

# Co-operative Housing and Starr-Bowkett Societies Act 1998 No 11

[1998-11]



New South Wales

## Status Information

### Currency of version

Historical version for 1 July 2019 to 12 January 2023 (accessed 9 February 2025 at 7:33)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Does not include amendments by**  
[Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2022 No 59](#) (not commenced — commences on 13.1.2023)
- **See also**  
[Statute Law \(Miscellaneous Provisions\) Bill 2021](#)

### Authorisation

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File last modified 26 October 2022

# Co-operative Housing and Starr-Bowkett Societies Act 1998 No 11



New South Wales

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# Co-operative Housing and Starr-Bowkett Societies Act 1998 No 11



New South Wales

An Act to make provision for the establishment, powers, membership, management, supervision and regulation of co-operative housing societies, Starr-Bowkett societies and associations; and for other purposes.

## Part 1 Preliminary

### Division 1 Introductory

#### 1 Name of Act

This Act is the *Co-operative Housing and Starr-Bowkett Societies Act 1998*.

#### 2 Commencement

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

#### 2A Prohibition on formation or registration of new societies and admission of new members

Despite any other provision of this Act:

- (a) a society cannot be formed or registered on or after the commencement of this section, and
- (b) a Starr-Bowkett society cannot admit any person to membership on or after that commencement.

### Division 2 Interpretation

#### 3 Definitions

(1) In this Act:

**accounting records** include:

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry, and

- (b) documents and records that record such entries, and
- (c) such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up.

**accounting standard** has the meaning given by section 9 of the Corporations Act.

**accounts** means statements of financial performance and statements of financial position, and includes statements, reports and notes (other than auditors' reports or directors' reports) attached to or intended to be read with any of those statements.

**advertisement** includes matter that is not in writing but because of the form or context in which it appears conveys a message.

**affairs**, in relation to a body corporate, has the meaning given by section 53 of the Corporations Act.

**approved form** means a form approved by the Registrar.

**association** means a body registered as an association under this Act.

**bank** means:

- (a) a bank as defined by section 5 of the *Banking Act 1959* of the Commonwealth, or
- (b) a bank constituted under a law of a State.

**board**, in relation to a co-operative housing body, means the board of directors of the body.

**body** includes an entity.

**body corporate** means any body corporate whether formed or incorporated within or outside this State, but does not include:

- (a) a body corporate that is incorporated within Australia or an external Territory and is a public authority or an instrumentality or agency of the Crown, or
- (b) a corporation sole.

**borrow** means to obtain financial accommodation.

**certificate of confirmation** has the meaning given by section 150 (Definitions).

**company** means a company incorporated, or taken to be incorporated, under the Corporations Act.

**consolidated accounts**, in relation to a co-operative housing body, means all of the following:

- (a) a consolidated statement of financial performance that section 129 (Group accounts) requires to be made out in relation to a financial year of the body,
- (b) a consolidated statement of financial position that section 129 (Group accounts) requires to be made out in relation to the financial year,
- (c) statements, reports and notes (other than a directors' report) attached to, or intended to be read with, that consolidated statement of financial performance or consolidated statement of financial position.

**co-operative housing body** means:

- (a) a society, or
- (b) an association.

**co-operative housing society** means a body registered under this Act as a co-operative housing society.

**Corporations Act** means the [Corporations Act 2001](#) of the Commonwealth.

**Court** means the Supreme Court, or a Supreme Court Judge, of this State.

**director** has the meaning given by section 5.

**economic entity** has the meaning given by section 5A.

**entity** has the meaning given by section 5A.

**executive officer**, in relation to a co-operative housing body or entity, means a person (by whatever name called) who is concerned, or takes part, in the management of the body or entity.

**expert**, in relation to a matter, means an independent person whose profession or reputation gives authority to a statement made by the person in relation to the matter.

**financial institution** means a building society or credit union under the financial institutions legislation.

**financial institutions legislation** has the same meaning as in the *AFIC (NSW) Code*.

**friendly society** means a friendly society under the [Friendly Societies Act 1989](#).

**group** means an economic entity of which a co-operative housing body is a part.

**group accounts**, in relation to a holding society, means a set of consolidated accounts for the group in relation to which the society is the holding society.

**holding body corporate** means a body corporate that is the holding body corporate

of another body corporate.

**holding society** has the meaning given by section 7.

**inspector** means a person authorised under section 30 (Inspectors).

**national business names register** has the meaning given by the Corporations Act.

**officer** has the meaning given by section 9 (Interpretation—meaning of “officer”).

**profit or loss** means:

- (a) in relation to an entity—the profit or loss resulting from operations of the entity, and
- (b) in relation to 2 or more entities or an economic entity constituted by 2 or more entities—the profit or loss resulting from operations of those entities.

**registered company auditor** means a person registered as an auditor, or taken to be registered as an auditor, under Part 9.2 of the Corporations Act.

**Registrar**—see section 47A.

**related body corporate** has the meaning given by section 10.

**securities** has the meaning given by section 92 of the Corporations Act.

**services corporation** means a body corporate declared to be a services corporation under section 13.

**share** means a share in the share capital of a body corporate.

**society** means a co-operative housing society or a Starr-Bowkett society.

**standard** means a standard that is continued in force under clause 21 of Schedule 5.

**Starr-Bowkett society** means a body registered under this Act as a Starr-Bowkett society.

**State** means a State or Territory.

**subsidiary** has the meaning given by section 11.

**transferee society** has the meaning given by section 150 (Definitions).

**transferor society** has the meaning given by section 150 (Definitions).

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) Schedule 1 (General interpretative provisions) has effect.
- (3) Notes in the text of this Act do not form part of this Act.
- (4) 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.

#### 4 Interpretation—meaning of “associate”

- (1) This section applies for the purposes of this Act other than section 103 (Financial accommodation to directors and associates).
- (2) A person is an **associate** of another, or is associated with another, if:
  - (a) they are partners, or
  - (b) one is a spouse, de facto partner, parent or child of the other, or
  - (c) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust, or
  - (d) one is a body corporate or other entity (whether inside or outside Australia) and the other is a director or member of the governing body of the body or entity, or
  - (e) one is a body corporate or other entity (whether inside or outside Australia) and the other is a person who has a legal or equitable interest in 5% or more of the share capital of the body or entity, or
  - (f) they are related bodies corporate, or
  - (g) a relationship of a prescribed kind exists between them, or
  - (h) a chain of relationships can be traced between them under any one or more of the above paragraphs.

#### Note—

“De facto partner” is defined in section 21C of the *Interpretation Act 1987*.

#### 5 Interpretation—meaning of “director”

- (1) Subject to subsection (2), for the purposes of this Act, a reference to **director**, in relation to a body corporate, includes a reference to:
  - (a) a person occupying or acting in the position of director of the body, by whatever name called and whether or not validly appointed to occupy, or duly authorised to act in, the position, and



- (b) a person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act, and
  - (c) in the case of a body corporate incorporated outside Australia:
    - (i) a member of the body's board, and
    - (ii) a person occupying or acting in the position of member of the body's board, by whatever name called and whether or not validly appointed to occupy, or duly authorised to act in, the position, and
    - (iii) a person in accordance with whose directions or instructions the members of the body's board are accustomed to act.
- (2) A person is not to be regarded as a person in accordance with whose directions or instructions:
- (a) a body corporate's directors, or
  - (b) the members of the board of a body corporate incorporated outside Australia, are accustomed to act merely because the directors or members act on advice given by the person in the proper performance of the functions attaching to:
  - (c) the person's professional capacity, or
  - (d) the person's business relationship with the directors, the members of the board or the body.

#### **5A Interpretation—meaning of “economic entity” and “entity”**

If an accounting standard defines the term **economic entity** or **entity** the definition in the accounting standard has effect for the purposes of this Act. Otherwise, the term has the meaning prescribed by the regulations.

**Note—**

Accounting Standard AASB 1024:*Consolidated Accounts* defines **economic entity** to mean “a group of entities comprising the parent entity and each of its subsidiaries” and defines **entity** to mean “any legal, administrative or fiduciary arrangements, organisational structure or other party (including a person) having the capacity to deploy scarce resources in order to achieve objectives”.

#### **6 Interpretation—reference to a holding body corporate**

A reference in this Act to the holding body corporate of another body corporate is a reference to a body corporate of which the other body corporate is a subsidiary.

#### **7 Interpretation—meaning of “holding society”**

A society is a holding society if the society:

- (a) controlled another entity during all or part of a financial year of the society, or

(b) controlled another entity at the end of a financial year of the society.

**8 Interpretation—meaning of “making a decision”**

A reference in this Act to the making of a decision includes a reference to:

- (a) making, suspending, revoking or refusing to make an order or determination, or
- (b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission, or
- (c) issuing, suspending, revoking or refusing to issue a licence, authority or other instrument, or
- (d) imposing a condition or restriction, or
- (e) making a declaration, demand or requirement, or
- (f) retaining, or refusing to deliver up, an article, or
- (g) doing or refusing to do anything else.

**9 Interpretation—meaning of “officer”**

(1) Subject to subsection (2), for the purposes of this Act, **officer**, in relation to a body corporate or entity, includes:

- (a) a director, secretary, executive officer or employee of the body or entity, and
- (b) a receiver and manager, appointed under a power contained in an instrument, of property of the body or entity, and
- (c) an official manager, or deputy official manager, of the body or entity, and
- (d) a liquidator of the body or entity appointed in a voluntary winding-up of the body or entity, and
- (e) a trustee or other person administering a compromise or arrangement made between the body or entity and other persons.

(2) None of the following is an officer of the body corporate or entity:

- (a) a receiver who is not also a manager,
- (b) a receiver and manager appointed by a court,
- (c) a liquidator appointed by a court.

**10 Interpretation—meaning of “related body corporate”**

If a body corporate is:

- (a) the holding body corporate of another body corporate, or
  - (b) a subsidiary of another body corporate, or
  - (c) a subsidiary of the holding body corporate of another body corporate,
- the first body corporate and the other body corporate are related to each other.

#### **11 Interpretation—meaning of “subsidiary”**

- (1) Subject to subsection (5), a body corporate is a subsidiary of a co-operative housing body if:
  - (a) the co-operative housing body:
    - (i) controls the composition of the body corporate’s board of directors, or
    - (ii) is in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the body corporate, or
    - (iii) holds more than 50% of the issued share capital of the body corporate (other than any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital), or
  - (b) the body corporate is a subsidiary of a body corporate that is a subsidiary of the co-operative housing body (including a body corporate that is a subsidiary of the co-operative housing body by another application of this paragraph).
- (2) The composition of a body corporate’s board of directors is controlled by a co-operative housing body if the co-operative housing body can appoint or remove all or a majority of the directors by the exercise of a power exercisable with or without the consent or concurrence of another person.
- (3) For the purposes of subsection (2), a co-operative housing body is taken to have power to make an appointment of directors if:
  - (a) a person cannot be appointed as director without the exercise of such a power by the co-operative housing body in the person’s favour, or
  - (b) a person’s appointment as a director follows necessarily from the person being a director or other officer of the co-operative housing body.
- (4) Subsection (2) does not limit by implication the circumstances in which the composition of a body corporate’s board of directors is taken to be controlled by a co-operative housing body.
- (5) In determining whether a body corporate is a subsidiary of a co-operative housing body:

- (a) any shares held or power exercisable by the co-operative housing body in a fiduciary capacity must be treated as not held or exercisable by it, and
  - (b) subject to paragraphs (c) and (d), any shares held or power exercisable:
    - (i) by any person as a nominee for the co-operative housing body, or
    - (ii) by, or by a nominee for, a subsidiary of the co-operative housing body (other than a subsidiary that is concerned only in a fiduciary capacity), andmust be treated as held or exercisable by the co-operative housing body, and
  - (c) any shares held or power exercisable by a person under a debenture, or a trust deed for securing the issue of debentures, must be disregarded, and
  - (d) any shares held or power exercisable by, or by a nominee for, the co-operative housing body or its subsidiary merely by way of security given for the purposes of a transaction entered into in the ordinary course of business in connection with providing financial accommodation must be disregarded.
- (6) If it is relevant to determine for the purposes of this Act whether a body corporate is a subsidiary of another body corporate that is not a co-operative housing body and subsection (1) does not apply, the first body corporate is a subsidiary of the other body corporate if it would be such a subsidiary under the Corporations Act.

## **12 Interpretation—when one entity controls another**

- (1) For the purposes of Divisions 4 (Accounts) and 5 (Audit) of Part 4 (Management), an entity controls another entity if the entity is a subsidiary of the first entity.
- (2) Despite subsection (1), a regulation may make provision for determining, for the purposes of those Divisions as they apply in relation to a society in relation to prescribed financial years, whether or not an entity controls another entity.
- (3) (Repealed)

## **13 Services corporations**

The Registrar may, by Gazette notice, declare a body corporate that provides or proposes to provide financial or other services to societies to enable them to further their objects to be a services corporation.

## **Division 3 Operation of Act**

### **14 Act binds the Crown**

- (1) This Act binds the Crown in right of this State and, so far as the legislative power of the Legislature of this State permits, the Crown in all its other capacities.

- (2) Nothing in this section permits the Crown in any of its capacities to be prosecuted for an offence.

## **Division 4 Application of Corporations Act to co-operative housing bodies**

### **15 Definition**

In this Division:

***excluded Corporations legislation provision*** means any provision of the Corporations legislation that does not apply to a co-operative housing body or its securities as a law of the Commonwealth.

### **16 Excluded matter**

- (1) The following matters are declared to be excluded matters 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 by this section:
- (a) co-operative housing bodies,
  - (b) securities of such bodies.

#### **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 co-operative housing bodies, 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-operative housing bodies and the securities of such bodies to the extent they would otherwise be applicable to such bodies and securities:
- (a) provisions applying to, or about, the following:
    - (i) bodies,
    - (ii) bodies corporate,
    - (iii) disclosing entities,
    - (iv) eligible bodies,
    - (v) persons,
    - (vi) securities, including securities of a particular type,

- (vii) securities, including securities of a particular type (for example, shares or debentures) of a body corporate,
  - (b) provisions applying to or about bodies or bodies corporate included in the official list of any prescribed financial market (including provisions of Chapter 6 applying to or about a company as defined for that Chapter),
  - (c) Chapter 2L (Debentures),
  - (d) Chapter 6D (Fundraising),
  - (e) Part 7.10 (Market misconduct and other prohibited conduct relating to financial products and financial services),
  - (f) provisions:
    - (i) about the interpretation of a provision mentioned in paragraphs (a)–(e) (***non-excluded Corporations Act provision***), including a provision defining a word used in the non-excluded Corporations Act provision, or
    - (ii) vesting power in the Australian Securities and Investments Commission, but only to the extent that they vest power for the purposes of a non-excluded Corporations Act provision, or
    - (iii) empowering a court to make an order (including an order curing a procedural irregularity), but only to the extent that they empower the court to make an order for the purposes of a non-excluded Corporations Act provision, or
    - (iv) otherwise about the administration of a non-excluded Corporations Act provision.
- (3) The expressions used in subsection (2) (a), (b) and (f) have the meanings given by the Corporations Act.

## **17 Applying the Corporations legislation to co-operative housing bodies**

- (1) The regulations may declare any matter relating to a co-operative housing body 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) However, a regulation may not declare a matter to be an applied Corporations legislation matter in relation to an excluded Corporations legislation provision to the extent that the application of the provision would be inconsistent with a provision of this Act.
- (4) 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.

## **18 (Repealed)**

## **Part 2 Functions and powers of Registrar**

### **Division 1 General**

#### **19 Functions of Registrar**

The functions of the Registrar are:

- (a) to register, supervise and regulate co-operative housing bodies, and
- (b) to supervise and enforce compliance by co-operative housing bodies with this Act and with standards, and
- (c) to ensure that an effective and efficient system of prudential supervision is applied to societies, and
- (d) to facilitate or direct the transfer of engagements of, or the conversion or merger of, co-operative housing bodies, and
- (e) (Repealed)
- (f) to carry out such other functions as are conferred on the Registrar by or under this or any other Act.

## **20 General powers**

- (1) The Registrar has power to do all things necessary or convenient to be done for, or in connection with, the performance of the Registrar's functions.
- (2) Without limiting subsection (1), the Registrar has such powers as are conferred on the Registrar by or under this or any other Act.

## **21 Application of variation under standards**

- (1) If a standard provides that the operation of the standard in relation to a particular co-operative housing body may be varied by the Registrar by temporarily changing a requirement of the standard, the Registrar may temporarily change the requirement as allowed under the standard.
- (2) Subsection (1) does not limit section 20 (General powers).

## **22 (Repealed)**

## **23 Inspection of documents**

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



## 24 Power of Registrar to reject documents, etc

- (1) If the Registrar is of the opinion that a document submitted to the Registrar:
  - (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) because of an omission or misdescription has not been duly completed, or
  - (d) does not comply with the requirements of this Act, or
  - (e) contains an error, alteration or erasure,the Registrar may refuse to register, or may reject, the document and may request:
  - (f) that the document be appropriately amended or completed and resubmitted, or
  - (g) that a fresh document be submitted in its place, or
  - (h) if the document has not been duly completed—that a supplementary document be submitted.
- (2) The Registrar may require a person who submits a document to the Registrar to also produce another document, or to give any information, that the Registrar considers necessary in order to form an opinion whether the Registrar should refuse to register or should reject the document.

## 25 Extension or abridgment of time

The Registrar may, on receipt of written application by a co-operative housing body or of the Registrar's own initiative, extend or abridge the time within which anything is required to be done under this Act or the body's rules, even if that time has ended.

## 26 Review of Registrar decisions

- (1) A person whose interests are affected by a decision of the Registrar made under this Act may, by written notice given to the Registrar, request the Registrar to review the decision.
- (2) The Registrar must comply with a request under subsection (1).
- (3) However, a person may not request the Registrar to review:
  - (a) a decision made under subsection (6) to confirm, vary or reverse a decision (**the original decision**), or
  - (b) the original decision as confirmed or varied.
- (4) A request under subsection (1) must be made within 1 month after the person is given

notice of the decision.

- (5) When reviewing a decision, the Registrar must give the person who requested the review an opportunity to appear before the Registrar and make a submission in relation to the decision.
- (6) The Registrar may confirm, vary or reverse the decision.

## **27 Administrative review by NCAT of Registrar decisions**

- (1) A person whose interests are affected by a decision of the Registrar made under this Act may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision.
- (2) This section does not apply to any of the following decisions of the Registrar:
  - (a) a decision under any of the following provisions:
    - (i) section 21 (Application of variation under standards),
    - (ii) Subdivision 1 (Enforcement powers) of Division 2 (Specific powers) of Part 2 (Functions and powers of Registrar),
    - (iii) section 40 (Special meeting and inquiry),
    - (iv) section 42 (Power to suspend operations),
    - (v) section 43 (Appointment of administrator),
    - (vi) section 47 (Power to control advertising),
    - (vii) section 156 (Registrar may direct a transfer of engagements between societies of the same type),
    - (viii) (Repealed)
  - (b) a decision under section 41 (Intervention by Registrar), other than the following decisions:
    - (i) a decision to remove an individual director,
    - (ii) a decision to remove an auditor,
    - (iii) a decision directing a co-operative housing body to change any practice if the practice is not dealt with by a standard,
  - (c) a decision prescribed by the regulations for the purposes of this subsection.
- (3) For the purposes of a review to which this section applies, the internal review referred to in section 55 (1) (b) of the *Administrative Decisions Review Act 1997* is a review

under section 26 of this Act.

- (4) Section 53 (Internal reviews) of the *Administrative Decisions Review Act 1997* does not apply to a decision of the Registrar made under this Act.

## **Division 2 Specific powers**

### **Subdivision 1 Enforcement powers**

#### **28 Obtaining information etc**

- (1) The Registrar may, if it is reasonably necessary for the purposes of the Registrar's functions under this Act, by written notice given to a co-operative housing body, or a body corporate related to a co-operative housing body, require the co-operative housing body or body corporate:
- (a) to give to the Registrar, within a reasonable period and in a reasonable way specified in the notice, specified information and reports, and
  - (b) to give to the Registrar, at the reasonable times and in a reasonable way specified in the notice, periodic reports on specific matters, and
  - (c) to notify the Registrar, within the reasonable time and in a reasonable way specified in the notice, if:
    - (i) a specified event or change of circumstances happens, or
    - (ii) the co-operative housing body or body corporate becomes aware that a specified event or change of circumstances is likely to happen.
- (2) The Registrar may, if it is reasonably necessary for the purposes of the Registrar's functions under this Act, by written notice given to a services corporation, or a body corporate related to a services corporation, require the services corporation or body corporate to give to the Registrar, within a reasonable time and in a reasonable way specified in the notice, specified information.
- (3) A co-operative housing body, body corporate or services corporation that, without reasonable excuse, fails to comply with a requirement under subsection (1) or (2) to the extent that it is capable of doing so commits an offence.
- Maximum penalty: 50 penalty units.
- (4) It is not a reasonable excuse for a co-operative housing body, body corporate or services corporation to fail to comply with a requirement under subsection (1) or (2) that complying with the requirement might tend to incriminate the co-operative housing body, body corporate or services corporation.
- (5) The fact that information or a report or notification was given by a co-operative

housing body, body corporate or services corporation under subsection (1) or (2) is not admissible in evidence against the co-operative housing body, body corporate or services corporation in a criminal proceeding (other than a proceeding in relation to the falsity of the information, report or notification) if:

- (a) the co-operative housing body, body corporate or services corporation, before giving the information, report or notification (the **relevant action**) claimed that the relevant action might tend to incriminate the co-operative housing body, body corporate or services corporation, and
- (b) the relevant action might in fact tend to incriminate the co-operative housing body, body corporate or services corporation.

## 29 Obtaining evidence

- (1) The Registrar may, if it is reasonably necessary for the purposes of this Act, by written notice given to a person, require the person:
  - (a) to attend before an employee of the Department of Finance, Services and Innovation authorised for the purpose, at a reasonable time and place specified in the notice, and then and there answer questions, and
  - (b) to produce to an employee of the Department of Finance, Services and Innovation authorised for the purpose, at a reasonable time and place specified in the notice, documents in the custody or under the control of the person.
- (2) An employee before whom a person attends under subsection (1) (a) may require answers to be verified or given on oath or affirmation, and either orally or in writing, and for that purpose the employee may administer an oath or affirmation.
- (3) The oath to be taken, or affirmation to be made, by a person for the purposes of this section is an oath or affirmation that the answers the person will give will be true.
- (4) An employee to whom documents are produced under subsection (1):
  - (a) may keep the documents for 60 days or, if a prosecution for an offence against this Act of which the document may afford evidence is instituted within that period, until the completion of the proceeding for the offence and of any appeal in relation to the proceeding, and
  - (b) while the employee has possession of the document, may take extracts from and make copies of the document, but must allow the document to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the employee's possession.
- (5) The regulations must prescribe scales of allowances and expenses to be allowed to persons required to attend under this section.

- (6) The Registrar may authorise an employee for the purpose of subsection (1) (a) only if the person has, in the Registrar's opinion, the appropriate expertise for the purpose (whether because of training or otherwise).
- (7) A person who, without reasonable excuse, fails to comply with a requirement under subsection (1) to the extent that the person is capable of doing so commits an offence.

Maximum penalty: 50 penalty units.

- (8) It is not a reasonable excuse for a person to fail to comply with a requirement under subsection (1) that complying with the requirement might tend to incriminate the person.
- (9) An answer given by a person under subsection (1) is not admissible against the person in a criminal proceeding (other than a proceeding in relation to the falsity of the answer) if:
  - (a) the person, before giving the answer, claimed that giving the answer might tend to incriminate the person, and
  - (b) giving the answer might in fact tend to incriminate the person.
- (10) The fact that a document was produced by a person under subsection (1) is not admissible in evidence against the person in a criminal proceeding (other than a proceeding in relation to the falsity of the document) if:
  - (a) the person, before producing the document, claimed that producing the document might tend to incriminate the person, and
  - (b) producing the document might in fact tend to incriminate the person.

### **30 Inspectors**

- (1) The Registrar may authorise a person, or a class of persons, to exercise:
  - (a) all the powers conferred by this Act on an inspector, or
  - (b) any powers conferred by this Act on an inspector.
- (2) The Registrar is to cause each inspector to be issued with a certificate of identification in the approved form.

### **31 Inspector to produce identification**

If an inspector proposing to exercise the functions of an inspector fails to produce on demand his or her certificate of identification, the inspector is not authorised to exercise those functions in relation to the person making the demand.

### **32 Entry and search—monitoring compliance**

- (1) An inspector may, for the purpose of finding out whether the requirements of this Act are being complied with:
  - (a) enter any place, and
  - (b) exercise the powers set out in section 34 (General powers of inspector in relation to places).
- (2) An inspector must not enter a place, or exercise a power under subsection (1), unless:
  - (a) the place is premises occupied by a co-operative housing body or services corporation, or a body corporate related to a co-operative housing body or services corporation, and the entry is made when the premises are open for conduct of business or otherwise open for entry, or
  - (b) the place is premises occupied by a banker or liquidator of a co-operative housing body, or a body corporate related to a co-operative housing body, and the entry is made when the premises are open for conduct of business or otherwise open for entry, or
  - (c) the place is premises that are not occupied for residential purposes, the inspector believes on reasonable grounds that accounting records or other prescribed documents of, or any auditor's working papers relating to, a co-operative housing body, or a body corporate related to a co-operative housing body, are kept or are to be found on the premises and the entry is made when the premises are open for conduct of business or otherwise open for entry, or
  - (d) the occupier of the place consents to the entry or exercise of the power, or
  - (e) a warrant under section 35 (Monitoring warrants) authorises the entry or exercise of the power.

### **33 Entry and search—evidence of offences**

- (1) Subject to subsection (3), if an inspector has reasonable grounds for suspecting that there is in a place a particular thing (**the evidence**) that may afford evidence of the commission of an offence against this Act, the inspector may:
  - (a) enter the place, and
  - (b) exercise the powers set out in section 34 (General powers of inspector in relation to places).
- (2) If an inspector enters the place and finds the evidence, the following provisions have effect:
  - (a) the inspector may seize the evidence,

- (b) the inspector may keep the evidence for 60 days or, if a prosecution for an offence against this Act in the commission of which the evidence may have been used or otherwise involved is instituted within that period, until the completion of the proceeding for the offence and of any appeal in relation to the proceeding,
  - (c) if the evidence is a document—while the inspector has possession of the document, the inspector may take extracts from and make copies of the document, but must allow the document to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the inspector's possession.
- (3) An inspector must not enter the place or exercise a power under subsection (1) unless:
- (a) the occupier of the place consents to the entry or exercise of the power, or
  - (b) a warrant under section 36 (Offence related warrants) that was issued in relation to the evidence authorises the entry or exercise of the power.
- (4) If, while searching the place under subsection (1) under a warrant under section 36 (Offence related warrants):
- (a) an inspector finds a thing that the inspector believes, on reasonable grounds, to be:
    - (i) a thing (other than the evidence) that will afford evidence of the commission of the offence mentioned in subsection (1), or
    - (ii) a thing that will afford evidence of the commission of another offence against this Act, and
  - (b) the inspector believes, on reasonable grounds, that it is necessary to seize the thing to prevent:
    - (i) its concealment, loss or destruction, or
    - (ii) its use in committing, continuing or repeating the offence mentioned in subsection (1) or the other offence, as the case may be,
- subsection (2) applies to the thing as if it were the evidence.
- (5) An inspector who seizes or damages anything under this section must give written notice of particulars of the thing or damage.
- (6) The notice must be given to:
- (a) if anything is seized—the person from whom the thing was seized, or
  - (b) if damage is caused to anything—the person who appears to the inspector to be

the owner.

### **34 General powers of inspector in relation to places**

- (1) The powers an inspector may exercise under section 32 (1) (b) (Entry and search—monitoring compliance) or 33 (1) (b) (Entry and search—evidence of offences) in relation to a place are as follows:
  - (a) to search any part of the place,
  - (b) to inspect, examine or photograph anything in the place,
  - (c) to take extracts from, and make copies of, any documents in the place,
  - (d) to take into the place such equipment and materials as the inspector requires for the purpose of exercising any powers in relation to the place,
  - (e) to require the occupier or any person in the place to give to the inspector reasonable assistance in relation to the exercise of an inspector's powers mentioned in paragraphs (a) to (d).
- (2) A person must not, without reasonable excuse, fail to comply with a requirement under subsection (1) (e).

Maximum penalty: 25 penalty units.

- (3) It is not a reasonable excuse for a person to fail to comply with a requirement under subsection (1) (e) on the ground of the privilege against self-incrimination.
- (4) If, under a requirement under subsection (1) (e), a person is required to answer a question or produce a document, the contents of the answer, or the fact of production of the document, is not admissible in evidence against the person in a criminal proceeding (other than a proceeding in relation to the falsity of the answer or document).
- (5) For the purposes of the application of subsection (4) to the production of a document, the contents of the document are to be disregarded.

### **35 Monitoring warrants**

- (1) An inspector may apply to a Magistrate for a warrant under this section in relation to a particular place.
- (2) Subject to subsection (3), the Magistrate may issue the warrant if the Magistrate is satisfied, by information on oath, that it is reasonably necessary that the inspector should have access to the place for the purpose of finding out whether the requirements of this Act are being complied with.
- (3) If the Magistrate requires further information concerning the grounds on which the



issue of the warrant is being sought, the Magistrate must not issue the warrant unless the inspector or another person has given the information to the Magistrate in the form (either orally or by affidavit) that the Magistrate requires.

(4) The warrant must:

(a) authorise the inspector, with such assistance and by such force as is necessary and reasonable:

(i) to enter the place, and

(ii) to exercise the powers set out in section 34 (General powers of inspector in relation to places), and

(b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night, and

(c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect, and

(d) state the purpose for which the warrant is issued.

### 36 Offence related warrants

(1) An inspector may apply to a Magistrate for a warrant under this section in relation to a particular place.

(2) Subject to subsection (3), the Magistrate may issue the warrant if the Magistrate is satisfied, by information on oath, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, in the place a particular thing (**the evidence**) that may afford evidence of the commission of an offence against this Act.

(3) If the Magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the Magistrate must not issue the warrant unless the inspector or another person has given the information to the Magistrate in the form (either orally or by affidavit) that the Magistrate requires.

(4) The warrant must:

(a) authorise the inspector, with such assistance and by such force as is necessary and reasonable:

(i) to enter the place, and

(ii) to exercise the powers set out in section 34 (General powers of inspector in relation to places), and

(iii) to seize the evidence, and

- (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night, and
- (c) specify the day (not more than 7 days after the issue of the warrant) on which the warrant ceases to have effect, and
- (d) state the purposes for which the warrant is issued.

**37 Offence related warrant may be granted by telephone**

- (1) If, because of urgent circumstances, an inspector considers it necessary to do so, the inspector may, under this section, apply by telephone for a warrant under section 36 (Offence related warrants).
- (2) Before applying for the warrant, the inspector must prepare an information of the kind mentioned in section 36 (2) that sets out the grounds on which the issue of the warrant is sought.
- (3) If it is necessary to do so, the inspector may apply for the warrant before the information has been sworn.
- (4) If the Magistrate is satisfied:
  - (a) after having considered the terms of the information, and
  - (b) after having received such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought,that there are reasonable grounds for issuing the warrant, the Magistrate may, under section 36 (Offence related warrants), complete and sign such a warrant as the Magistrate would issue under that section if the application had been made under that section.
- (5) If the Magistrate completes and signs the warrant:
  - (a) the Magistrate must:
    - (i) tell the inspector what the terms of the warrant are, and
    - (ii) tell the inspector the date on which and the time at which the warrant was signed, and
    - (iii) record on the warrant the reasons for granting the warrant, and
  - (b) the inspector must:
    - (i) complete a form of warrant in the same terms as the warrant completed and signed by the Magistrate, and
    - (ii) write on the form of warrant the name of the Magistrate and the date on which

and the time at which the Magistrate signed the warrant.

- (6) The inspector must also, not later than the day after the day of expiry or execution of the warrant (whichever is the earlier), send to the Magistrate:
- (a) the form of warrant completed by the inspector, and
  - (b) the information mentioned in subsection (2), which must have been duly sworn.
- (7) When the Magistrate receives the documents mentioned in subsection (6), the Magistrate must:
- (a) attach them to the warrant that the Magistrate completed and signed, and
  - (b) deal with them in the way in which the Magistrate would have dealt with the information if the application for the warrant had been made under section 36 (Offence related warrants).
- (8) A form of warrant duly completed by the inspector under subsection (5) is authority for any entry, search, seizure or other exercise of a power that the warrant signed by the Magistrate authorises.
- (9) If:
- (a) it is material for a court to be satisfied that an entry, search, seizure or other exercise of power was authorised by this section, and
  - (b) the warrant completed and signed by the Magistrate authorising the exercise of power is not produced in evidence,
- the court must assume, unless the contrary is proved, that the exercise of power was not authorised by such a warrant.

### **38 Obstruction etc of inspectors**

A person must not, without reasonable excuse, assault, obstruct, hinder or resist an inspector in the exercise of a power under this Act.

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

### **39 False or misleading statements**

(1) In this section:

**relevant person** means a person exercising powers under this Act, and includes an inspector.

(2) A person must not:

- (a) make a statement to the Registrar or a relevant person that the person knows is false or misleading in a material particular, or

- (b) omit from a statement made to the Registrar or a relevant person anything without which the statement is, to the person's knowledge, misleading in a material particular, or
- (c) give to the Registrar or a relevant person a document containing information that the person knows is false, misleading or incomplete in a material particular without, at the same time:
  - (i) indicating that the document is false, misleading or incomplete and the respect in which it is false, misleading or incomplete, and
  - (ii) giving correct information if the person has, or can reasonably obtain, the correct information.

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

## **Subdivision 2 Special meeting and inquiry**

### **40 Special meeting and inquiry**

- (1) The Registrar may, on the written application of a majority of the directors, or not less than 10% of the members, of a society or on the Registrar's own initiative:
  - (a) call a special meeting of the society, or
  - (b) hold an inquiry into affairs (including the working and financial conditions) of the society.
- (2) The Registrar may, on the Registrar's own initiative, hold an inquiry into affairs (including the working and financial conditions) of:
  - (a) a body corporate related to a society, or
  - (b) a services corporation.
- (3) An application under subsection (1) 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.
- (4) Notice of the application must be given to the society if the Registrar directs.
- (5) Security for the expenses of a meeting or inquiry must be given:
  - (a) if the meeting is called or inquiry is held on an application under subsection (1)—by the applicants, or
  - (b) in any other case—by such persons and in such way as the Registrar directs.
- (6) The Registrar may:

- (a) direct the time and place the meeting or inquiry is to be held, and
- (b) direct what matters are to be discussed or determined, and
- (c) despite the rules of the society, give notice to members of the holding of the meeting or inquiry as the Registrar considers appropriate.

(7) The Registrar may, by written notice, direct the directors and such other persons as the Registrar requires to attend the meeting or inquiry.

(8) A person to whom a direction is given under subsection (7) must not, without reasonable excuse, fail to comply with the direction.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

(9) A meeting held under this section has all the powers of a meeting called under the rules of a society and has power to appoint a person to preside at the meeting, despite any rule of the society to the contrary.

(10) The Registrar, or any person nominated by the Registrar, may attend and address a meeting held under this section.

(11) All expenses of and incidental to the meeting or inquiry may be defrayed:

(a) if the meeting is called or inquiry is held under subsection (1)—by the applicants or out of the funds of the society or by any officer or member, or former officer or member, in such proportions as may be agreed between the Registrar and those persons, or

(b) if the inquiry is held under subsection (2):

(i) in the case of a related body corporate—out of the funds of the society to whom the body corporate is related, or

(ii) in the case of a services corporation—out of the funds of the services corporation, or out of the funds of any society that has shares in the services corporation, in such proportions as the Registrar directs,

and may be recovered as a debt in a court having jurisdiction for the recovery of debts up to the amount concerned.

(12) In default of agreement under subsection (11) (a), the expenses must be defrayed by such persons, and in such proportions, as the Court, on the application of the Registrar, directs.

## **Subdivision 3 Special power of intervention**

### **41 Intervention by Registrar**

- (1) If the Registrar is of the opinion that:
  - (a) a co-operative housing body has contravened this Act and, after being given written notice of the contravention by the Registrar, has allowed the contravention to continue or has again contravened this Act, or
  - (b) a co-operative housing body is trading unprofitably or has an accumulated deficit in its accounts, or
  - (c) the affairs of a co-operative housing body are being conducted in an improper or financially unsound way,the Registrar may, by written notice given to the body, place it under direction.
- (2) The Registrar may, by written notice given to the body, revoke the notice.
- (3) While the co-operative housing body is under direction, the Registrar may do all things that the Registrar considers necessary to ensure that the matter is remedied.
- (4) Without limiting subsection (3), the Registrar may:
  - (a) order an audit of the affairs of the co-operative housing body by an auditor chosen by the Registrar at the expense of the body, or
  - (b) direct the co-operative housing body to change any practices that in the Registrar's opinion are undesirable or unsound, or
  - (c) direct the co-operative housing body to cease or limit the raising or lending of funds or the exercise of other powers, or
  - (d) remove a director, or all the directors, of the co-operative housing body from office and appoint another director or other directors, or
  - (e) remove any auditor of the co-operative housing body from office and appoint another auditor, or
  - (f) give any other directions as to the way in which the affairs of the co-operative housing body are to be conducted or not conducted.
- (5) If the co-operative housing body:
  - (a) fails, without reasonable excuse, to comply with a direction given or requirement made under this section to the extent that the co-operative housing body is capable of doing so, or
  - (b) without reasonable excuse, obstructs, hinders or resists the exercise of the

Registrar's powers under this section,

the co-operative housing body and any officer of the co-operative housing body who is in default each commit an offence.

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

- (6) A director or auditor appointed under this section holds office for such term as the Registrar directs.

## **Subdivision 4 Power to suspend operations of society**

### **42 Power to suspend operations**

- (1) If the Registrar considers that it is necessary to do so:
- (a) in the interests of members or creditors, or persons who may become members or creditors, of a co-operative housing body, or
  - (b) because a co-operative housing body has failed to comply with a standard,
- the Registrar may, by written notice given to the body, direct the body not to do any of the following:
- (c) give any financial accommodation to members,
  - (d) borrow any amount,
  - (e) accept any payment on account of share capital except calls that fell due before the notice was given,
  - (f) repay any amount paid on shares,
  - (g) repay any money on loan,
  - (h) pay or transfer an amount to any person, or create an obligation to do so.
- (2) A notice under subsection (1) continues in force until it expires, or is withdrawn by the Registrar.
- (3) The Registrar may, by a further written notice given to the co-operative housing body:
- (a) extend the period for which a notice under subsection (1) is to have force, or
  - (b) amend the terms of the notice, or
  - (c) withdraw the notice.
- (4) If a co-operative housing body fails to comply with a notice under this section, the body and any officer of the body who is in default each commit an offence.

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

- (5) Subsection (4) does not apply if the failure to comply happens with the written permission of the Registrar.

## **Subdivision 5 Administrators**

### **43 Appointment of administrator**

- (1) The Registrar may, by written notice, appoint an administrator to conduct the affairs of a co-operative housing body and may, by written notice, revoke the appointment.
- (2) A notice of appointment 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:
- (a) the Registrar is of the opinion that:
    - (i) the co-operative housing body has contravened this Act or its rules and, after being given written notice of the contravention by the Registrar, has allowed the contravention to continue or has again contravened this Act or those rules, or
    - (ii) the body is trading unprofitably or has an accumulated deficit in its accounts, or
    - (iii) the affairs of the body are being conducted in an improper or financially unsound way, or
  - (b) after making such inquiries in relation to the body as the Registrar considers appropriate, the Registrar is satisfied that it is in the interest of members or creditors that the body's affairs be conducted by an administrator, or
  - (c) the Registrar has certified that:
    - (i) the body has not started business within a year of registration or has suspended or ceased to carry on business for a period of more than 6 months, or
    - (ii) an event (specified in the certificate) has happened on the happening of which the regulations or the body's rules provide that the body is to be wound-up, or



- (iii) there are, or have been for a period of 1 month immediately before the date of the certificate, insufficient directors of the body to constitute a quorum as provided by the body's rules.
- (5) On the appointment of an administrator of a co-operative housing body:
- (a) the directors of the body cease to hold office, and
  - (b) all contracts of employment with, or for providing administrative or secretarial services to, the body are terminated, and
  - (c) the administrator may terminate any contract for providing other services to the body.
- (6) An administrator of a co-operative housing body has the powers and functions of the board of the body, including the board's powers of delegation.
- (7) A director of a co-operative housing body must not be appointed or elected while the administrator is in office except as provided by this section.
- (8) An administrator holds office until the administrator's appointment is revoked.
- (9) 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 housing body's records and documents.
- (10) On providing the report and accounting fully in relation to the administration of the co-operative housing body to the satisfaction of the Registrar, the administrator is released from any further duty to account in relation to the administration of the body other than on account of fraud, dishonesty, negligence or wilful failure to comply with this Act.
- (11) Before revoking an administrator's appointment, the Registrar must:
- (a) appoint another administrator, or
  - (b) appoint a liquidator, or
  - (c) ensure that directors have been appointed or elected under the co-operative housing body's rules at a meeting called by the administrator under the rules, or
  - (d) appoint directors of the body.
- (12) Directors elected or appointed under this section:
- (a) take office on the revocation of the administrator's appointment, and
  - (b) in the case of directors appointed under this section—hold office, subject to

section 44 (Additional powers of Registrar), until the society's next annual general meeting.

- (13) The expenses of conducting a co-operative housing body's affairs by an administrator are payable from the body's funds.
- (14) The expenses of conducting a co-operative housing body's affairs include:
  - (a) if the administrator is not an employee of the Department of Finance, Services and Innovation—remuneration of the administrator at a rate approved by the Registrar, or
  - (b) if the administrator is an employee of the Department of Finance, Services and Innovation—the amount that the Registrar certifies should be paid to the Registrar as repayment of the administrator's remuneration.
- (15) An amount certified by the Registrar as the amount that should be paid to the Registrar as repayment of the administrator's remuneration is a debt due to the Crown and may be sued for and recovered in a court having jurisdiction for the recovery of debts up to the amount concerned.
- (16) An administrator has, in relation to the expenses of conducting a co-operative housing body's affairs, the same priority on the winding-up of the body as the liquidator of the body has.
- (17) If a co-operative housing body incurs any loss because of any fraud, dishonesty, negligence or wilful failure to comply with this Act or the body's rules by an administrator, the administrator is liable for the loss. An administrator is not liable for any other loss but must account for the loss in a report given under this section.

#### **44 Additional powers of Registrar**

- (1) If the Registrar appoints directors of a co-operative housing body under section 43 (11) (d) (Appointment of administrator), the Registrar may, by written notice given to the body, specify:
  - (a) a time during which this section is to apply in relation to the body, 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 body's rules.
- (2) While this section applies to a co-operative housing body, 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 a co-operative housing body, extend the time for which this section is to apply in relation to the body.
- (4) A rule specified by the Registrar under this section as a rule of a co-operative housing body:
  - (a) is not to be amended or revoked except in the way set out in this section, and
  - (b) if it is inconsistent with any other rule of the body—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 body's rules and to copies of them.

#### **45 Stay of proceedings**

- (1) If the Registrar appoints an administrator to conduct a co-operative housing body's affairs, a person must not begin or continue any proceeding in a court against the body 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 to 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.

#### **46 Administrator to report to Registrar**

On the receipt of a request from the Registrar, the administrator of a co-operative housing body must, without delay, prepare and give to the Registrar a report showing how the administration is being carried out.

### **Subdivision 6 Advertising by co-operative housing bodies**

#### **47 Power to control advertising**

- (1) The Registrar may, by written notice given to a co-operative housing body, direct it:
  - (a) not to issue an advertisement, or
  - (b) not to issue an advertisement of a specified kind, or
  - (c) not to issue an advertisement that is substantially in the same form as an advertisement that has been issued before, or
  - (d) to include in an advertisement of a specified kind, or in an invitation to invest in or

lend amounts to the body, information relating to the body that is required by the Registrar to be included.

- (2) Directions under subsection (1) may be varied or revoked by further written notice given to the body by the Registrar.
- (3) A body that fails to comply with a direction under this section commits an offence.  
Maximum penalty: 50 penalty units.

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

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

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

#### **47B Delegation by Registrar**

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

## **Part 3 Societies**

### **Division 1 Formation and registration**

#### **48 Co-operative housing societies and Starr-Bowkett societies**

- (1) A society may be either a co-operative housing society or a Starr-Bowkett society.
- (2) A society is a co-operative housing society if it has as its object the assisting of members and other persons to achieve home ownership (including ownership of land upon which a home is to be erected), and is by its rules:
  - (a) authorised to raise money on loan, and
  - (b) not authorised to receive money on deposit, and
  - (c) not authorised to raise money by the subscription of its members except money raised by the nominal subscription required by its rules for a person to become a member.
- (3) A society is a Starr-Bowkett society if it has as its object the raising, by the

subscription of its members, of a fund for making loans to its members upon the security of a mortgage over freehold or leasehold land or land of any tenure under any Act dealing with the disposition and holding of lands of the Crown, and is by its rules:

- (a) authorised to raise money by the subscription of its members, and
  - (b) authorised to determine by ballot the precedence among applicants for loans.
- (4) A society has such additional objects as may be prescribed by the regulations in relation to the provision of housing for its members and other persons, and any such additional object may be prescribed so as:
- (a) to apply generally to all societies, or
  - (b) to apply to one kind of society only or to both kinds, or
  - (c) to apply to a particular society or the members of a particular class of societies, or
  - (d) to be limited in its application to those societies by reference to specified exceptions or factors.

#### **49 Formation of co-operative housing and Starr-Bowkett societies**

- (1) A body proposed to be a co-operative housing society or a Starr-Bowkett society may be formed by any 7 or more adults.
- (2) The proposed society may be formed only if there has been a meeting for the purpose of forming the society at which there were present 7 or more adults.
- (3) At the formation meeting, there must be presented:
  - (a) a written statement showing:
    - (i) the objects of the society, and
    - (ii) whether the society is proposed to operate as a co-operative housing society or a Starr-Bowkett society, and
    - (iii) the reasons for believing:
      - (A) that an application for registration of the society should be granted, and
      - (B) that, if registered, the society will be able to carry out its objects successfully, and
  - (b) a copy of the proposed rules of the society.
- (4) If, at the formation meeting or any subsequent or adjourned meeting, 7 or more adults, after considering the statement and the rules, approve the rules (with or without amendment), and sign an application for membership and shares, they may

proceed to elect the first directors of the society under the rules as so approved.

- (5) An application for shares in a proposed society, made before the registration of the society, may not be withdrawn, and a person who makes such an application is, on the registration of the society, liable to pay the society:
- (a) the value of the shares for which the person applied, or
  - (b) the value of the minimum number of shares for which a member is entitled to subscribe,
- whichever is the greater.
- (6) The expenses of, and incidental to, the formation of the society may be paid out of the capital or income of the society.
- (7) A person must not, before a society is registered:
- (a) make an offer or invitation to the public in order to raise funds for the proposed society, whether by allotting a share or interest in the proposed society or accepting amounts on loan, or
  - (b) take an amount in consideration of the allotment of a share or interest in, or providing financial accommodation by, the proposed society.

Maximum penalty (subsection (7)): 50 penalty units or imprisonment for 12 months, or both.

## **50 Registration**

- (1) A proposed society formed under this Part may apply to the Registrar, in accordance with the regulations, to be registered under this Act as a society and authorised to operate either as a co-operative housing society or as a Starr-Bowkett society.
- (2) An application for registration must:
- (a) be made within 2 months after the formation meeting at which the first directors of the society were elected, and
  - (b) be accompanied by:
    - (i) a statement, in the form approved by the Registrar, to the effect that the requirements of section 49 (Formation of co-operative housing and Starr-Bowkett societies) have been complied with, and
    - (ii) a copy of the statement presented to the meeting, signed by the person presiding and the secretary, and
    - (iii) 2 copies of the proposed rules of the society, certified by the person presiding

- and the secretary to be the rules approved at the meeting, and
- (iv) a list containing the full name, date and place of birth, residential address and business occupation of each director, and
  - (v) a list containing the full name, address and occupation of each of 7 or more adults who attended the meeting and applied for membership and (if applicable) shares, and
  - (vi) written estimates of all income and expenditure and capital flows over each of the first 3 years of operation of the society, and
  - (vii) such evidence as the Registrar requires:
    - (A) that the society is eligible for registration, and
    - (B) that the society, if registered, will be able to comply with this Act and all applicable standards, and
    - (C) that the society, if registered, will be able to carry out its objects successfully.
- (3) (Repealed)
- (4) If the Registrar is satisfied that the society is eligible for registration, the Registrar must:
- (a) register the society and its proposed rules, and
  - (b) authorise the society to operate either as a co-operative housing society or a Starr-Bowkett society, but not both.
- (5) A society is eligible for registration only if:
- (a) the society's application for registration complies with this Act, and
  - (b) the proposed rules of the society are not contrary to this Act, and
  - (c) there are reasonable grounds for believing that the society will, if registered:
    - (i) be able to comply with all applicable standards and applicable character requirements, and
    - (ii) be able to carry out its objects successfully, and
  - (d) there is no good reason why the society and its rules should not be registered.
- (6) Without limiting the form that may be approved under subsection (2) (b) (i), the form may be an electronic form accessible on a publicly available website.

- (7) A person who provides the Registrar with a statutory declaration setting out the particulars required by the approved form is taken to have done so in the approved form.

### **51 Certificate of incorporation**

- (1) On registering a society, the Registrar must issue to the society:
- (a) a certificate of incorporation, and
  - (b) a written authority to operate either as a co-operative housing society or a Starr-Bowkett society.
- (2) A certificate of incorporation is conclusive evidence that all requirements of this Act in relation to registration and matters precedent or incidental to registration have been complied with.
- (3) A written authority to operate either as a co-operative housing society or a Starr-Bowkett society is conclusive evidence that the society is authorised under this Act to operate as a co-operative housing society or a Starr-Bowkett society, as the case may be.

### **52 Effect of incorporation**

A society is a body corporate with perpetual succession and:

- (a) has, subject to this Act and the society's rules, the legal capacity of a natural person, and
- (b) has a common seal, and
- (c) may sue and be sued in its corporate name.

## **Division 2 Powers**

### **53 Powers of societies**

- (1) Without limiting section 52 (Effect of incorporation), but subject to this Act and the society's rules, a society may:
- (a) raise money on loan, and
  - (b) act as agent for other persons in relation to the provision of housing for its members and other persons and the provision of financial services generally required by householders and their families (such as hospital, medical and general insurance and housing related services), and
  - (c) acquire by purchase or otherwise shares in an association, or in a corporation or other body corporate that has agreed to render special services to the society in



furtherance of the society's objects or has agreed to render special services to the members of the society, and

(d) hold a subsidiary, but only if approved of by the Registrar, and

(e) do anything else that it is authorised to do by this Act or the society's rules.

(2) A society must not under subsection (1) (c) invest funds of an amount in excess of one-third of any sums transferred to any reserve, except as may be permitted by a standard.

(3) The powers of a subsidiary formed or acquired by a society are not limited by the society's objects or limitations on the society's powers.

#### **54 Restrictions on subscriptions and deposits—co-operative housing societies**

A co-operative housing society must not:

(a) receive money on deposit, or

(b) raise money by the subscription of its members except money raised by the nominal subscription required by its rules for a person to become a member.

#### **55 Restrictions on borrowings by co-operative housing societies**

(1) A co-operative housing society that raises money on loan by means of any one or more of the following kinds of loan must not raise money by means of any other kind of loan:

(a) loans made by lenders pursuant to three-party loan and guarantee agreements as referred to in section 4A of the [Government Guarantees Act 1934](#), section 17AC of the [Co-operation Act 1923](#) or section 60 (Treasurer's guarantee for co-operative housing society loans) of this Act,

(b) (Repealed)

(c) loans made from the Home Purchase Assistance Fund, or loans made by any person on behalf of the Treasurer from any other public account of the State,

(d) loans made by a lender prescribed by the regulations for the purposes of this section.

(2) Where a co-operative housing society raises money on loan by means of a loan of a kind referred to in subsection (1), the society must not:

(a) create any mortgage, charge or lien or issue any debenture or bond other than:

(i) in the case of a loan of a kind referred to in subsection (1) (a)—a charge in favour of the Treasurer over the securities given to the society by its members in respect of loans made or to be made from money raised by the loan of that

kind, or

(ii) in the case of a loan of a kind referred to in subsection (1) (c) or (d)—a charge in favour of the lender over the securities given to the society by its members in respect of loans made or to be made from money raised by the loan of that kind, or

(b) enter into any agreement which provides for the appointment of a receiver or manager of the property of the society.

#### **56 Prohibition on foreign borrowings by co-operative housing societies**

A co-operative housing society must not:

- (a) borrow money from a source outside Australia, or
- (b) borrow money in a foreign currency, or
- (c) borrow money by means of a loan that is repayable (whether as to principal or interest) in a foreign currency.

#### **57 Restrictions on borrowings by Starr-Bowkett societies**

- (1) The total amount raised on loan by a Starr-Bowkett society and not repaid by the society must not at any time exceed whichever is the larger of the following amounts:
  - (a) 80% of the amount for the time being secured to the society by mortgages from its members,
  - (b) an amount equal to 12 months' subscriptions on the shares for the time being in force.
- (2) In calculating for the purposes of this section the amount for the time being secured to a society by mortgages from its members, the following amounts are to be disregarded:
  - (a) the amounts secured on any property in respect of which the payments were 12 months or more in arrears at the date of the last annual account and statement of the society,
  - (b) the amount secured on any property of which the society had been in possession for 12 months or more at the date of that account and statement.

#### **58 Protection of lenders**

A person who lends money to a society is not bound to see to the application of the money and is not in any way affected or prejudiced by the fact that the society, in borrowing the money, has contravened any provision of this Act or of the rules of the society.

### **59 Treasurer's indemnity for loans by co-operative housing society**

- (1) The Treasurer may, on the recommendation of the New South Wales Land and Housing Corporation, grant a written indemnity for a co-operative housing society that indemnifies the society against loss as specified in the indemnity suffered by the society in respect of a loan made or to be made by the society.
- (2) An indemnity in respect of a loan made by a society is subject to:
  - (a) the terms and conditions set out in the indemnity when it is granted, and
  - (b) any other terms and conditions imposed by the Treasurer, notice of which has been served on the society before the loan is made.
- (3) An indemnity may apply:
  - (a) with respect to a particular loan, or
  - (b) with respect to loans of any class, whether or not made or to be made by the same society.
- (4) An amount payable in connection with an indemnity under this section is to be paid out of moneys provided by Parliament.
- (5) If a term or condition to which an indemnity relating to a society is subject is contravened, the Treasurer may, by notice served on the society, cancel the indemnity:
  - (a) if it was granted in respect of a particular loan—wholly, or
  - (b) if it was granted in respect of loans of a class made or to be made by that society—wholly or to the extent to which it applied in respect of any one or more of those loans.
- (6) The Treasurer ceases to be liable in respect of an indemnity when the amount of the loan to which the indemnity relates is reduced to an amount that does not exceed the equivalent of 80% of the value of the security for the loan when the loan was made.
- (7) The Treasurer may delegate to any Minister any or all of the Treasurer's powers, authorities, duties or functions under this section.

### **60 Treasurer's guarantee for co-operative housing society loans**

- (1) The Treasurer may, on the recommendation of the New South Wales Land and Housing Corporation, execute a guarantee in favour of any person approved by the Treasurer, for the repayment of any advance to a co-operative housing society made or to be made by the person.
- (2) Sections 4 and 5 of the [Government Guarantees Act 1934](#) apply to a guarantee

authorised by this section in the same way as they apply to a guarantee authorised by that Act, except as provided by subsections (3) and (4).

- (3) The guarantee is to be part of a three-party loan and guarantee agreement between the lender (being the approved person concerned), the Treasurer and the co-operative housing society under which, in consideration for the advance to be made by the lender to the co-operative housing society and the guarantee to be given by the Treasurer:
  - (a) the co-operative housing society and the lender undertake to observe the terms and conditions specified in the agreement, and
  - (b) the co-operative housing society creates a charge in favour of the Treasurer over the securities given to the society by its members in respect of loans to be made from the advance.
- (4) The society concerned must lodge with the Registrar a copy of each such three-party loan and guarantee agreement entered into by the society as soon as practicable after it is entered into.
- (5) The guarantee is enforceable against the Treasurer and the Consolidated Fund even though the lender is not authorised:
  - (a) to hold any security in respect of the debt guaranteed (other than the guarantee),  
or
  - (b) to appoint a receiver or manager of the property of the co-operative housing society.
- (6) The Treasurer may delegate to any Minister any or all of the Treasurer's functions under this section.

## **Division 3 Rules**

### **61 Rules**

- (1) The rules of a co-operative housing society must provide for the matters specified in Schedule 2.
- (2) The rules of a Starr-Bowkett society must provide for the matters specified in Schedule 3.
- (3) Subject to subsection (4), the rules of a society may also provide for any matter that is necessary, expedient or desirable for the society's purposes.
- (4) If there is any inconsistency between a rule of a society and this Act or a standard, this Act or the standard prevails and the rule is invalid to the extent of the inconsistency.

**62 (Repealed)**

**63 Copies of rules**

- (1) A society must give a copy of its rules to a member or proposed member who requests it and has paid to the society the fee (if any) payable under subsection (2).  
Maximum penalty: 5 penalty units.
- (2) A society may charge a fee for supplying the copy but only if the fee has been approved by its board.

**64 Society and members to be bound by rules**

The rules of a society bind the society, all its members, and all persons claiming through the society or a member, to the same extent as if:

- (a) each member had subscribed his or her name and affixed his or her seal to the rules, and
- (b) there were contained in the rules a covenant on the part of each member and the member's legal representative to observe all the rules subject to this Act and the standards.

**65 Alteration of rules by special resolution**

Subject to sections 66 (Alteration of rules by board of directors), 68 (Power of Registrar to require modification of rules) and 69 (Power of Registrar to modify rules to facilitate transfer of engagements), the rules of a society may be altered only if the alteration has been approved by special resolution of the members under section 115 (Special resolutions).

**66 Alteration of rules by board of directors**

- (1) A society's rules may be altered by a resolution of its board if:
  - (a) the alteration is required by or under this Act or is to give effect to a standard, or
  - (b) the Registrar is satisfied that approval of the alteration by members of the society is not necessary and alteration by the board would be appropriate.
- (2) The society must give written notice of the alteration to its members not later than the day on which notice is given of the next general meeting of the society.  
Maximum penalty: 20 penalty units.
- (3) The notice may, with the prior written approval of the Registrar, be given by advertisement published:
  - (a) in a newspaper (whether published in print or on a publicly accessible website)

having a circulation generally in the area in which the society operates, or

- (b) on a publicly accessible website that, in the opinion of the Registrar, is appropriate to cause the notice to come to the attention of persons in the area in which the society operates.

#### **67 Registration of alteration of rules**

- (1) If the Registrar is satisfied:
  - (a) that an alteration made under section 65 (Alteration of rules by special resolution) or 66 (Alteration of rules by board of directors) is not contrary to this Act or the standards, and
  - (b) that there is no good reason why the alteration should not be registered, the Registrar must register the alteration.
- (2) The alteration takes effect when it is registered.
- (3) The rules of the society must be read subject to any registered alteration.

#### **68 Power of Registrar to require modification of rules**

- (1) If, in the Registrar's opinion, the rules of a society should be altered:
  - (a) to comply with this Act, or
  - (b) to give effect to a standard, or
  - (c) in the interests of the members of the society, or
  - (d) in the public interest,the Registrar may, by written notice given to the society, require it, within a reasonable period specified in the notice, to alter its rules in a way specified in the notice or otherwise in a way approved by the Registrar.
- (2) If the society fails to alter its rules as required by the notice, the Registrar may alter its rules by notation on the registered copy of the rules.
- (3) The Registrar must immediately give written notice to a society of:
  - (a) an alteration of its rules made under this section, and
  - (b) the day on which the alteration starts.
- (4) The society must give written notice of the alteration to its members not later than the day on which notice is given of the next general meeting of the society.

Maximum penalty: 20 penalty units.

- (5) The notice may, with the prior written approval of the Registrar, be given by advertisement published:
  - (a) in a newspaper (whether published in print or on a publicly accessible website) having a circulation generally in the area in which the society operates, or
  - (b) on a publicly accessible website that, in the opinion of the Registrar, is appropriate to cause the notice to come to the attention of persons in the area in which the society operates.

## **69 Power of Registrar to modify rules to facilitate transfer of engagements**

- (1) If the Registrar has directed a transfer of engagements under Part 5 (Mergers and transfers of engagements), the Registrar may, by notation on the registered copy of the rules of the transferor society (if it is to continue to exist) or the transferee society, alter the rules of the society to the extent necessary to ensure that the rules are appropriate.
- (2) The Registrar must alter the rules by notation on the registered copy.
- (3) The Registrar must immediately give written notice to a society of:
  - (a) an alteration of its rules made under this section, and
  - (b) the day on which the alteration starts.
- (4) A society must give written notice of the alteration to its members not later than the day on which notice is given of the next general meeting of the society.
- (5) The notice may, with the prior written approval of the Registrar, be given by advertisement published:
  - (a) in a newspaper (whether published in print or on a publicly accessible website) having a circulation generally in the area in which the society operates, or
  - (b) on a publicly accessible website that, in the opinion of the Registrar, is appropriate to cause the notice to come to the attention of persons in the area in which the society operates.

## **Division 4 Membership**

### **70 Members**

- (1) The members of a society are:
  - (a) the persons who sign the application for membership on the formation of the society, and
  - (b) any other persons who are admitted to membership under the society's rules.

- (2) The members of a merged society are the persons who, on the day of the merger, are members of a society that is a party to the merger, and any other persons who are admitted to membership under the merged society's rules.
- (3) The members of a society to which another society has transferred the whole of its engagements include the persons who, immediately before the transfer took effect, were members of the transferor society.
- (4) The members of a society to which another society has transferred part of its engagements include the persons who, immediately before the transfer took effect, were members of the transferor society and are specified, for the purposes of this subsection, in an agreement between the societies.
- (5) A person may exercise the rights of membership of a society only if the person has complied with any requirements for membership under the society's rules.

## **71 Shares**

- (1) A co-operative housing body can have a share capital but does not have to have a share capital.
- (2) The share capital of a co-operative housing body varies in amount according to the nominal value of shares from time to time subscribed.
- (3) Shares are to be of a fixed amount, which is to be specified in the rules of the co-operative housing body.
- (4) Shares are to be of one class all ranking equally.
- (5) The rules of a co-operative housing society may not require a member to subscribe for more than one share and the nominal value of the share may not exceed \$1.
- (6) A share in a co-operative housing society cannot be sold or transferred.
- (7) A share in a Starr-Bowkett society or association cannot be sold or transferred except in accordance with the rules of the society or association.
- (8) The liability of a shareholder in a co-operative housing body in relation to a share is limited to the amount (if any) unpaid on the share.

## **72 Members who are minors**

- (1) Subject to a society's rules, a minor may be a member.
- (2) A member of a society who is a minor cannot hold office in a society and cannot vote at a meeting of the society.
- (3) A member of a society is not at any time entitled on any ground relating to the member's minority or former minority to avoid any of the member's obligations or



liabilities:

- (a) as a member, or
- (b) under any deed, mortgage, bill, lien, charge, contract, instrument or document entered into by the member as a member.

### **73 Joint members**

- (1) Membership in a society may be joint if the society's rules provide for it.
  - (2) If membership is joint the following provisions apply:
    - (a) the register of members must indicate that a person is a joint member,
    - (b) the joint members are entitled to choose the order in which they are named in the register of members, but failing any such choice the society may enter the names in the order it considers appropriate,
    - (c) the joint member who is named first in the society's register of members is the primary joint member,
    - (d) subject to the society's rules, but without affecting the right of a member to obtain a copy of the statement of financial position from the society on demand, a notice or other document may be given or sent to the primary joint member,
    - (e) for the purpose of determining:
      - (i) who is qualified to vote on a resolution at a meeting of the society, and
      - (ii) the number or proportion of members required to give effect to any provision of this Act or the society's rules,
- membership is taken to be solely that of the primary joint member.

### **74 Corporate membership**

- (1) Subject to a society's rules, a body corporate may be a member of the society.
- (2) A body corporate that is a member of a society may, by written notice given to the society, appoint an individual to represent it at meetings of members of the society.
- (3) A person appointed under subsection (2):
  - (a) is entitled:
    - (i) to receive notice of all meetings of members in the same way as a member of the society, and
    - (ii) to exercise the same rights of voting as a member of the society, and

(b) is eligible to be elected as a director of the society if:

- (i) the body corporate holds the qualifications required for holding office as a director (other than qualifications about age and being an individual), and
- (ii) a person has not been appointed as liquidator of the body corporate.

#### **75 Cessation of membership**

A person ceases to be a member of a society as provided by the society's rules.

#### **76 Expulsion of member**

A member of a society may be expelled, or have the member's membership rescinded, under the society's rules.

#### **77 Liability of members**

Subject to this Act, a member of a society is not liable, because of the membership, to contribute towards the payment of the debts and liabilities of the society or the costs, charges and expenses of a winding-up of the society.

#### **78 Fees and charges**

- (1) A society must furnish to any person intending to become a member written notice of fees and charges payable by a member to the society.

Maximum penalty: 5 penalty units.

- (2) A society must on request made by a member of the society provide the member with a written notice showing the current fees and charges payable by a member to the society.

Maximum penalty: 5 penalty units.

- (3) (Repealed)

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

- (1) A society may impose a fine on a member for any infringement of the rules of the society.
- (2) The rules of the society must specify the maximum fine that may be imposed on a member and a fine that is greater than that maximum cannot be imposed.
- (3) A fine exceeding \$20 (or such other amount as may be prescribed by the regulations) cannot 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.

## **Division 5 Name and office**

### **80 Registration of name and change of name**

- (1) The registered name of a co-operative housing body is its name as specified in the body's rules for the time being registered under this Act.
- (2) If the Registrar registers an alteration of the rules of a co-operative housing body changing the name of the body, the Registrar may, on application by the body, amend its certificate of incorporation or issue a new certificate.
- (3) A co-operative housing body must publish a change of its name as directed by the Registrar.

Maximum penalty: 20 penalty units.

- (4) The Registrar may, on application by a co-operative housing body, approve the use by the body of a name other than its registered name subject to such conditions as the Registrar determines. The Registrar may, by written notice given to the body, revoke the approval or vary or revoke conditions to which it is subject.
- (5) A co-operative housing body must not use a name other than:
- (a) its registered name, or
- (b) a name approved under this section.

Maximum penalty: 20 penalty units.

- (6) A co-operative housing body does not contravene this section by using a name in a way mentioned in section 82 (1) (Abbreviations etc of name).
- (7) A co-operative housing body must not fail to comply with the conditions of an approval under this section.

Maximum penalty: 20 penalty units.

### **81 Requirements for and restrictions on names**

- (1) The name of a co-operative housing society must include the words "co-operative housing society" or "co-op housing society".
- (2) The name of a Starr-Bowkett society must include the word "Starr-Bowkett".
- (3) The name of an association must include the word "co-operative" or "co-op".

- (4) The name of a Starr-Bowkett society or an association must end with the word “Limited” or the abbreviation “Ltd”. The name of a co-operative housing society must not include the word “Limited” or any abbreviation of that word.
- (5) The Registrar must not register a proposed co-operative housing body’s rules, or an alteration of rules affecting a co-operative housing body’s name, if the Registrar is of the opinion that the name for the proposed body or body:
  - (a) is the name of a co-operative housing body, or
  - (b) is reserved or registered for a financial institution or proposed financial institution under the financial institutions legislation, or
  - (c) is reserved or registered for a body corporate under the Corporations Act, or
  - (d) is on the national business names register, or
  - (e) is likely to be confused with a name mentioned in paragraphs (a)-(d), or
  - (f) is undesirable.
- (6) The Registrar may direct a co-operative housing body to change its name if, through inadvertence or otherwise, the body is registered by a name that the Registrar is satisfied is a name that would not be permissible under this section.

## **82 Abbreviations etc of name**

- (1) A description of a co-operative housing body is not inadequate or incorrect merely because the body’s name is given using:
  - (a) the abbreviation **Co-op** for the word **Co-operative**, or
  - (b) the abbreviation **Ltd** for the word **Limited**, or
  - (c) the abbreviation **Aust** for the word **Australian**, or
  - (d) the abbreviation **No** for the word **Number**, or
  - (e) the symbol **&** for the word **and**, or
  - (f) any of those words instead of the corresponding abbreviation or symbol.
- (2) In this section:

**name** of a co-operative housing body means:

  - (a) its registered name, or
  - (b) a name approved for its use under section 80 (4) (Registration of name and change of name).

### **83 Change of name does not affect identity**

- (1) A change of name of a co-operative housing body does not:
  - (a) affect the identity of the body, or
  - (b) affect a right or obligation of the body or of a member or other person, or
  - (c) render defective legal proceedings by or against the body.
- (2) A legal proceeding that might have been continued or started by or against the body by its former name may be continued or started by or against it by its new name.

### **84 Use of words “co-operative housing society” or “Starr-Bowkett”**

- (1) In this section:

**trade or carry on business**, in relation to a person or body, includes:

  - (a) establishing or using an office for receiving share capital or loan funds, and
  - (b) advertising for share capital or loan funds, and
  - (c) providing financial accommodation to members of the person or body residing within this State.
- (2) Subject to this section:
  - (a) a person or body, other than a co-operative housing body, must not trade or carry on business, under a name or title of which the words **co-operative housing society** or **Starr-Bowkett**, or any other words, abbreviations or symbols with a similar meaning, form part, and
  - (b) a person or body, other than a co-operative housing body must not hold out that its trade or business is that of a co-operative housing body.
- (3) A person or body may apply to the Registrar for exemption from subsection (2).
- (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 society, and the specified provisions then apply accordingly (as if a reference in those provisions to a society 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 an unincorporated body contravening this section or the condition, commits an offence.

Maximum penalty (subsection (6)): 100 penalty units.

- (7) (Repealed)

## **85 Publication of name**

- (1) A co-operative housing body must ensure that its registered name appears in legible letters on:

- (a) all business letters, notices (other than advertisements) and other publications (other than advertisements) signed, issued or published by the body, and
- (b) all bills of exchange, cheques, promissory notes, endorsements, orders for money or goods, invoices, receipts and other documents signed or issued in the body's business.

- (2) On each advertisement published by a co-operative housing body, the body must use its registered name, or a name approved in relation to the body under section 80.

- (3) A co-operative housing body must ensure that its registered name and the words **Registered Office** are displayed in a conspicuous place and in legible letters, on the outside of its registered office.

- (4) A co-operative housing body must ensure that its registered name is displayed in a conspicuous place and in legible letters on the outside of every other office or place in which its business is carried on.

Maximum penalty: 20 penalty units.

- (5) A co-operative housing body does not contravene subsection (1), (3) or (4) merely because the body, when displaying its registered name, also displays a name approved in relation to the body under section 80.

## **86 Seal**

- (1) A society must ensure its registered name appears in legible letters on its seal.
- (2) An officer of a society, or any person acting on its behalf, must not use any seal, purporting to be the seal of the society, on which its registered name does not appear in legible letters.

Maximum penalty: 20 penalty units.

## **87 Registered office**

- (1) A society must have a registered office.

- (2) The first registered office of a society is the address that appears in the society's rules at the time of registration.
- (3) A society must give written notice of any proposed change of address to the Registrar.  
Maximum penalty: 20 penalty units.
- (4) At the end of the day of registration by the Registrar of the new address or at the end of such later day as the society specifies in the notice, the new address becomes the registered office of the society.

## **Division 6**

### **88 (Repealed)**

## **Part 4 Management**

### **Division 1 Directors and officers**

#### **89 Interpretation**

In this Division:

**employee**, in relation to a society, includes a person, or an employee of a person, who provides the society with services under a management contract.

**society** includes an association.

#### **90 Board of directors**

- (1) The business and operations of a society are to be managed and controlled by a board of directors.
- (2) Subject to this section, the board may exercise all the powers of the society.
- (3) The powers of the board are subject to any restrictions imposed by this Act, applicable standards and the society's rules.
- (4) Every director acting in the society's business or operations under a resolution duly passed by the board is taken to be acting as the society's duly authorised agent.
- (5) Anything done by or in relation to a director is not invalid merely because of a defect or irregularity in the director's election or appointment.

#### **91 Meetings**

- (1) Meetings of a society's board must be held as often as is necessary for properly conducting the society's business.
- (2) Meetings of the board must be held at intervals of not longer than 3 months.

- (3) A quorum at a meeting of the board is the number of directors prescribed by the society's rules, but must not be less than half the total number of directors.
- (4) Subject to this section, a meeting of the board may be conducted in any way prescribed by the society's rules.

## **92 Number of directors**

The number of directors of a society must not be less than 3.

## **93 Election or appointment of directors**

- (1) Subject to this Act, the directors of a society are elected or appointed, hold and vacate office, and retire or are removed from office, as prescribed by the society's rules.
- (2) A director holds office for a term (not longer than 3 years) as is prescribed by the society's rules.
- (3) Despite subsection (2), in relation to a director elected at an annual general meeting of a society, the society's rules may specify a term of office ending at the start of the third annual general meeting of the society happening after the election.
- (4) A director is eligible for re-election or reappointment at the end of the director's term.
- (5) The directors must be elected:
  - (a) at the annual general meeting of the society, or
  - (b) by postal voting under the society's rules, or
  - (c) in such other way as is prescribed by the society's rules.
- (6) If the directors are elected by postal voting, the society must cause the results of the election to be announced at the society's next annual general meeting.

## **94 Employee directors**

- (1) The members of a society may, under the society's rules, elect 1 employee of the society nominated by the directors to be a director of the society.
- (2) The members of an association may, under the association's rules, elect one or more employees of the association to be directors of the association, but the number of employees elected as directors must be less than half the total number of directors of the association. Of the directors who constitute a quorum at a meeting of the board of an association, at least half must be directors who are not employees elected as directors.



### **95 Alternate directors**

- (1) If authorised by a society's rules, a director may appoint a person, who is eligible to be a director of the society, to be the alternate director in place of that director.
- (2) The alternate director may act as a director in the absence of the director who appointed him or her.
- (3) Only a director who is an employee of the society may appoint an employee of the society to be his or her alternate director.

### **96 Chairperson**

- (1) A society's board must elect 1 of its members as chairperson.
- (2) An employee of the society is not eligible to be the chairperson.
- (3) The chairperson:
  - (a) must hold office, and
  - (b) must retire, and
  - (c) may be removed from office,as prescribed by the society's rules.

### **97 Qualifications of directors**

Subject to sections 94 (Employee directors) and 95 (Alternate directors), a person is not eligible to be a director of a society if the person:

- (a) is a minor, or
- (b) is not:
  - (i) a member of the society, or
  - (ii) the representative, appointed under section 74 (Corporate membership), of a body corporate member of the society, or
- (c) is an employee of the society, or
- (d) is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his or her creditors or made an assignment of his or her remuneration for their benefit, or
- (e) is prohibited from being a director of a body corporate by the Corporations Act for a reason other than the person's age, or
- (f) has been convicted in the last 10 years:

- (i) of an indictable offence in relation to the promotion, formation or management of a body corporate, or
- (ii) of an offence involving fraud or dishonesty, or
- (iii) of any prescribed offence.

## **98 Vacation of office**

- (1) The office of a director becomes vacant if the director:
  - (a) dies, or
  - (b) becomes a person who, under section 97 (Qualifications of directors), is not eligible to be a director, or
  - (c) being a director who is the representative, appointed under section 74 (Corporate membership), of a body corporate member of the society and whose eligibility for election to the office was based on being that representative—ceases to be eligible under section 74, or
  - (d) being a director elected under section 94 (Employee directors)—ceases to be an employee of the society, or
  - (e) is absent from 3 consecutive ordinary meetings of the board without its leave, or
  - (f) resigns by written notice of resignation given to the board, or
  - (g) is 3 months in arrears for an amount payable to the society and has failed to make arrangements for payment satisfactory to the society, or
  - (h) is removed from office by a resolution under section 99 (Removal of directors), or
  - (i) completes a term of office.
- (2) If a casual vacancy happens in the office of a director as mentioned in subsection (1) (a)–(h), the board may appoint a person who is qualified under section 97 (Qualifications of directors) to fill the vacancy.
- (3) The term of office of a director appointed to fill a casual vacancy ends at the start of the next annual general meeting of the society after the appointment.
- (4) A director may not be removed from office, and the office of a director does not become vacant, except as provided by this Act.

## **99 Removal of directors**

- (1) A co-operative housing society or association may, by special resolution, remove a director before the end of the director's term of office, despite anything in its rules or in any agreement between it and the director.

- (2) A Starr-Bowkett society may, by ordinary resolution, remove a director before the end of the director's term of office, despite anything in its rules or in any agreement between it and the director.
- (3) A resolution under subsection (1) or (2) may be passed only if the society or association has given notice to members specifying the proposed resolution and the day and time of the meeting when it is proposed the resolution will be made (the **relevant meeting**).
- (4) The society or association must also give a copy of the notice to the director.
- (5) A society's or association's rules may provide for:
  - (a) the period of notice, and
  - (b) the way notice may be given to members, and
  - (c) any other relevant matter.
- (6) The director may make written representations to the society or association (of a reasonable length) before the relevant meeting.
- (7) The society or association must promptly send to each member a copy of any written representations made by the director if:
  - (a) the director asks the society or association to do so, and
  - (b) there is enough time for the copies to be received by the members at least 2 days before the relevant meeting.
- (8) At the relevant meeting, the director:
  - (a) is entitled to be heard on the resolution to remove the director, and
  - (b) if the director has made written representations under subsection (6) and a copy has not been sent to members under subsection (7)—may require that the representations be read out.

## **100 Declaration of interest**

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

Maximum penalty: 50 penalty units or imprisonment for 2 years, or both.

- (2) Subsection (1) does not apply to a contract to provide financial accommodation if the provision of the financial accommodation does not contravene section 103 (Financial accommodation to directors and associates).

- (3) 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.
- (4) If a director becomes interested in a contract with the society 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.
- (5) 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 or officer 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.
- (6) A director of a society 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 (5), declare at a meeting of the society's board the fact and the nature, character and extent of the conflict.
- Maximum penalty: 50 penalty units or imprisonment for 2 years, or both.
- (7) A declaration required by subsection (6) 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.
- (8) A declaration under this section must be recorded in the minutes of the meeting at

which it was made and, 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.

(9) For the purposes of the making of a determination of the board under subsection (8) 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.

(10) Every declaration must be reported by the board:

- (a) to the Registrar immediately after the making of the declaration, and
- (b) to the members at the next annual general meeting after the making of the declaration.

(11) A society must, within 3 months after the end of its financial year, lodge with the Registrar a return specifying:

- (a) all declarations made to the board during that financial year, and
- (b) all declarations in force at the end of the financial year.

Maximum penalty: 50 penalty units.

(12) This section is in addition to any rule of law or any provision in a society's rules restricting a director from having an interest in contracts with the society or from holding offices or having interests involving duties or interests in conflict with the director's duties or interests as a director.

### **101 General duty to make disclosure**

(1) A director of a society must give written notice to the society:

- (a) of such particulars relating to securities, rights, options and contracts as are necessary to enable the society to comply with section 118 (Register of directors etc), and
- (b) of particulars of any change relating to the particulars mentioned in paragraph (a), including the consideration (if any) received because of the event giving rise to the change.

(2) A notice under subsection (1) must be given:

- (a) if the notice is under subsection (1) (a)—within 14 days after the person:
    - (i) became a director, or
    - (ii) became aware that the person had acquired the securities, a relevant interest in the securities or the rights or options, or
    - (iii) entered into the contracts,whichever happens last, and
  - (b) if the notice is under subsection (1) (b)—within 14 days after the person becomes aware of the happening of the event giving rise to the change.
- (3) A society must, within 7 days after receiving a notice, send a copy to each of the other directors of the society.
- (4) A director or society who contravenes this section commits an offence.  
Maximum penalty: 50 penalty units.
- (5) In any proceeding under this section, a person is, in the absence of evidence to the contrary, to be taken to have been aware at a particular time of a fact or happening of which an employee or agent of the person, being an employee or agent having duties of acting in relation to his or her employer's or principal's interests in a security issued by the society concerned, was aware at that time.

## **102 Certain financial accommodation to officers prohibited**

- (1) An officer of a society who is not a director of the society must not obtain financial accommodation from the society other than:
- (a) with the approval of a majority of the directors, or
  - (b) under a scheme about providing financial accommodation to officers that has been approved by a majority of the directors.
- Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.
- (2) For the purposes of this section, financial accommodation is taken to be obtained by an officer of a society if it is obtained by:
- (a) a proprietary company in which the officer is a shareholder or director, or
  - (b) a trust of which the officer is a trustee or beneficiary, or
  - (c) a trust of which a body corporate is trustee if the officer is a director or other officer of the body corporate.
- (3) A society must not give financial accommodation to an officer of the society if:

- (a) by giving the financial accommodation, the officer would contravene this section, and
- (b) the society knows or should reasonably know of the contravention.

Maximum penalty: 50 penalty units.

### **103 Financial accommodation to directors and associates**

- (1) In this section:

**associate** of a director means:

- (a) the director's spouse or de facto partner, or
- (b) a person when acting in the capacity of trustee of a trust under which:
  - (i) the director or director's spouse or de facto partner 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 or de facto partner 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 society must not provide financial accommodation to a director, or to a person the society 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 society 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: 50 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, and
- (b) 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) commits an offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

- (6) If a director of a society or an associate of a director accepts in payment of a debt owed by a member of the society to the director or associate, any proceeds of financial accommodation provided to the member by the society, this section has effect as if the financial accommodation had been provided to the director or associate.
- (7) However, subsection (6) applies only if the financial accommodation is provided to the member on terms more favourable than the terms on which it is reasonable to expect the society would give if dealing with the member at arm's length in the same circumstances.
- (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.



#### **104 Directors' remuneration**

A director of a society (other than a director who is an employee of the society) 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 society.

#### **105 Management contracts**

(1) In this section:

**management contract** means a contract or other arrangement under which:

- (a) a person who is not an officer of the society agrees to perform the whole, or a substantial part, of the functions of the society, or
- (b) a society 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 society must not enter into a management contract without the prior written approval of the Registrar.

Maximum penalty: 50 penalty units.

- (3) The Registrar may subject the Registrar's approval under subsection (2) to conditions.
- (4) A management contract entered into in contravention of subsection (2) is void.
- (5) A management contract entered into before the commencement of this section becomes void 6 months after that commencement unless the Registrar directs that it continue in operation.

#### **106 Duties of directors and officers**

- (1) An officer of a society must at all times act honestly in the exercise of the powers and the discharge of the functions of his or her office.
- (2) If an officer contravenes subsection (1), the officer commits an offence for which the maximum penalty is:
  - (a) if because of the contravention:
    - (i) the society is, or its members are, deceived or defrauded, or
    - (ii) a creditor of the society, or a creditor of any other person, is deceived or defrauded,

200 penalty units or imprisonment for 5 years, or both, or

(b) if the contravention was committed:

(i) with the intention of deceiving or defrauding the society or its members, a creditor of the society or a creditor of any other person, or

(ii) for any other fraudulent purpose,

but paragraph (a) does not apply—200 penalty units or imprisonment for 5 years, or both, or

(c) in any other case—50 penalty units.

(3) An officer of a society must at all times exercise a reasonable degree of care and diligence in the exercise of the powers and the discharge of the functions of his or her office and in the protection of the interests of members. This subsection does not apply to an employee unless the employee is a director, secretary or executive officer of the society.

Maximum penalty: 10 penalty units.

(4) An officer of a society, or a former officer of a society, must not make improper use of information acquired by virtue of his or her position as such an officer to gain, directly or indirectly, an advantage for himself or herself or for any other person, or to cause detriment to the society.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

(5) An officer of a society must not make improper use of his or her position as such an officer, to gain, directly or indirectly, an advantage for himself or herself or for any other person, or to cause detriment to the society.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

(6) If:

(a) a person is convicted of an offence against this section, and

(b) the court by which the person is convicted is satisfied that the society 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 compensation to the society of an amount specified by the court.

(7) The order may be enforced as if it were a judgment of that court.

(8) If a person contravenes this section, the society may, whether or not the person has been convicted of an offence against this section in relation to that contravention,

recover from the person as a debt due to the society by action in a court having jurisdiction for the recovery of debts up to the amount concerned:

- (a) if that person or any other person has made a profit as a result of the contravention—an amount equal to that profit, and
- (b) if the society has suffered loss or damage as a result of the contravention—an amount equal to that loss or damage.

(9) This section is in addition to and does not derogate from any other rule of law relating to the duties of directors, officers and employees of a society.

### **107 Prohibition on transfer of money**

(1) Where:

- (a) a prosecution has been instituted against a person for an offence against this Act, or
- (b) a civil proceeding has been instituted against a person under this Act,

and the Court considers it necessary or desirable to do so for the purpose of protecting the interests of a person (in this section called an **aggrieved person**) to whom the person mentioned in paragraph (a) or (b), as the case may be, (in this section called the **relevant person**), is liable, or may be or become liable, to pay money, whether in relation to a debt, by way of damages or compensation or otherwise, or to account for securities or other property, the Court may, on application by the Registrar or by an aggrieved person, make 1 or more of the following orders:

- (c) an order prohibiting a person who is indebted to the relevant person or to an associate of the relevant person from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed,
- (d) an order prohibiting a person holding money, securities or other property, on behalf of the relevant person, or on behalf of an associate of the relevant person, from paying all or any of the money, or transferring, or otherwise parting with possession of, the securities or other property, to, or to another person at the direction or request of, the person on whose behalf the money, securities or other property, is or are held,
- (e) an order prohibiting the taking or sending out of Australia, by a person of money of the relevant person or of an associate of the relevant person,
- (f) an order prohibiting the taking, sending or transfer by a person of securities or other property of the relevant person, or of an associate of the relevant person:
  - (i) from a place in this State to a place outside this State (including the transfer of

- securities from a register in this State to a register outside this State), or
- (ii) from a place in Australia to a place outside Australia (including the transfer of securities from a register in Australia to a register outside Australia),
- (g) an order appointing:
- (i) if the relevant person is an individual—a receiver or trustee, having such powers as the Court orders, of the property or of part of the property of that person, or
  - (ii) if the relevant person is a body corporate—a receiver or receiver and manager, having such powers as the Court orders, of the property or of part of the property of that person,
- (h) if the relevant person is an individual—an order requiring that person to deliver up to the Court his or her passport and any other documents the Court considers appropriate,
- (i) if the relevant person is an individual—an order prohibiting that person from leaving Australia without the consent of the Court.
- (2) A reference in subsection (1) (f) or (g) to property of a person includes a reference to property that the person holds otherwise than as sole beneficial owner, for example:
- (a) as trustee for, as nominee for, or otherwise on behalf of or on account of, another person, or
  - (b) in a fiduciary capacity.
- (3) An order under subsection (1) prohibiting conduct may prohibit the conduct either absolutely or subject to conditions.
- (4) Where an application is made to the Court for an order under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.
- (5) On an application under subsection (1), the Court must not require the applicant or any other person, as a condition of granting an interim order under subsection (4), to give an undertaking as to damages.
- (6) Where the Court has made an order under this section on a person's application, the Court may, on application by that person or by any person affected by the order, make a further order discharging or varying the first-mentioned order.
- (7) An order under subsection (1) or (4) may be expressed to operate for a specified period or until the order is discharged by a further order under this section.

(8) This section has effect subject to the *Bankruptcy Act 1966* of the Commonwealth.

(9) A person must not contravene an order by the Court under this section that is applicable to the person.

Maximum penalty (subsection (9)): 200 penalty units or imprisonment for 5 years, or both.

### **108 Unlawfully acting as director**

(1) A person, who is not the director of a society, or the alternate director of such a director, must not purport to act as a director of a society.

(2) A director of a society must not permit a person who is not a director of the society, or the alternate director of such a director, to purport to act as a director of the society.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

## **Division 2 Meetings**

### **109 Annual general meeting**

(1) The first annual general meeting of a society must be held within 18 months after it is registered under this Act.

(2) The second and every subsequent annual general meeting of a society must be held within 5 months after the close of its financial year, or within any further time allowed by the Registrar or prescribed.

(3) A society that fails to hold an annual general meeting as required by this section commits an offence.

Maximum penalty (subsection (3)): 20 penalty units.

### **110 Special general meeting**

(1) The board of a society may convene a special general meeting of the society.

(2) The board of a society must immediately proceed to convene a special general meeting of the society if required to do so by not less than the number of members prescribed for that purpose by the society's rules.

### **111 Quorum**

(1) A general meeting of a society must not deal with an item of business unless a quorum is present.

(2) Subsection (1) does not apply to an item of business that may be dealt with by postal voting under the society's rules.

- (3) A quorum is as prescribed by the society's rules.

### **112 Notice of meeting**

- (1) Subject to subsection (2):
- (a) written notice of an annual general meeting must be given personally or by post to each member of the society at least 14 days before the date of the meeting, and
  - (b) written notice of a special general meeting must be given personally or by post to each member of the society at least 7 days before the date of the meeting.
- (2) If the society's rules so provide, notice of an annual general meeting or special general meeting may be given to the members of the society by advertisement published in a newspaper (whether published in print or on a publicly accessible website) having a circulation generally in the area in which the society operates.
- (3) Notice of a general meeting of a society must be displayed in a conspicuous place at the registered office and each other office of the society over a period of at least:
- (a) in the case of an annual general meeting—14 days immediately before the date of the meeting, and
  - (b) in the case of a special general meeting—7 days immediately before the date of the meeting.
- (4) The failure by a member of a society to receive notice of a general meeting required to be given to the member by this Act does not invalidate the meeting.
- (5) A society that fails to give notice of an annual general meeting, or a special general meeting, or to display notice of an annual general meeting in accordance with this section commits an offence.

Maximum penalty: 20 penalty units.

### **113 Voting**

- (1) A member of a society is not entitled to exercise more than 1 vote on any question arising for determination by the society's members.
- (2) Subsection (1) does not prevent a member of a society who has been appointed to represent a corporate member of the society from voting both as a member and in that other capacity.
- (3) A Starr-Bowkett society's rules may provide that a member's entitlement to vote may not be exercised if the member has not paid any subscriptions that are due and payable to the society, or did not for a certain period pay any subscriptions that were due and payable to the society.

#### **114 Proxy votes**

- (1) No member of a co-operative housing society may vote by proxy or otherwise by or through another person (such as under a power of attorney).
- (2) No member of a Starr-Bowkett society or an association may vote by proxy or otherwise by or through another person (such as under a power of attorney), except by proxy as permitted by the rules of the society or association.
- (3) The rules of a Starr-Bowkett society or association may provide for:
  - (a) whether proxy voting is allowed at a meeting,
  - (b) the use of a proxy that specifies the way the member giving the proxy wishes the vote to be exercised.
- (4) Only a person who is a member of the Starr-Bowkett society or association concerned may be appointed as a proxy for a member.
- (5) At a meeting of a Starr-Bowkett society or association, a person may not act as proxy for more than 5 persons.

#### **115 Special resolutions**

- (1) For the purposes of this Act, a special resolution is a resolution passed by a majority of not less than two-thirds of those members who, being entitled to vote:
  - (a) in any case—are present, either personally or by proxy, at a meeting at which a motion for the passing of the resolution is moved and vote on the resolution, or
  - (b) in the case of a merger or transfer of engagements under Part 5 (Mergers and transfers of engagements)—vote on the resolution by a postal ballot conducted in accordance with the regulations.
- (2) In the case of a special resolution passed at a meeting, unless a poll is demanded, a declaration by the person presiding at the meeting that a resolution has been carried by a specified majority is conclusive evidence of the fact.
- (3) Subject to subsection (4), written notice of a proposed special resolution, containing the text or a summary of the motion for the passing of the resolution, must be given personally or by post to each member of the society who is entitled to vote on the resolution at least 21 days before the date of the meeting or close of the postal ballot.
- (4) If the rules of the society so provide, notice of a proposed special resolution, setting out its terms, may be given to the members of the society entitled to vote on the resolution by advertisement published in a newspaper (whether published in print or on a publicly accessible website) having a circulation generally in the area in which the society operates.

- (5) A purported special resolution in relation to which notice has not been given in accordance with subsection (3) or (4) is of no effect.
- (6) However, the failure by a member to receive notice of a proposed special resolution does not invalidate the passing of the resolution.
- (7) A society must, within 1 month after a special resolution has been passed, submit the resolution to the Registrar for registration.
- (8) A special resolution is of no effect until registered.
- (9) The Registrar must register a special resolution of a society if satisfied that:
  - (a) the special resolution is not contrary to:
    - (i) this Act, or
    - (ii) the standards, and
  - (b) there is no good reason why the special resolution should not be registered.
- (10) This section applies in relation only to those matters that are required by this Act or a society's rules to be passed or approved by a special resolution.

#### **116 Minutes**

- (1) A society must cause full and accurate minutes to be kept of every meeting of its board, and of every meeting of its members.  
Maximum penalty: 50 penalty units.
- (2) A society must keep at its registered office available for inspection without fee by members of the society a copy of the minutes of the meetings of members.  
Maximum penalty: 20 penalty units.

### **Division 3 Registers and inspection**

#### **117 Registers**

- (1) A society must keep such registers as are prescribed.  
Maximum penalty: 20 penalty units.
- (2) Subject to this section, all registers required to be kept by a society (whether under this section or any other provision of this Act) must be kept at the registered office of the society and be kept in such way, and contain such particulars, as may be prescribed.  
Maximum penalty: 20 penalty units.



- (3) With the written consent of the Registrar, all or any of the registers may be kept at an office of the society other than its registered office.

### **118 Register of directors**

- (1) In this section:

**securities** does not include deposits or withdrawable shares.

- (2) For the purposes of this section:

(a) a person has a relevant interest in securities if the person has a relevant interest in securities for the purposes of the Corporations Act, and

(b) bodies are related to each other if they are related to each other for the purposes of that Act.

- (3) A society must keep a register of its directors, principal executive officer and secretaries in accordance with this section.

Maximum penalty: 20 penalty units.

- (4) The register must show in relation to each director of the society:

(a) the present given name and surname, any former given name or surname, the date and place of birth, the usual residential address and the business occupation (if any) of the director, and

(b) particulars of directorships held by the director in bodies corporate (other than related bodies corporate) that are public companies, financial institutions or friendly societies, or subsidiaries of any of those bodies, and

(c) securities issued by a body corporate that is related to the society, being securities in which the director has a relevant interest, and the nature and extent of that interest, and

(d) particulars of rights or options of the director, or of the director and another person, in relation to the acquisition or disposal of securities issued by a body corporate that is related to the society, and

(e) particulars of contracts to which the director is a party or under which he or she is entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of securities issued by a body corporate that is related to the society.

- (5) The register must show in relation to the principal executive officer and each secretary the present given name and surname, any former given name or surname, the date and place of birth, the usual residential address and the business occupation (if any), of the principal executive officer or secretary.

- (6) A society need not show in its register in relation to a director particulars of securities issued by a body corporate that is related to the society and is a wholly owned subsidiary of the society.
- (7) A society must, within 7 days after receiving notice from a director under section 101 (1) (a) (General duty to make disclosure), enter in its register, in relation to the director, the particulars specified in subsection (4) of this section, including the number and description of securities, rights, options and contracts to which the notice relates and, in relation to securities, rights or options acquired or contracts entered into after he or she became a director:
- (a) the price or other consideration for the transaction (if any) because of which an entry is required to be made in the register, and
  - (b) the date of:
    - (i) the agreement for the transaction or, if it is later, the completion of the transaction, or
    - (ii) if there was no transaction, the happening of the event because of which an entry is required to be made in the register.

Maximum penalty: 20 penalty units.

- (8) A society must, within 3 days after receiving a notice from a director under section 101 (1) (b) (General duty to make disclosure), enter in its register the particulars of the change specified in the notice.

Maximum penalty: 20 penalty units.

- (9) A society is not, because of anything done under this section, to be taken for any purpose to have notice of, or to be on inquiry as to, the right of a person to or in relation to a security issued by the society.
- (10) Within 1 month beginning on the day on which a person becomes or ceases to be a director, the principal executive officer or a secretary of a society, the society must lodge with the Registrar a return in the approved form advising that fact and containing in relation to a new director, principal executive officer or secretary the matters required by subsection (4) (a) or (5) to be shown in the register.

Maximum penalty: 5 penalty units.

- (11) A register kept by a society under this section must be open for inspection:
- (a) by any member of the society, without fee, and
  - (b) by any other person, on payment for each inspection of the amount (if any) prescribed by the society's rules.

- (12) A society must produce its register at the start of each annual general meeting of the society and keep it open and accessible during the meeting to all persons attending the meeting.

Maximum penalty: 20 penalty units.

- (13) It is a defence to a prosecution for failing to comply with subsection (4) or (5) in relation to particulars relating to a director if the defendant proves that the failure was due to the failure of a director to comply with section 101 (General duty to make disclosure) in relation to those particulars.

### **119 Register of members**

- (1) A society must keep a register of members of the society and enter in the register:

- (a) the names and addresses of the members, and
- (b) the date of admission to membership, and
- (c) any other prescribed information.

Maximum penalty: 20 penalty units.

- (2) The register of members is evidence of membership of the society.

- (3) A member is entitled to have access to that part of the register of members in which particulars of his or her membership are entered.

- (4) A society must allow a person access to the register of members if the person satisfies the society that the person requires access for the purpose of:

- (a) calling a meeting of members or a particular class of members, or
- (b) undertaking some other activity approved by the Registrar.

- (5) Before a society allows a person, who has satisfied the society in accordance with subsection (4), to have access to the register of members, the society may require the person to enter into a contract with the society under which the person undertakes:

- (a) to restrict access to the information obtained by the person from the register to persons identified in the contract, and
- (b) to restrict use of the information obtained by the person from the register to a specified purpose.

- (6) If a society's register of members includes information in addition to that required by subsection (1), this section does not require:

- (a) a person to be allowed to see that additional information when inspecting the register, or

- (b) a copy of the register, or a part of it, sent to a person to contain that additional information.

## 120 Inspection

- (1) A society must keep at its registered office available for inspection without fee by members of the society, persons eligible for membership of the society and its creditors:
  - (a) a copy of this Act, and
  - (b) a copy of the rules of the society, and
  - (c) a copy of the last accounts of the society, together with a copy of the report of the auditor on those accounts, and
  - (d) a copy of the last directors' report under section 134 (Directors' reports).
- (2) A society must keep a copy of its rules available for inspection without fee by members of the society at each office of the society.
- (3) A society must, on request by a member of the society, give the member particulars of his or her financial position with the society as a member, shareholder or borrower.
- (4) Subject to the regulations and to section 119 (Register of members), a member may request a society to give him or her a copy of a register or any part of a register kept by the society under this Act and, where such a request is made, the society must send the copy to the member:
  - (a) if the society requires payment of an amount prescribed by the rules—within 21 days after payment of the amount is received by the society or within such longer period as the Registrar approves, or
  - (b) in any other case—within 21 days after the request is made or within such longer period as the Registrar approves.

Maximum penalty: 20 penalty units.

## 121 Location of registers on computers

- (1) This section applies despite anything in this Division to the contrary.
- (2) This section applies if:
  - (a) a society records, otherwise than in writing, matters (the **stored matters**) this Division requires to be contained in a register, and
  - (b) the record of stored matters is kept at a place (the **place of storage**) other than the place (the **place of inspection**) where the register is, apart from this section,

required to be kept, and

(c) at the place of inspection means are provided by which the stored matters are made available for inspection in written form, and

(d) the society has served the Registrar with a notice:

(i) stating that this section is to apply to:

(A) unless sub-subparagraph (B) applies—the register, or

(B) if the stored matters are only some of the information that is required to be contained in the register—the register and matters that are of the same kind as the stored matters, and

(ii) specifying the situation of the place of storage and the place of inspection.

(3) The society is taken to have complied with the requirements of this Division about the location of the register, but only as far as the register is required to contain the stored matters.

(4) However, if:

(a) the situation of the place of storage or the place of inspection changes, and

(b) the society does not serve notice of the change within 14 days after the change,

this section, as it applies to the society because of the serving of the notice mentioned in subsection (2) (d), ceases to apply at the end of the 14 days.

## **122 Form and evidentiary value of registers**

(1) A register that is required by this Division to be kept or prepared may be kept or prepared:

(a) by making entries in a bound or loose-leaf book, or

(b) by recording or storing matters using a mechanical, electronic or other device, or

(c) in another way approved by the Registrar.

(2) Subsection (1) does not authorise a register to be kept or prepared by a mechanical, electronic or other device unless:

(a) the matters recorded or stored will be capable, at any time, of being reproduced in a written form, or

(b) a reproduction of the matters is kept in written form approved by the Registrar.

(3) A society must take all reasonable precautions, including the precautions (if any) prescribed, for guarding against damage to, destruction of or falsification of or in, and

for discovery of falsification of or in, any register or part of a register required by this Division to be kept or prepared by the society.

- (4) If a society records or stores matters using a mechanical, electronic or other device, a duty imposed by this Division to make a register containing the matters available for inspection or to provide copies of the whole or a part of a register containing the matters is taken to be a duty to make the matters available for inspection in written form or to provide a document containing a clear reproduction in writing of the whole or part of them, as the case may be.
- (5) A regulation may provide for how up-to-date the information contained in an instrument prepared for subsection (4) must be.
- (6) If:
  - (a) because of this Act, a register that this Division requires to be kept or prepared is evidence of a matter, and
  - (b) the register, or part of the register, is kept or prepared by recording or storing matters (including the matter) using a mechanical, electronic or other device, a written reproduction of the matter as so recorded or stored is evidence of the matter.
- (7) A writing purporting to reproduce a matter recorded or stored using a mechanical, electronic or other device is taken to be a reproduction of the matter unless the contrary is established.

## **Division 4 Accounts**

### **123 Financial year of co-operative housing society**

- (1) The financial year of a co-operative housing society is the period from 1 July to the following 30 June.
- (2) If a co-operative housing society is registered (otherwise than as a result of a merger) on a day falling between 1 January and 30 June in any year, its first financial year may, if the society so elects, extend to 30 June in the following year.
- (3) Despite subsection (1), if at the commencement of this section the financial year of a co-operative housing society is a period other than that specified in subsection (1), the society may retain that period as its financial year for a maximum period of 2 years after that commencement but must comply with that subsection before the end of that period.

Maximum penalty: 20 penalty units.

### **124 Financial year of Starr-Bowkett society**

- (1) The financial year of a Starr-Bowkett society is the period ending on such day in each calendar year as is provided for by the rules of the society.
- (2) The first financial year of a Starr-Bowkett society can extend from the date of its registration to a date not later than eighteen months from the date of its registration.
- (3) On an alteration of the rules of a Starr-Bowkett society 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.

### **125 Financial year of association**

- (1) The financial year of an association is to be the same as that of its component societies.
- (2) If the financial years of its component societies are not the same, the Registrar may (for the purpose of ensuring that their financial years are the same) give a direction in writing to any of the societies requiring them to change their financial years in accordance with the direction.
- (3) A society must comply with a direction given to the society under this section.  
Maximum penalty: 20 penalty units.

### **126 Accounting records to be kept**

- (1) A society must:
  - (a) keep accounting records that correctly record and explain the transactions and the financial position of the society, and
  - (b) keep the accounting records in a way that will enable:
    - (i) true and fair accounts of the society to be prepared periodically, and
    - (ii) the accounts of the society to be conveniently and properly audited in accordance with this Part, and
  - (c) retain the accounting records for a period of 7 years after the completion of the transactions to which they relate, and
  - (d) keep accounting records in writing in the English language or so as to enable the accounting records to be readily accessible and readily convertible into writing in the English language, and
  - (e) keep the accounting records at such a place or places as its directors think fit.

- (2) If any of the accounting records of a society are kept at a place outside this State, the society must keep at a place within this State determined by the directors such information as would enable true and fair accounts, and any documents or reports required by this Part to be attached to the accounts, to be prepared.

Maximum penalty: 20 penalty units.

### **127 Inspection of accounting records**

- (1) A society must make its accounting records available at all reasonable times for inspection without fee by any director of the society and by any other person authorised or permitted under this Act to inspect the accounting records.

Maximum penalty: 20 penalty units.

- (2) The Court may, on application by a director of a society, make an order authorising a registered company auditor acting for the director to inspect the accounting records of the society.
- (3) A registered company auditor who inspects accounting records under a Court order must not disclose to a person other than the director on whose application the order was made any information acquired during the inspection.

Maximum penalty: 20 penalty units.

- (4) The cost of an inspection conducted under a Court order must be met by the society.

### **128 Statement of financial performance and statement of financial position**

The directors of a society must, before the day on which returns must be lodged by the society under section 148 (1), cause to be prepared:

- (a) a statement of financial performance for the last financial year giving a true and fair view of the profit or loss of the society for that financial year, and
- (b) a statement of financial position as at the end of the last financial year giving a true and fair view of the state of affairs of the society as at the end of that financial year.

### **129 Group accounts**

If at the end of a financial year of a society, the society is a holding society, the directors of the society must, before the day on which returns must be lodged by the society under section 148 (1), cause to be made out:

- (a) a consolidated statement of financial performance that gives a true and fair view of the profit or loss, for that financial year, of the economic entity constituted by the society and the entities it controlled from time to time during that financial year (even if the society did not control the same entities during all of that financial year), and



- (b) a consolidated statement of financial position, as at the year's end, that gives a true and fair view of the state of affairs as at the year's end, of the economic entity constituted by the society and the entities that it controls at the year's end,

so far as a true and fair view of the profit and loss and state of affairs concern members of the holding society.

### **130 Audit**

- (1) The directors of a society must take reasonable steps to ensure that the accounts and group accounts of the society are audited as required by this Part before the day before which the accounts are required by this Division to have been prepared.
- (2) The directors of a society must cause to be attached to, or endorsed on, the accounts or group accounts the auditor's report given to the directors under Division 5 (Audit).

### **131 Directors to ascertain certain matters**

Before the statement of financial performance and statement of financial position are prepared, the directors of a society must take reasonable steps:

- (a) to ascertain what action has been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts and to cause all known bad debts to be written off and adequate provision to be made for doubtful debts, and
- (b) to ascertain whether any current assets, other than current assets to which paragraph (a) applies, are unlikely to realise in the ordinary course of business their value as shown in the accounting records of the society and, if so, to cause:
  - (i) those assets to be written down to an amount that they might be expected so to realise, or
  - (ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount that they might be expected so to realise, and
- (c) to ascertain whether any non-current asset is shown in documents of the society at an amount that, having regard to its value to the society as a going concern, exceeds the amount that it would have been reasonable for the society to spend to acquire that asset as at the end of the financial year and, unless adequate provision for writing down that asset is made, to cause to be included in the accounts such information and explanations as will prevent the accounts from being misleading because of the overstatement of the amount of that asset.

### **132 Requirements applying to accounts and group accounts**

- (1) The directors of a society must ensure that the accounts and group accounts:
  - (a) comply with any prescribed requirements.

(b) (Repealed)

(2), (3) (Repealed)

(4) If accounts or group accounts prepared in accordance with subsection (1) would not otherwise give a true and fair view of the matters required by this section to be dealt with in those accounts, the directors of the society must add such information and explanations as will give a true and fair view of those matters.

### **133 Directors' statement**

(1) The directors of a society must cause to be attached to any accounts required to be laid before an annual general meeting, before the auditor reports on those accounts, a statement made in accordance with a resolution of the directors and signed by not less than 2 directors stating whether in the opinion of the directors:

(a) the statement of financial performance is drawn up so as to give a true and fair view of the profit or loss of the society for the financial year, and

(b) the statement of financial position is drawn up so as to give a true and fair view of the state of affairs of the society as at the end of the financial year, and

(c) as at the date of the statement, there are reasonable grounds to believe that the society will be able to pay its debts as and when they fall due.

(2) The directors of a society that is a holding society must cause to be attached to group accounts required to be laid before an annual general meeting, before the auditor reports on those accounts, a statement made in accordance with a resolution of the directors and signed by not less than 2 directors stating whether, in the opinion of the directors, the group accounts are so drawn up as to give a true and fair view of:

(a) the profit or loss of the society and the entities it controlled during all or part of the last financial year, and

(b) the state of affairs of the society and the entities it controlled as at the end of the last financial year,

so far as they concern members of the society.

(3) The directors of a society:

(a) must, in forming an opinion as to the matters mentioned in subsection (1) (a) and (b) for the purposes of a statement under that subsection, have regard to circumstances that have arisen and information that has become available, since the end of the financial year to which the accounts relate, being circumstances or information that would, if the accounts were being prepared at the time the statement is made, have affected the determination of an amount or a particular in those accounts, and

(b) must, if adjustments have not been made in those accounts to reflect circumstances or information of a kind mentioned in paragraph (a), being circumstances or information relevant to an understanding of those accounts, or of an amount or particular in those accounts, include in the statement such information and explanations as will prevent those accounts, or that amount or particular, from being misleading as a result of those adjustments not having been made.

(4) The directors of a society that is a holding society:

(a) must, in forming an opinion as to the matters mentioned in subsection (2) (a) and (b) for the purposes of a statement under that subsection, have regard to circumstances that have arisen, or information that has become available, since:

(i) in the case of circumstances or information relating to the society—the end of the financial year of the society to which the group accounts relate, or

(ii) in the case of circumstances or information relating to an entity controlled by the society—the end of the financial year of the entity to which the group accounts relate,

being circumstances or information that would, if the group accounts were being prepared at the time the statement is made, have affected the determination of an amount or a particular in those group accounts, and

(b) must, if adjustments have not been made in those group accounts to reflect circumstances or information of a kind mentioned in paragraph (a), being circumstances or information relevant to an understanding of those group accounts, or of an amount or particular in those group accounts, include in the statement such information and explanations as will prevent those group accounts, or that amount or particular, from being misleading as a result of those adjustments not having been made.

### **134 Directors' reports**

(1) The directors of a society, other than a society to which subsection (2) applies, must, before (but not more than 6 weeks before) the day before which the accounts for its last financial year are required under this Division to be prepared, cause to be prepared a report, prepared in accordance with a resolution of the directors and signed by at least 2 directors:

(a) stating the names of the directors in office at the date of the report and specifying for each director:

(i) the qualifications, experience and special responsibilities (if any) of the director, and

(ii) the number, type and class of any securities for which the society is required

to keep particulars, for the director, under section 118 (Register of directors etc), and

- (iii) any interest of the director in a contract or proposed contract with the society, being an interest declared by the director under Division 1 (Directors and officers) since the commencement of this section or the date on which particulars were last given under this paragraph, and

(b) stating that:

- (i) the society keeps a register under section 118 containing information about the directors, and
- (ii) the register is open for inspection by any member of the society without fee and by any other person on payment of the amount (if any) prescribed by the society's rules, and

(c) stating:

- (i) the principal activities of the society during its last financial year and any significant change in the nature of those activities that happened during that financial year, and
- (ii) the net amount of the profit or loss of the society for that financial year after provision for income tax, and
- (iii) the amount (if any) that the directors recommend should be paid by way of dividend and any such amounts that have been paid or declared since the commencement of that financial year, indicating which of those amounts (if any) have been shown in a previous report under this subsection or subsection (2), and

(d) containing a review of the operations of the society during that financial year and of the results of those operations, and

(e) giving particulars of any significant change in the state of affairs of the society that happened during that financial year, and

(f) giving particulars of any matter or circumstance that has arisen since the end of that financial year and that has significantly affected or may significantly affect:

- (i) the operations of the society, or
- (ii) the results of those operations, or
- (iii) the state of affairs of the society,

in financial years subsequent to that financial year, and

(g) referring to:

- (i) likely developments in the operations of the society, and
- (ii) the expected results of those operations,

in financial years subsequent to that financial year.

(2) The directors of a society that is a holding society in relation to a financial year must, before (but not more than 6 weeks before) the day before which the group accounts for that financial year are required under this Division to be prepared, cause to be prepared a report, prepared in accordance with a resolution of the directors and signed by at least 2 directors:

(a) stating the names of the directors in office at the date of the report and specifying for each director:

- (i) the qualifications, experience and special responsibilities (if any) of the director, and
- (ii) the number, type and class of any securities for which the society is required to keep particulars, for the director, under section 118 (Register of directors etc), and
- (iii) any interest of the director in a contract or proposed contract with the society, being an interest declared by the director under Division 1 (Directors and officers) since the commencement of this section or the date on which particulars were last given under this paragraph, and

(b) stating that:

- (i) the society keeps a register under section 118 containing information about the directors, including details of each director's interests in securities issued by the society, and
- (ii) the register is open for inspection by any member of the society, without fee, and by any other person, on payment of the amount (if any) prescribed by the society's rules, and

(c) stating:

- (i) the principal activities of the entities in the group during that financial year and any significant change in the nature of those activities that happened during that period (even if the entities were not part of the group during all of the financial year), and
- (ii) the net amount of the consolidated profit or loss of the entities in the group for that financial year after provision for income tax and after deducting from that consolidated profit or loss any amounts that should properly be attributed to

- any person other than an entity in the group, and
- (iii) the amount (if any) that the directors of the society recommend should be paid by way of dividend, and any such amounts that have been paid or declared since the commencement of that financial year, indicating which of those amounts (if any) have been shown in a previous report under this subsection or subsection (1), and
  - (d) containing a review of the operations of the group during that financial year and of the results of those operations, and
  - (e) giving particulars of any significant change in the state of affairs of the group that happened during that financial year, and
  - (f) giving particulars of any matter or circumstance that has arisen since the end of that financial year and that has significantly affected or may significantly affect:
    - (i) the operations of the group, or
    - (ii) the results of those operations, or
    - (iii) the state of affairs of the group,in financial years subsequent to that financial year, and
  - (g) referring to:
    - (i) likely developments in the operations of the group, and
    - (ii) the expected results of those operations,in financial years subsequent to that financial year.
- (3) If, in the opinion of the directors of a society, it would prejudice the interests of the society if any particular information required under subsection (1) (f) or (2) (f) were to be included in a report:
- (a) the information need not be so included, and
  - (b) the report must contain a statement that some, or all (as the case may require) of the information required under subsection (1) (f) or (2) (f) has not been included in the report.
- (4) If a society, or an entity controlled by a holding society, has at any time granted to a person an option to have issued to him or her shares in the society or entity, the directors must state in the report:
- (a) in the case of an option granted by a holding society, or an entity controlled by a holding society, the name of the body granting the option, and

- (b) in the case of an option granted during the financial year or since the end of the financial year:
  - (i) the name of the person to whom the option was granted or, where it was granted generally to all the holders of shares or debentures or of a class of shares or debentures of that society or entity, that the option was so granted, and
  - (ii) the number and classes of shares in relation to which the option was granted, and
  - (iii) the date of expiration of the option, and
  - (iv) the basis upon which the option is or was to be exercised, and
  - (v) whether any person entitled to exercise the option had or has any right, by virtue of the option, to participate in any share issue of any other body corporate, and
- (c) particulars of shares issued, during the financial year or since the end of the financial year, by virtue of the exercise of an option, and
- (d) the number and classes of unissued shares under option as at the date of the report, the prices, or the method of fixing the prices, of issue of those shares, the dates of expiration of the options and particulars of the rights (if any) of the holders of the options to participate by virtue of the options in any share issue of any other body corporate.
- (5) If any of the particulars required by subsection (4) have been stated in a previous report, they may be stated by reference to that report.
- (6) The report must set out whether or not, during the financial year or since the end of the financial year, a director has received, or has become entitled to receive, a benefit because of a contract that:
  - (a) the director, or
  - (b) a firm of which the director is a member, or
  - (c) an entity in which the director has a substantial financial interest,has made (during that or any other financial year) with:
  - (d) the society, or
  - (e) an entity that the society controlled, or a body corporate that was related to the society, when the contract was made or when the director received, or became entitled to receive, the benefit (if any).

- (7) If so, the report must set out the general nature of each such benefit that a director has so received or to which a director has so become entitled.
- (8) Subsections (6) and (7) do not apply to:
  - (a) a benefit included in the aggregate amount of emoluments received or due and receivable, by directors shown in accordance with any regulations in force for the purposes of section 132 (1) (a) (Requirements applying to accounts and group accounts), or
  - (b) the fixed salary of a full-time employee of:
    - (i) the society, or
    - (ii) an entity that the society controlled, or a body corporate that was related to the society, at a relevant time.
  - (c) (Repealed)
- (9) If there is attached to or included with a report of the directors laid before a society at its annual general meeting a statement, report or other document relating to the affairs of the society or any of the entities controlled by the society, not being a statement, report or document required by this Act to be laid before the society in general meeting, the statement, report or other document, for the purposes of section 213 (False or misleading information), is taken to be part of that first mentioned report.
- (10) To avoid doubt, if a society controlled a particular entity during part, but not all, of the financial year, the report need not relate to the entity's operations or state of affairs during a period during which the society did not control the entity or to the result of those operations.

### **135 Accounts and reports to be laid before annual general meeting**

- (1) The directors of a society must cause to be laid before each annual general meeting of the society:
  - (a) a copy of the accounts made out in accordance with section 128 (Statement of financial performance and statement of financial position) for the last financial year of the society, and
  - (b) in the case of a society that, at the end of its last financial year before the relevant annual general meeting, was not a holding society—a copy of the directors' report made out in accordance with section 134 (Directors' reports) in relation to that financial year, and
  - (c) in the case of a society that, at the end of its last financial year before the relevant annual general meeting, was a holding society—a copy of the group accounts



made out in accordance with section 129 (Group accounts) in relation to that financial year and a copy of the directors' report made out in accordance with section 134 (Directors' reports) in relation to that financial year, and

- (d) a copy of any auditor's report required by section 130 (Audit) to be attached to or endorsed upon the accounts or group accounts, and
- (e) a copy of the statement by the directors required by section 133 (Directors' statement) to be attached to the accounts or group accounts.

- (2) Copies of the accounts, statements and reports required to be laid before an annual general meeting by subsection (1) must be made available to members of the society at the registered office and at each other office of the society from the day before which those documents are required under this Division to have been prepared until the holding of the annual general meeting.

### **136 Contravention of Division**

- (1) A director of a society who fails to take all reasonable steps to comply with or secure compliance with any provision of this Division commits an offence.

Maximum penalty:

- (a) if the offence is committed with intent to deceive or defraud creditors of the society or creditors of any other person or for a fraudulent purpose—20 penalty units, or
- (b) in any other case—5 penalty units.

- (2) (Repealed)

- (3) In any proceeding for an offence against subsection (1) arising out of an omission from the accounts of a society or the group accounts of a holding society, it is a defence to prove that the information omitted was immaterial and did not affect the giving of a true and fair view of the matters required by this Division to be dealt with in those accounts.
- (4) If, after the end of the period within which any accounts of a society or any report of the directors of a society is or are required under this Division to be prepared, the Registrar, by written notice to each of the directors, requires the directors to produce the accounts or report to a person specified in the notice on a date and at a place so specified, and the directors fail to produce the accounts or report as required by the notice, then, in any proceeding for a failure to comply with the requirements of this Division, proof of the failure to produce the accounts or report as required by the notice is evidence that the accounts or report were not prepared within that period.

## Division 5 Audit

### 137 Qualifications of auditors

(1) In this section:

**officer of a society** includes a receiver who is not also a manager.

(2) For the purposes of subsections (4) and (5), a person is taken to be an officer of a society if:

- (a) the person is an officer of an entity controlled by the society or a body corporate related to the society, or
- (b) except if the Registrar directs that this paragraph not apply in relation to the person—the person has, at any time during the last 12 months, been an officer or promoter of the society or of an entity that is controlled by the society.

(3) For the purposes of this section, a person is not taken to be an officer of a society by reason only of:

- (a) being or having been the liquidator of the society or of an entity controlled by the society, or
- (b) having been appointed as auditor of the society or of an entity controlled by the society or, for any purpose relating to taxation, a public officer of a body corporate, or
- (c) being or having been authorised to accept, on behalf of the society or an entity controlled by the society, service of process or any notices required to be served on the society or entity.

(4) Subject to this section, a person must not:

- (a) consent to be appointed as auditor of a society, or
- (b) act as auditor of a society, or
- (c) prepare a report required by this Act to be prepared by a registered company auditor or by an auditor of a society,

if:

- (d) the person is not a registered company auditor, or
- (e) the person is not ordinarily resident in this State, or
- (f) the person is indebted in an amount exceeding \$5,000 to the society or to a related body corporate, or

(g) the person:

- (i) is an officer of the society, or
- (ii) is a partner, employer or employee of an officer of the society, or
- (iii) is a partner or employee of an employee of an officer of the society.

Maximum penalty: 20 penalty units.

(5) Subject to this section, a firm must not:

- (a) consent to be appointed as auditor of a society, or
- (b) act as auditor of a society, or
- (c) prepare a report required by this Act to be prepared by a registered company auditor or by an auditor of a society,

unless:

- (d) at least 1 member of the firm is a registered company auditor who is ordinarily resident in this State, and
- (e) if the business name under which the firm is carrying on business is not registered under the law of this State relating to business names—there has been lodged with the Registrar a return in the approved form showing, in relation to each member of the firm, the member's full name and address as at the time when the firm so consents, acts or prepares a report, and
- (f) neither the firm nor the member of the firm responsible for conducting the audit, or signing the report, is indebted in an amount exceeding \$5,000 to the society or to a related body corporate, and
- (g) no member of the firm is:
  - (i) an officer of the society, or
  - (ii) a partner, employer or employee of an officer of the society, or
  - (iii) a partner or employee of an employee of an officer of the society, and
- (h) no officer of the society receives any remuneration from the firm for acting as a consultant to it on accounting or auditing matters.

(6) The appointment of a firm as auditor of a society is taken to be an appointment of all persons who are members of the firm and are registered company auditors, whether resident in Australia or not, as at the date of the appointment.

(7) If a firm that has been appointed as auditor of a society is reconstituted because of

the death, retirement or withdrawal of a member or members or because of the admission of a new member or new members, or both:

- (a) a person who was an auditor of the society by virtue of subsection (6) and who has so retired or withdrawn from the firm as previously constituted is taken to have resigned as auditor of the society as from the day of that retirement or withdrawal but, unless that person was the only member of the firm who was a registered company auditor and, after the retirement or withdrawal of that person, there is no member of the firm who is a registered company auditor, section 140 (Removal and resignation of auditors) does not apply to that resignation, and
- (b) a person who is a registered company auditor and who is so admitted to the firm is taken to have been appointed as an auditor of the society as from the date of admission to the firm, and
- (c) the reconstitution of the firm does not affect the appointment of the continuing members of the firm who are registered company auditors as auditors of the society,

but nothing in this subsection affects the operation of subsection (5).

- (8) Except as provided by subsection (7), the appointment of the members of a firm as auditors of a society by virtue of the appointment of the firm as auditor of the society is not affected by the dissolution of the firm.
- (9) A report or notice that purports to be made or given by a firm appointed as auditor of a society is not taken to be duly made or given unless it is signed in the firm name and in his or her own name by a member of the firm who is a registered company auditor.
- (10) If, in contravention of this section, a firm consents to be appointed, or acts as, auditor of a society, or prepares a report required by this Act to be prepared by an auditor of a society, each member of the firm commits an offence.

Maximum penalty: 20 penalty units.

- (11) A person must not:
  - (a) if appointed auditor of a society—knowingly disqualify himself or herself while the appointment continues from acting as auditor of the society, or
  - (b) if a member of a firm that has been appointed auditor of a society—knowingly disqualify the firm while the appointment continues from acting as auditor of the society.

### **138 Appointment of auditors**

- (1) In this section, a reference to the appointment of a person or firm as auditor of a

society includes a reference to the appointment of persons, firms, or a person or persons and a firm or firms, as auditors of the society.

- (2) Within 1 month of incorporation, the directors of a society must appoint, unless the society at a general meeting has appointed, a person or firm as auditor of the society.
- (3) Within 14 days after the appointment of an auditor under subsection (2), the society must give a notice of the appointment in the approved form to the Registrar.

Maximum penalty: 5 penalty units.

- (4) A person or firm appointed as auditor under subsection (2) holds office, subject to this Division, until the first annual general meeting of the society.
- (5) A society must:
  - (a) at its first annual general meeting appoint a person or firm as auditor of the society, and
  - (b) at each subsequent annual general meeting, if there is a vacancy in the office of auditor, appoint a person or firm to fill the vacancy.
- (6) A person or firm appointed as auditor under subsection (5) holds office:
  - (a) until death or removal or resignation from office in accordance with section 140 (Removal and resignation of auditors), or
  - (b) until ceasing to be capable of acting as auditor because of section 137 (4) or (5) (Qualifications of auditors).
- (7) Within 1 month after a vacancy, other than a vacancy caused by the removal of an auditor from office, happens in the office of auditor of the society, if there is no surviving or continuing auditor of the society, the directors must, unless the society at a general meeting has appointed a person or firm to fill the vacancy, appoint a person or firm to fill the vacancy.
- (8) While a vacancy in the office of auditor continues, the surviving or continuing auditor (if any) may act.
- (9) A society must not, and the directors of a society must not, appoint a person or firm as auditor of the society unless the person or firm has, before the appointment, consented by written notice given to the society or to the directors to act as auditor and has not withdrawn consent by written notice given to the society or to the directors.
- (10) A notice given by a firm must be signed in the firm name and in his or her own name by a member of the firm who is a registered company auditor.
- (11) A purported appointment of a person or firm as auditor of a society in contravention

of subsection (9) has no effect.

- (12) If an auditor of a society is removed from office at a general meeting in accordance with section 140 (Removal and resignation of auditors):
- (a) the society may at that meeting (without adjournment), by a resolution passed by a majority of its members as, being entitled so to do, vote in person, immediately appoint as auditor a person or firm to whom has been sent a copy of the notice of nomination in accordance with section 139 (Nomination of auditors), or
  - (b) if a resolution is not passed, or could not be passed only because a copy of the notice of nomination had not been sent to a person, the meeting may be adjourned to a date not earlier than 20 days and not later than 30 days after the day of the meeting and the society may, at the adjourned meeting, by ordinary resolution, appoint as auditor a person or firm notice of whose nomination for appointment as auditor has been received by the society from a member of the society at least 14 clear days before the date of the adjourned meeting.
- (13) If, after the removal from office of an auditor, the society fails to appoint another auditor under subsection (12):
- (a) the society must, within 7 days after the failure, notify the Registrar of the failure, and
  - (b) the Registrar must, unless there is another auditor of the society whom the Registrar believes is able to carry out the responsibilities of auditor alone and who agrees to continue as auditor, appoint as auditor a person or firm that has consented to be appointed.
- (14) Subject to subsection (13), if a society does not appoint an auditor when required by this Division to do so, the Registrar may, on the written application of a member of the society, appoint as auditor of the society a person or firm that has consented to be appointed.
- (15) A person or firm appointed as auditor of a society under subsection (7), (12), (13) or (14) holds office, subject to this Division, until the next annual general meeting of the society.
- (16) A director of a society must take all reasonable steps to comply with, or to secure compliance with, subsection (2) or (7).
- Maximum penalty: 20 penalty units.
- (17) A society that contravenes subsection (9) commits an offence.
- Maximum penalty: 20 penalty units.
- (18) A society that contravenes subsection (5) or (13) commits an offence.

Maximum penalty: 20 penalty units.

### **139 Nomination of auditors**

- (1) Subject to this section, a society must not appoint a person or firm as auditor of the society at its annual general meeting, not being a meeting at which an auditor is removed from office, unless written notice of nomination of the person or firm as auditor was given to the society by a member:
  - (a) before the meeting was convened, or
  - (b) not less than 3 weeks before the meeting.
- (2) A purported appointment of a person or firm as auditor of the society in contravention of subsection (1) has no effect.
- (3) If a society contravenes subsection (1), the society and any officer of the society who is in default each commits an offence.

Maximum penalty: 20 penalty units.

- (4) If notice of nomination of a person or firm for appointment as auditor is received by the society, whether for appointment at a meeting or an adjourned meeting mentioned in section 138 (12) (Appointment of auditors) or at an annual general meeting, the society must not less than 7 days before the meeting or at the time notice of the meeting is given:
  - (a) send a copy of the notice of nomination to each person or firm nominated and to each auditor of the society, and
  - (b) cause a copy of the notice of nomination to be displayed in a conspicuous place at the registered office and each other office of the society until the day of the meeting.

Maximum penalty: 20 penalty units.

### **140 Removal and resignation of auditors**

- (1) An auditor of a society may only be removed from office by special resolution at a general meeting of the society.
- (2) If notice of a special resolution to remove an auditor is given, the society must immediately send a copy of the notice to the auditor and to the Registrar.

Maximum penalty: 20 penalty units.

- (3) Within 7 days after receiving a copy of the notice, the auditor may make written representations of not more than a reasonable length to the society and request that a copy of the representations be displayed by the society in a conspicuous place at the

registered office and each other office of the society until the day of the meeting at which the resolution is to be considered.

- (4) Unless the Registrar on the application of the society orders otherwise, the society must display a copy of the representations in accordance with the auditor's request, and the auditor may, without prejudice to the right to be heard orally or, if a firm is the auditor, to have a member of the firm heard orally on its behalf, require that the representations be read out at the meeting.

Maximum penalty: 20 penalty units.

- (5) If an auditor is removed from office, the society must immediately give written notice of the removal to the Registrar.

Maximum penalty: 20 penalty units.

- (6) An auditor of a society may, by written notice given to the society, resign if the auditor:

- (a) by written notice given to the Registrar, has applied for consent to the resignation and stated the reasons for the application, and
- (b) at or about the same time as the auditor gave the notice to the Registrar, has given written notice of the application to the society, and
- (c) has received the consent of the Registrar to the resignation.

- (7) The Registrar must, as soon as practicable after receiving a notice from an auditor, notify the auditor and the society whether the Registrar consents to the resignation.

- (8) A statement made by an auditor in an application to the Registrar for consent to the resignation or in answer to an inquiry by the Registrar relating to the reasons for the application:

- (a) is not admissible in evidence in any civil or criminal proceeding against the auditor, and
- (b) may not be made the ground of a prosecution, action or suit against the auditor.

- (9) A certificate by the Registrar that a statement was made in the application or in the answer to an inquiry by the Registrar is conclusive evidence that the statement was so made.

- (10) Subject to subsection (11), the resignation of an auditor takes effect:

- (a) on the date (if any) specified for the purpose in the notice of resignation, or
- (b) on the date on which the Registrar gives the Registrar's consent to the resignation, or



(c) on the date (if any) fixed by the Registrar for the purpose,  
whichever is the latest.

(11) If, on the retirement or withdrawal from a firm of a member, the firm will no longer be capable, because of section 137 (5) (d) (Qualifications of auditors), of acting as auditor of a society, the member so retiring or withdrawing must (if not disqualified from acting as auditor of the society) give reasonable notice to the society of his or her retirement or withdrawal and, upon receipt of the notice by the society, the office of auditor becomes vacant.

Maximum penalty: 20 penalty units.

(12) Within 14 days after the receipt of a notice of resignation, retirement or withdrawal from an auditor, the society must give a notice of the resignation, retirement or withdrawal in the approved form to the Registrar.

Maximum penalty: 20 penalty units.

#### **141 Effect of winding-up on office of auditor**

An auditor of a society ceases to hold office if:

- (a) a special resolution is passed for the voluntary winding-up of the society, or
- (b) an order is made by the Court for the winding-up of the society, or
- (c) the Registrar issues a certificate under section 176 (Winding-up on certificate of Registrar) in relation to the society.

#### **142 Fees and expenses of auditors**

A society must pay the reasonable fees and expenses of an auditor, including the auditor's expenses in giving a report required to be given by this Act.

#### **143 Auditor's report**

- (1) An auditor of a society must report to the members on the accounts required to be laid before the society at the annual general meeting and on the society's accounting records and other records relating to those accounts and, if the society is a holding society for which group accounts are required, must also report to the members on the group accounts.
- (2) The auditor must state in the report:
  - (a) whether the accounts and any group accounts are in the auditor's opinion properly prepared:
    - (i) so as to give a true and fair view of the matters required by sections 128 (Statement of financial performance and statement of financial position) and

- 129 (Group accounts) to be dealt with in the accounts or group accounts, and
- (ii) in accordance with this Act, and
  - (iii) (Repealed)
- (b) (Repealed)
- (c) in the case of group accounts:
- (i) the names of each entity that the society controlled during all or part of, or at the end of, the financial year but for which the auditor has not acted as auditor, and
  - (ii) if there are included in the group accounts (whether separately or consolidated with other accounts) the accounts of an entity controlled by the society of which he or she has not acted as auditor, and he or she has not examined the auditor's report (if any) on those accounts—the name of that entity, and
  - (iii) if the auditor's report on the accounts of an entity controlled by the society was made subject to any qualification, or included any comment made under subsection (4)—the name of that entity and particulars of the qualification or comment, and
- (d) any defect or irregularity in the accounts or group accounts and any matter not set out in the accounts or group accounts without regard to which a true and fair view of the matters dealt with by the accounts or group accounts would not be obtained, and
- (e) if the auditor is not satisfied as to any matter mentioned in paragraph (a)—the reasons for not being so satisfied.
- (3) The auditor of a society has a duty to form an opinion on each of the following matters:
- (a) whether the auditor has obtained all the information and explanations that he or she required,
  - (b) whether proper accounting records and other records, including registers, have been kept by the society as required by this Act,
  - (c) whether the returns received from offices of the society other than the registered office are adequate,
  - (d) if the society is a holding society:
    - (i) whether the accounts of the entities controlled by the society that are to be consolidated with other accounts are, in form and content, appropriate and

proper for the purposes of the preparation of the consolidated accounts, and whether the auditor has received satisfactory information and explanations as required by him or her for that purpose, and

- (ii) whether the procedures and methods used by the society and by each of the entities it controls in arriving at the amounts taken into any consolidated accounts were appropriate to the circumstances of the consolidation.
- (4) The auditor must state in the auditor's report particulars of any deficiency, failure or shortcoming in relation to any matter mentioned in subsection (3).
- (5) The auditor must give the auditor's report to the directors of the society in sufficient time to enable the society to comply with the requirements of section 130 (Audit) in relation to that report.
- (6) The auditor's report:
- (a) must be attached to or endorsed on the accounts or group accounts, and
  - (b) if a member so requires, must be read before the society at the annual general meeting, and
  - (c) must be open to inspection by a member at any reasonable time.
- (7) The auditor must, when giving the auditor's report, also give to the directors of the society a report as to:
- (a) the adequacy, in the auditor's opinion, of the systems adopted by the society:
    - (i) to ensure compliance with the requirements of Division 1 (Formation and registration) of Part 3 (Societies), and
    - (ii) to monitor and manage risks associated with its financial activities, and
  - (b) any other matter of a kind prescribed in a standard made for the purpose of this subsection.
- (8) An auditor must, at the time at which the auditor gives the directors of a society a report under subsection (7), give a copy of the report to the Registrar.
- (9) An auditor of a society who contravenes this section commits an offence.

Maximum penalty (subsection (9)): 20 penalty units.

#### **144 Powers and duties of auditor**

- (1) An auditor of a society has a right of access at all reasonable times to the accounting records and other records and registers of the society.
- (2) The auditor is entitled to require from any officer of the society any information and

explanation that the auditor requires for the audit.

- (3) An auditor of a holding society for which group accounts are required has a right of access at all reasonable times to the accounting records and other records and registers of each entity that the society controlled during all or part of, or at the end of, any relevant financial year even if the holding society no longer controls the entity.
- (4) The auditor is entitled to require from any officer or auditor of any entity controlled by the holding society, at the expense of the holding society, any information and explanation in relation to the affairs of the entity that the auditor requires for the purpose of reporting on the group accounts.
- (5) An auditor of a society, or an agent authorised by the auditor in writing for the purpose:
  - (a) is entitled to attend any general meeting of the society, and
  - (b) is entitled to receive all notices of, and other communications relating to, any general meeting that a member is entitled to receive, and
  - (c) is entitled to be heard at any general meeting that he or she attends on any part of the business of the meeting that concerns the auditor in the capacity of auditor, and
  - (d) is entitled so to be heard even though:
    - (i) the auditor retires at that meeting, or
    - (ii) a resolution to remove the auditor from office is passed at that meeting.
- (6) If an auditor becomes aware that the society or the directors has or have not complied with section 109 (Annual general meeting), or the provisions of section 135 (Accounts and reports to be laid before annual general meeting) relating to the laying of accounts or group accounts before the annual general meeting of the society, the auditor must immediately inform the Registrar by written notice and, if accounts or group accounts have been prepared and audited, send to the Registrar a copy of the accounts or group accounts and of the auditor's report on the accounts or group accounts.
- (7) Except in a case to which subsection (6) applies, if an auditor, while performing duties as auditor of a society, is satisfied that:
  - (a) there has been a contravention of this Act, and
  - (b) the circumstances are such that, in the auditor's opinion, the matter has not been, or will not be, adequately dealt with by comment in his or her report on the accounts or group accounts or by bringing the matter to the notice of the directors of the society,

the auditor must immediately report the matter to the Registrar by written notice.

(8), (9) (Repealed)

(10) In addition to any other report that an auditor, or former auditor, of a society is required to give to the Registrar, an auditor, or former auditor, of a society must give to the Registrar any report in relation to the affairs of the society that the Registrar requires and the auditor, or former auditor, is able to give.

(11) An auditor, or former auditor, of a society who contravenes this section commits an offence.

Maximum penalty (subsection (11)): 20 penalty units.

#### **145 Final audit on merger etc**

(1) If a society is dissolved as part of a merger or transfer of engagements under Part 5 (Mergers and transfers of engagements) and the Registrar directs that this section is to apply to the merger or transfer, the auditor of the society must prepare a report containing the statements referred to in section 143 (2) relating to the accounts and accounting records of the society for the financial year up to the date of dissolution of the society and for the preceding financial year if an auditor's report has not been prepared relating to the accounts of the society for that year.

(2) The provisions of section 144 (Powers and duties of auditor) relating to the rights of access of an auditor to the records of a society and any entity controlled by a society apply in relation to a report under this section as if it were a report required under section 143 (Auditor's report).

(3) A report required under this section in relation to the accounts of a society dissolved as part of a merger or transfer of engagements must be given by the auditor to the directors of the merged society, or transferee society, as the case may be, within 2 months after the date of the merger or transfer and the directors of the merged society or transferee society must in turn, within 3 months after the date of the merger or transfer, send each auditor's report together with the accounts of each society dissolved as part of the merger or transfer to the Registrar.

(4) An auditor of a society who contravenes this section commits an offence.

Maximum penalty: 20 penalty units.

(5) A director of a society must take all reasonable steps to ensure that a report required by this section to be sent to the Registrar by the directors of a society is so sent.

Maximum penalty: 20 penalty units.

### **146 Obstruction of auditor**

- (1) An officer of a society must not:
  - (a) fail without lawful excuse:
    - (i) to allow an auditor of the society access, in accordance with this Part, to any accounting records and other records and registers of the society that are in the custody or control of the officer, or
    - (ii) to give any information or explanation as and when required under this Part, or
  - (b) otherwise hinder, obstruct or delay an auditor in the performance of the duties or the exercise of the powers of an auditor.
- (2) An officer or auditor of an entity controlled by a society must not:
  - (a) refuse or fail without lawful excuse:
    - (i) to allow an auditor of a holding society that controls the entity, or has controlled but no longer controls it, access, in accordance with this Part, to any accounting records and other records and registers of the entity in the custody or control of that officer or auditor, or
    - (ii) to give any information or explanation as and when required under this Part, or
  - (b) otherwise hinder, obstruct or delay an auditor in the performance of the duties or the exercise of the powers of an auditor.

Maximum penalty: 20 penalty units.

### **147 Qualified privilege**

- (1) In this section:

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

**qualified privilege** means that a person:

  - (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) An auditor of a society has qualified privilege in relation to:
  - (a) any oral or written statement made by the auditor while exercising functions as auditor of the society, and
  - (b) the giving to the Registrar of a notice or report, or a copy of any accounts or group accounts.

- (3) A person has qualified privilege in relation to the publishing of:
  - (a) a document that is prepared by an auditor of a society while exercising functions as auditor of the society and is required under this Act to be lodged with the Registrar, whether or not the requirement has been complied with, and
  - (b) any oral or written statement made by the auditor while exercising functions as auditor of the society.
- (4) This section does not limit or affect any other right, privilege or immunity that an auditor or other person has as a defendant in an action for defamation.

## **Division 6 Returns and relief**

### **148 Returns**

- (1) A society must lodge returns with the Registrar in accordance with the regulations.  
Maximum penalty: 20 penalty units.
- (2) The Registrar may, by written notice, require a society to lodge such further returns as the Registrar requires.
- (3) A further return must contain the information required by the notice and must be lodged as often as is required by the notice.
- (4) Without limiting the effect of this section, the information that may be required in a further return may comprise or include information relating to:
  - (a) an entity controlled by the society, and
  - (b) a body corporate or other entity formed or acquired outside Australia by an entity controlled by the society, and
  - (c) a body corporate or other entity (whether within or outside Australia) with which:
    - (i) the society, or
    - (ii) an entity controlled by the society, or
    - (iii) a body corporate or other entity mentioned in paragraph (b),  
has invested funds.
- (5) The Registrar may, by written notice, require a society to lodge with a return or further return a report by a registered company auditor, or other person of a specified class, on specified matters to which the return relates.
- (6) A society that fails to comply with a requirement of a notice given to it under this section commits an offence.

Maximum penalty: 20 penalty units.

**149 Relief from requirements as to accounts and audit**

- (1) The directors of a society may apply to the Registrar in writing for an order relieving the directors, the society or the auditor of the society from compliance with any specified requirements of Division 4 (Accounts) or 5 (Audit) (other than section 126 (Accounting records to be kept)).
- (2) An application under subsection (1) must be accompanied by a written statement made in accordance with a resolution of the directors of the society, signed by not less than 2 directors and stating the reasons for seeking the order.
- (3) The Registrar may require the directors making the application to supply such information relating to the operations of the society, and of any entity controlled by the society, as the Registrar thinks necessary for the purpose of determining the application.
- (4) The Registrar may make an order unconditionally or subject to any conditions the Registrar considers appropriate.
- (5) Notice of an order under subsection (4) must be given to the society.
- (6) The Registrar may, if the Registrar considers it appropriate, make an order in relation to a specified class of societies relieving the directors of a society included in that class, a society included in that class or the auditor of a society included in that class, from compliance with any specified requirements of Division 4 (Accounts) or 5 (Audit) (other than section 126 (Accounting records to be kept)).
- (7) The Registrar may make an order under subsection (6) unconditionally or subject to any conditions the Registrar considers appropriate.
- (8) Notice of an order under subsection (6) must be published in the Gazette.
- (9) The Registrar must not make an order in relation to a society, or a class of societies, under this section unless the Registrar is of the opinion, in relation to each requirement of this Act specified in the order, that compliance with the requirement:
  - (a) would render accounts or group accounts, or a report required in relation to those accounts, misleading, or
  - (b) would be inappropriate to the circumstances of the society, or of the societies included in that class, or
  - (c) would impose unreasonable burdens on:
    - (i) the society, an officer of the society or the auditor of the society, or
    - (ii) the societies, or officers or auditors of the societies, included in that class,



as the case may be.

- (10) An order under this section may be limited in its effect to a period specified in the order.
- (11) The Registrar may, on application by the directors of a society or on the Registrar's own initiative, revoke or suspend an order under this section.
- (12) A revocation or suspension does not take effect:
- (a) in the case of an order under subsection (4)—until written notice of the revocation or suspension is given to the society, or
  - (b) in the case of an order under subsection (6)—until notice of the revocation or suspension is published in the Gazette.

## **Part 5 Mergers and transfers of engagements**

### **Division 1 Preliminary**

#### **150 Definitions**

In this Part:

**certificate of confirmation** means a certificate given by the Registrar to confirm a transfer of engagements.

**transferee society** means a society to whom another society is to transfer, or has transferred, its engagements under this Part.

**transferor society** means a society that is to transfer, or has transferred, its engagements under this Part.

#### **151 Part applies only to co-operative housing societies and associations**

This Part applies only to co-operative housing societies and associations, with the effect that a Starr-Bowkett society cannot be a party to a merger or transfer of engagements under this Part. A reference in this Part to a society includes a reference to an association.

### **Division 2 Mergers and transfers of engagements between societies of the same type**

#### **152 Interpretation—societies of the same type**

For the purposes of this Division societies are of the same type if, on application by the societies, the Registrar certifies that the Registrar considers the societies to be of the same type on the basis that the borrowings of each of the societies are of the same kind or substantially the same kind.

**153 Application for registration of merger or transfer of engagements between societies of the same type**

- (1) If 2 or more societies of the same type propose to consolidate all or any of their assets, liabilities and undertakings by way of merger, or transfer of engagements, the societies may, after complying with this section, apply for the registration of the merger, or transfer of engagements. There is to be no merger or transfer of engagements involving a Starr-Bowkett society.
- (2) The proposed merger, or transfer of engagements, must have been approved by a special resolution of each society involved unless the Registrar has determined that it may be approved by the society's board.
- (3) A society that is to approve the proposed merger, or transfer of engagements, by special resolution must send to each of its members a statement approved by the Registrar specifying:
  - (a) if the proposal is for a merger—any proposal for the composition of the board of the merged society, and
  - (b) if the proposal is for a total transfer of engagements—any proposal for the composition of the board of the transferee society, and
  - (c) the financial position of each of the societies 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
  - (d) any interest that any officer of any of the societies has in the proposed merger, or transfer of engagements, and
  - (e) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to any officer or member of a society in relation to the proposed merger, or transfer of engagements, and
  - (f) whether the proposal is a merger, or transfer of engagements and the reason for the merger, or transfer of engagements, and
  - (g) in the case of a transfer of engagements—whether it is a total or partial transfer of engagements, and
  - (h) any other matter specified by the Registrar.
- (4) The statement mentioned in subsection (3) must be sent to the members of the society 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 in accordance with the regulations by members voting in the ballot.
- (5) The Registrar may exempt a society from having to comply with subsection (3).
- (6) The Registrar may grant an exemption, or approve a statement, subject to any conditions the Registrar considers appropriate.
- (7) An application for the registration of a merger or transfer of engagements under this Division must be made in the way and form required by the Registrar.
- (8) An application for a proposed merger must be accompanied by 2 copies of the proposed rules of the merged society and any other particulars required by the Registrar.

**154 Registrar may register merged society**

- (1) If, in relation to an application under this Division by societies for registration of a proposed merger, the Registrar is satisfied that:
  - (a) the societies involved have complied with section 153 (Application for registration of merger or transfer of engagements between societies of the same type), and
  - (b) the proposed rules of the merged society are adequate, and
  - (c) there are reasonable grounds for believing that the merged society will be able to comply with all applicable standards, and
  - (d) the certificates of incorporation of the societies involved in the merger have been surrendered to the Registrar, and
  - (e) there is no good reason why the merged society and its rules should not be registered,the Registrar must:
  - (f) register the merged society, and
  - (g) register its rules, and
  - (h) authorise it to operate as a co-operative housing society, and
  - (i) cancel the registration of the societies involved in the merger, and those societies are thereby dissolved.
- (2) On registering the merged society, the Registrar must issue to the society:
  - (a) a certificate of incorporation, and

(b) a written authority to operate as a co-operative housing society.

(3) A merger takes effect on the issue of the certificate of incorporation under subsection (2).

### **155 Certificate of confirmation (voluntary transfer)**

(1) This section applies to a transfer of engagements following an application under section 153 (Application for registration of merger or transfer of engagements between societies of the same type).

(2) For a total transfer of engagements, the Registrar must issue a certificate of confirmation if the Registrar is satisfied that:

(a) the societies have complied with section 153, and

(b) the rules, or proposed rules, of the transferee society are adequate, and

(c) the certificate of incorporation of the transferor society has been:

(i) surrendered to the Registrar, or

(ii) lost or destroyed, and

(d) there is no good reason why the transfer should not take effect.

(3) For a partial transfer of engagements, the Registrar must issue a certificate of confirmation if the Registrar is satisfied that:

(a) the societies have complied with section 153, and

(b) the rules, or proposed rules, of the societies are adequate, and

(c) there is no good reason why the transfer should not take effect.

### **156 Registrar may direct a transfer of engagements between societies of the same type**

(1) The Registrar may, by written notice given to a society, direct it to totally or partially transfer its engagements to another society of the same type (the **transferee society**) if the board of the transferee society has, by resolution, consented to the proposed transfer.

(2) The Registrar must give a copy of the direction to the transferee society.

(3) For a total transfer of engagements, the direction must specify that the transferor society must surrender its certificate of incorporation to the Registrar or satisfy the Registrar that its certificate has been lost or destroyed.

(4) The Registrar must not direct a society to transfer its engagements under this section unless:

- (a) the Registrar is of the opinion that:
  - (i) the society has contravened this Act or the society's rules and, after being given written notice of the contravention by the Registrar, has allowed the contravention to continue or has again contravened this Act or the rules, or
  - (ii) the society is trading unprofitably or has an accumulated deficit in its accounts, or
  - (iii) the affairs of the society are being conducted in an improper or financially unsound way, or
- (b) after making such inquiries in relation to one or both of the societies as the Registrar considers appropriate, the Registrar is satisfied that it is in the interest of members or creditors of the society that it is to be directed to transfer its engagements, or
- (c) the Registrar has certified, in relation to the society, that any of the events mentioned in section 176 (1) (a), (b), (c) or (g) (Winding-up on certificate of Registrar) has happened.

**157 Society to comply with direction**

- (1) A society must take all reasonable steps to comply with a direction under this Division to transfer its engagements.

Maximum penalty: 10 penalty units.

- (2) An officer of a society must not:

- (a) fail to take all reasonable steps to secure compliance by the society with a direction to transfer its engagements, or
- (b) by a wilful act or omission, be the cause of a failure by the society to comply with a direction to transfer its engagements.

Maximum penalty: 10 penalty units.

**158 Certificate of confirmation (transfer by direction)**

- (1) This section applies to a transfer of engagements by a direction under section 156 (Registrar may direct a transfer of engagements between societies of the same type).
- (2) If the transfer takes effect immediately, the direction must be accompanied by a certificate of confirmation indicating that the certificate takes effect when it is issued.
- (3) If the transfer does not take effect immediately:
  - (a) the direction must specify the day when the Registrar proposes to issue the certificate of confirmation, and

- (b) when the Registrar is satisfied that the societies have complied with the direction, the Registrar must issue a certificate of confirmation.

**159 Who receives the certificate of confirmation**

The Registrar must give a certificate of confirmation:

- (a) for a partial transfer—to each of the societies, or
- (b) for a total transfer—to the transferee society.

**160 When transfer of engagements takes effect**

A transfer of engagements takes effect:

- (a) on the issue of the certificate of confirmation of the transfer, or
- (b) if a later time is stated in the certificate—at the later time.

**161 Cancellation of registration after total transfer**

When a total transfer of engagements takes effect, the Registrar must cancel the transferor society's registration and the transferor society is thereby dissolved.

**162 Effect of merger**

- (1) This section applies on a merger of societies under this Division taking effect.
- (2) The merged society is the successor of the merging societies.
- (3) Without limiting subsection (2):
  - (a) the members of each merging society become members of the merged society, and
  - (b) all assets, rights and liabilities of each merging society become assets, rights and liabilities of the merged society without any conveyance, transfer or assignment, and
  - (c) in all documents (including, for example, a contract to which a merging society was a party), a reference to a merging society is a reference to the merged society, and
  - (d) a legal proceeding by or against a merging society that is not finished when the merger takes effect may be continued and finished by or against the merged society, and
  - (e) the duties, obligations, immunities and privileges applying to a merging society apply to the merged society.
- (4) 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 a contract or instrument, or as causing or permitting the termination of any contract or instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or
- (d) as an event of default under any contract or instrument.

### **163 Effect of transfer of engagements**

- (1) This section applies on a transfer of engagements under this Division taking effect.
- (2) However, for a partial transfer, this section applies:
  - (a) subject to the terms on which the transfer takes place, and
  - (b) only to the extent necessary to give effect to the transfer.
- (3) The transferee society is the successor of the transferor society.
- (4) Without limiting subsection (3):
  - (a) the members of the transferor society become members of the transferee society, and
  - (b) all assets, rights and liabilities of the transferor society become assets, rights and liabilities of the transferee society without any conveyance, transfer or assignment, and
  - (c) in all documents (including, for example, a contract to which the transferor society was a party), a reference to the transferor society is a reference to the transferee society, and
  - (d) a legal proceeding by or against the transferor society that is not finished when the transfer takes effect may be continued and finished by or against the transferee society, and
  - (e) the duties, obligations, immunities and privileges applying to the transferor society apply to the transferee society.
- (5) 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 a contract or instrument, or as causing or permitting the termination of any contract or instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or

(d) as an event of default under any contract or instrument.

## **Division 3**

### **164-172 (Repealed)**

## **Part 6 External administration**

### **Division 1 Arrangements and reconstructions**

#### **173 Schemes of arrangement and reconstruction**

A society 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 5.1 of the Corporations Act, subject to the following modifications to the provisions of Part 5.1:

(a) a reference to a company is to be read as a reference to a society,

(b) a reference to ASIC is to be read as a reference to the Registrar,

(c) a reference to a shareholder is to be read as a reference to a member,

(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 17 (1).

### **Division 2 Receivers and managers**

#### **174 Receivers and managers**

A society 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 5.2 of the Corporations Act, subject to the following modifications to the provisions of Part 5.2:

(a) a reference to ASIC is to be read as a reference to the Registrar,

(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 17 (1).



## **Division 3 Winding-up**

### **175 Winding-up**

- (1) A society may be wound-up voluntarily or by the Court or on a certificate of the Registrar.
- (2) Subject to this Division, a society may be wound-up in the way and circumstances in which a company may be wound-up under the Corporations Act.

### **176 Winding-up on certificate of Registrar**

- (1) In the case of a winding-up on a certificate of the Registrar, the society may be wound-up if the Registrar certifies that any of the following events has happened:
  - (a) that the number of members is reduced to less than 7 and no borrowing members remain,
  - (b) that the society has not started business within a year of registration or has suspended or ceased to carry on business for a period of more than 6 months,
  - (c) that an event (to be specified in the certificate) has happened on the happening of which the regulations or the society's rules provide that the society is to be wound-up,
  - (d) that the registration of the society has been obtained by mistake or fraud,
  - (e) that the society exists for an illegal purpose,
  - (f) that the society has, after notice by the Registrar of any contravention of this Act or the society's rules, failed, within the time specified in the notice, to remedy the contravention or has committed any further contravention of a kind specified in the notice,
  - (g) that there are, and have been for a period of one month immediately before the date of the certificate, insufficient directors of the society to constitute a quorum as provided by the society's rules,
  - (h) that, because of an investigation under this Act into the affairs of the society, it is in the interests of the public or of members or creditors that the society be wound-up.
- (2) The Registrar must not so certify unless the event has been proved to the Registrar's satisfaction.
- (3) If the Registrar so certifies, the Registrar may appoint a person to be the liquidator of the society.
- (4) The liquidator appointed by the Registrar may be employed in the office of the

Registrar and, if so, need not be a registered liquidator under the Corporations Act.

- (5) The liquidator, unless employed in the Registrar's office, is entitled to receive an amount of remuneration that the Registrar considers appropriate, having regard to the rate of payment that normally would apply for such an appointment.
- (6) Any vacancy in the office of a liquidator appointed under subsection (3) must be filled by a person appointed by the Registrar for the purpose.
- (7) A winding-up on a certificate of the Registrar is taken to commence at the date of the certificate of the Registrar.
- (8) The liquidator must, within 14 days after the appointment, give notice of the appointment by Gazette notice.

### **177 Application of Corporations Act to winding-up of societies**

- (1) Subject to this Division, a society matter 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 Commonwealth winding-up and deregistration provisions, subject to the following modifications to those provisions:
  - (a) a reference to a special resolution is to be read as a reference to a special resolution under this Act,
  - (b) a reference to ASIC is to be read as a reference to the Registrar,
  - (c) a reference to a voluntary winding-up includes a reference to a winding-up of a society on a certificate of the Registrar,
  - (c1) a reference to the Court or the Court (within the meaning of section 58AA) in Division 2A of Part 5.7B is to be read as a reference to the Supreme Court,
  - (c2) section 588FK is to be read as if the definition of **PPSA security interest** in section 588FK (4) read as follows and the note to the section were omitted:

**PPSA security interest** (short for Personal Property Securities Act security interest) means a security interest to which the *Personal Property Securities Act 2009* of the Commonwealth applies (including a transitional security interest within the meaning of that Act).

- (c3) section 588FL (1) (a) is to be read as if the following subparagraph were inserted after subparagraph (i):

“(ia) a certificate is issued by the Registrar under section 176 of the *Co-operative Housing and Starr-Bowkett Societies Act 1998* for the winding up

of a society;”,

- (c4) the definition of **critical time** in section 588FL (7) is to be read as if the words “(as applied and modified by section 177 of the *Co-operative Housing and Starr-Bowkett Societies Act 1998*)” were inserted after “513B” in paragraph (a) of that definition,
- (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 note to section 17 (1).

(2) In this section:

**Commonwealth winding-up and deregistration provisions** means:

- (a) the provisions of Parts 5.4, 5.4A, 5.4B, 5.5, 5.6, 5.7B (other than section 588G) and 5.9 of the Corporations Act, or
- (b) the provisions of Part 5A.1 of the Corporations Act.

**society matter** means:

- (a) the winding-up or dissolution of a society, or
- (b) a defunct or dissolved society.

### **178 Voluntary winding-up**

- (1) If a society is to be wound-up voluntarily, a person employed in the office of the Registrar may be appointed liquidator.
- (2) If a society is being wound-up voluntarily and a vacancy happens in the office of liquidator, a person employed in the office of the Registrar may be appointed liquidator to fill the vacancy.
- (3) An appointment under subsection (1) or (2) is not effective unless made with the written approval of the Registrar.
- (4) A person appointed as liquidator under this section need not be a registered liquidator under the Corporations Act.
- (5) The remuneration payable in relation to a liquidator appointed under this section must be paid to the Registrar.

### **179 Vacancy in office of liquidator on voluntary winding-up**

Where:

- (a) a society is being wound-up voluntarily, and
- (b) the liquidator was not appointed under section 180 (Voluntary winding-up), and
- (c) a vacancy happens in the office of liquidator that, in the Registrar's opinion, is unlikely to be filled in the way provided by Part 5.5 of the Corporations Act (as applied to a voluntary winding-up by reason of section 177),

the Registrar may appoint as liquidator, a person qualified under that Part for such appointment.

#### **180 Remuneration of liquidator on voluntary winding-up**

Despite anything in this Act or in the Corporations Act (as applied by reason of section 177), the remuneration paid to the liquidator of a society wound-up voluntarily must not exceed the amount fixed by the Registrar.

#### **181 Cancellation of registration**

As soon as is practicable after the society is dissolved or taken to be dissolved, the Registrar must register the dissolution and cancel the registration of the society.

### **Part 7 Associations**

#### **182 Formation of associations**

A body proposed to be an association under this Act may be formed by any 2 or more societies (whether of the same or a different kind).

**Note—**

For example, a body can be formed as an association consisting of two or more Starr-Bowkett societies, or two or more co-operative housing societies, or one or more co-operative housing societies together with one or more Starr-Bowkett societies.

#### **183 Objects of associations**

The objects of an association are such of the following as are authorised by the rules of the association:

- (a) to provide administrative, secretarial or other services to the bodies that are its members and to the members of those bodies,
- (b) to perform such other functions as may be prescribed.

#### **184 Registration**

- (1) Any 2 or more of the bodies that can form an association may apply to the Registrar, in accordance with the regulations, for a body to be registered under this Act as an association.

- (2) The application must be accompanied by:
  - (a) the proposed rules of the body, and
  - (b) such other documents as are prescribed, and
  - (c) such evidence as the Registrar requires:
    - (i) that the body is eligible for registration as an association, and
    - (ii) that the body, if registered, will be able to comply with this Act and all applicable standards.
- (3) The Registrar may, for the purposes of this section, accept a statutory declaration as sufficient evidence of matters mentioned in the declaration.
- (4) If the Registrar is satisfied that the body is eligible for registration, the Registrar must register the body as an association and register its proposed rules.
- (5) A body is eligible for registration as an association only if:
  - (a) the body's application for registration complies with this Act, and
  - (b) the proposed rules of the body are not contrary to this Act, and
  - (c) the objects of the body are appropriate for an association, and
  - (d) there are reasonable grounds for believing that the body will, if registered, be able to carry out its objects successfully, and
  - (e) there is no good reason why the body should not be registered.

### **185 Certificate of incorporation**

- (1) On registering an association under this Part, the Registrar must issue a certificate of incorporation to the association.
- (2) A certificate of incorporation is conclusive evidence that all requirements of this Act in relation to registration and matters precedent or incidental to registration have been complied with.

### **186 Effect of incorporation**

On the issue under this Part of a certificate of incorporation to an association, the association is a body corporate with perpetual succession and:

- (a) has, subject to this Act and the association's rules, the legal capacity of a natural person, and
- (b) has a common seal, and

(c) may sue and be sued in its corporate name.

### **187 Membership**

- (1) The members of an association are the bodies by which the association is formed, and any other bodies that are admitted to membership of the association under its rules.
- (2) The only bodies that can be admitted to membership of an association are bodies that are able to form an association under this Act.

### **188 Share capital**

The share capital (if any) of an association must be divided into shares in accordance with its rules.

### **189 Meetings**

- (1) Meetings of the members of an association must be convened and conducted under the association's rules.
- (2) A member of an association is, at any such meeting, entitled:
  - (a) to be represented, and
  - (b) to exercise voting rights,under the rules.
- (3) An association must cause full and accurate minutes to be kept of every meeting of its board and of the members of the association.

### **190 Application of Act to associations**

The prescribed provisions of this Act apply, with all necessary modifications and any prescribed modifications, to an association as if the association were a society.

## **Part 8**

### **191-199 (Repealed)**

## **Part 9 Evidence, offences and proceedings**

### **Division 1 Evidence**

#### **200 Certificates etc**

- (1) In a proceeding, a document that appears to be a certificate of registration, certificate of incorporation or other certificate, or an authority, issued by the Registrar under this Act, or a copy of any such document appearing to be certified as such by the Registrar, is evidence of the matters stated in the certificate, authority or copy.

- (2) Judicial notice must be taken of the imprint of the Registrar's seal appearing on a document and the document must be presumed to have been properly sealed until the contrary is proved.
- (3) A copy of, or extract from, a document lodged with, created by or otherwise held by the Registrar, and certified to be a true copy or extract under the Registrar's seal:
  - (a) is as admissible in a proceeding as the original document, and
  - (b) has the same validity in evidence as the original document or the extracted part of the original document.
- (4) In a proceeding, a certificate of the Registrar 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,is evidence of the matters specified in the certificate.

## **201 Rules**

A printed copy of the rules of a co-operative housing body appearing to be certified by the body's secretary to be a true copy of its registered rules is evidence of the rules.

## **202 Registers**

- (1) The registers kept under this Act are evidence of the particulars directed or authorised by or under this Act to be inserted.
- (2) A copy of an entry in a register is, if apparently certified by the secretary of the co-operative housing body concerned to be a true copy of the entry in question, evidence of the particulars to which the entry relates.

## **203 Minutes**

- (1) An entry in the minutes purporting to be:
  - (a) a minute of the business transacted at a meeting of a co-operative housing body or its board, and
  - (b) signed by the chairperson of the meeting at which the business was transacted or a subsequent meeting,is evidence that the business as 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 housing body to the effect that a resolution was carried or was lost is evidence of the fact without proof of the number or proportion of votes recorded for or against the resolution.

#### **204 Entries**

A copy of an entry in a book of a co-operative housing body regularly kept in the course of business is, if certified by statutory declaration of the secretary to be a true copy of the entry, admissible in evidence in any case where, and to the same extent as, the original entry itself is admissible.

### **Division 2 Offences**

#### **205 Defaults by co-operative housing bodies**

- (1) A co-operative housing body must comply with a lawful requirement under this Act to give information to the Registrar or another person.
- (2) If a co-operative housing body contravenes subsection (1), the co-operative housing body and any officer of the co-operative housing body who is in default each commit an offence.

Maximum penalty (subsection (2)): 50 penalty units or imprisonment for 12 months, or both.

#### **206 Restrictions on powers**

- (1) A co-operative housing body must not contravene a restriction imposed on its powers, or in relation to its exercise of its powers, under this Act.

Maximum penalty: 50 penalty units.

- (2) Without limiting subsection (1), a co-operative housing body must not:
  - (a) accept as a member a person who is not eligible for membership under the body's rules, or
  - (b) raise money on loan except as authorised and within the limits imposed by this Act or, subject to this Act, the body's rules.

- (3) If a co-operative housing body contravenes this section, any officer of the body who is in default commits an offence.

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

#### **207 Offences by officers**

- (1) In this section and sections 208 (Incurring debts not likely to be paid) and 209 (Powers of Court):



**appropriate officer** means:

- (a) in relation to a co-operative housing body that is being wound-up—the liquidator, and
- (b) in relation to a co-operative housing body that is under the management of an administrator—the administrator, and
- (c) in relation to a co-operative housing body in relation to which a receiver or manager of all or any of the body's property has been appointed, whether by the Court or under the powers contained in any instrument—the receiver or manager, and
- (d) in relation to a co-operative housing body that has ceased to carry on business or is unable to pay its debts—the Registrar.

**co-operative housing body to which this section applies** means a co-operative housing body:

- (a) that is being wound-up, or
- (b) that is under the management of an administrator, or
- (c) in relation to which a receiver or manager has been appointed, whether by the Court or under the powers contained in any instrument, or
- (d) that has ceased to carry on business or is unable to pay its debts.

**the relevant day** means:

- (a) in relation to a co-operative housing body that is being wound-up—the day on which under this Act the winding-up has started or is taken to have started, and
- (b) in relation to a co-operative housing body that is under the management of an administrator—the day on which the administrator is appointed, and
- (c) in relation to a co-operative housing body in relation to which a receiver or manager has been appointed—the day on which the receiver or manager was appointed, and
- (d) in relation to a co-operative housing body that is unable to pay its debts—the day on which the execution or other process was returned unsatisfied in whole or in part, and
- (e) in relation to a co-operative housing body that has, within the meaning of subsection (2), ceased to carry on business—the day on which a letter was first sent to the body or a notice was first published in the Gazette in relation to the body.

- (2) (Repealed)
- (3) An officer, or former officer, of a co-operative housing body to which this section applies who:
- (a) does not to the best of the person's knowledge and belief fully and truly disclose to the appropriate officer:
    - (i) all the property of the co-operative housing body, and
    - (ii) how and to whom and for what consideration and when the body disposed of any part of its property, except such part as has been disposed of in the ordinary course of the body's business, or
  - (b) does not deliver up to the appropriate officer, or as the appropriate officer directs:
    - (i) all the property of the co-operative housing body in the person's custody or under the person's control and that the person is required by law to deliver up, or
    - (ii) all documents in the person's custody or under the person's control belonging to the body and that the person is required by law to deliver up, or
  - (c) within 5 years before the relevant day or at any time on or after that day:
    - (i) has concealed any part of the body's property to the value of \$100 or more, or has concealed a debt due to or from the body, or
    - (ii) has fraudulently removed part of the body's property to the value of \$100 or more, or
    - (iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of a document affecting, or relating to, the body's property or affairs, or
    - (iv) has made, or has been privy to the making of, a false entry in any document affecting or relating to the body's property or affairs, or
    - (v) has fraudulently parted with, altered or made any omission in, or has been privy to fraudulently parting with, altering or making an omission in a document affecting or relating to the body's property or affairs, or
    - (vi) by a false representation or other fraud, has obtained on credit, for or on behalf of the body, property that the body has not subsequently paid for, or
    - (vii) has obtained on credit for or on behalf of the body, under the false pretence that the body is carrying on business, property that the body has not subsequently paid for, or

- (viii) has pawned, pledged or disposed of any of the body's property that has been obtained on credit and has not been paid for, unless the pawning, pledging or disposing was in the ordinary course of the body's business, or
  - (d) knowingly makes any material omission in any statement relating to the body's affairs, or
  - (e) knowing or believing that a false debt has been proved by any person, fails for a period of 1 month to inform the appropriate officer of the knowledge or belief, or
  - (f) prevents the production of any document affecting or relating to the body's property or affairs, or
  - (g) within 5 years before the relevant day, or at any time on or after that day, has attempted to account for any part of the body's property by making entries in the body's documents showing fictitious transactions, losses or expenses, or
  - (h) within 5 years before the relevant day, or at any time on or after that day, has been guilty of any false representation or other fraud for the purpose of obtaining the consent of the body's creditors or any of them to an agreement relating to the body's affairs or to the winding-up,
- commits an offence.

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

(4) It is a defence to a charge:

- (a) under subsection (3) (a), (b) or (d) or subsection (3) (c) (i), (vii) or (viii), if the accused person proves that the person had no intent to defraud, and
- (b) under subsection (3) (c) (iii) or (iv) or subsection (3) (f), if the accused person proves that the person had no intent to conceal the state of affairs of the co-operative housing body or to defeat the law.

- (5) If a person pawns, pledges or disposes of property in circumstances that amount to an offence under subsection (3) (c) (viii), a person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances commits an offence.

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

## **208 Incurring debts not likely to be paid**

- (1) If an officer of a co-operative housing body to which this section applies was knowingly a party to the contracting of a debt by the body and had at the time the debt was contracted, no probable or reasonable grounds of expectation, after taking into consideration the body's other liabilities (if any) at the time, of the body being

able to pay the debt, the officer commits an offence.

Maximum penalty: 50 penalty units.

- (2) If any business of a co-operative housing body to which this section applies has been carried on with intent to defraud the body's creditors or creditors of another person or for any fraudulent purpose, a person who was knowingly a party to the carrying on of the business in that way commits an offence.

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

## **209 Powers of Court**

- (1) If a person has been convicted of an offence under section 208 (Incurring debts not likely to be paid), the Court on the application of the Registrar or a prescribed person may declare that the person is personally responsible without any limitation of liability:
- (a) in the case of a conviction under section 208 (1)—for the payment to the co-operative housing body of an amount equal to the whole of the debt to which the conviction relates or such part of the debt as the Court considers appropriate, and
  - (b) in the case of a conviction under section 208 (2)—for the payment to the co-operative housing body of the amount required to satisfy all or any of the body's debts as the Court considers appropriate.
- (2) In relation to a co-operative housing body to which a conviction mentioned in subsection (1) relates:
- (a) the appropriate officer, and
  - (b) a creditor of the body authorised by the Registrar to make an application under subsection (1),
- are prescribed persons for the purposes of that subsection.
- (3) If the Court makes a declaration under subsection (1) in relation to a person it may:
- (a) give such further directions as it considers proper for the purpose of giving effect to the declaration and, in particular, may order that the liability of the person under the declaration is a charge on:
    - (i) a debt or obligation due from the co-operative housing body to the person, or
    - (ii) any charge or any interest in any charge on any of the body's assets held by or vested in the person or any body corporate or person on the person's behalf or any person claiming as assignee from or through the person liable or any body corporate or person acting on the person's behalf, or

(b) from time to time make such further order as is necessary for the purpose of enforcing a charge imposed under this subsection.

- (4) This section has effect despite the fact that the person concerned is criminally liable in relation to the matters on the ground on which the declaration is made.
- (5) On the hearing of an application under subsection (1), the appropriate officer or other applicant may give evidence or call witnesses.
- (6) In subsection (3):

**assignee** includes any person to whom or in whose favour, by the direction of the person liable, the debt, obligation, or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (other than consideration by way of marriage) given in good faith and without notice of any of the matters on which the conviction or declaration was made.

### **210 Inducement to be appointed as liquidator or official manager**

A person must not give, or agree or offer to give, to a member or creditor of a co-operative housing body valuable consideration with a view to securing the person's appointment or nomination, or to securing or preventing the appointment or nomination of another person, as the liquidator or official manager of the co-operative housing body.

Maximum penalty: 50 penalty units or imprisonment for 2 years, or both.

### **211 Falsification of records**

- (1) An officer of a co-operative housing body must not destroy, mutilate, alter or falsify a document or security, or make or be privy to the making of any false or fraudulent entry in a document, belonging to the body with intent to defraud or deceive a person.
- (2) A person who, having a duty to record information in the documents of a co-operative housing body, fails to record the information in the documents:
- (a) with intent to defraud another person, or
- (b) knowing that the failure will render other matter contained in the documents false or misleading in a material particular,

commits an offence.

Maximum penalty: 20 penalty units.

### **212 Frauds by officers**

An officer of a co-operative housing body who:

- (a) by false pretence, or by means of another fraud, induces a person to give credit to the body, or

- (b) with intent to defraud creditors of the co-operative housing body, makes or causes to be made a gift or transfer of, or charge on, or causes or connives at the levying of any execution against, the body's property, or
- (c) with intent to defraud the body's creditors, conceals or removes part of the body's property within 2 months before, or after, the date of any unsatisfied judgment or order for payment of money obtained against the body,

commits an offence.

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

### **213 False or misleading information**

A person must not make available, or give, information in a return, report, certificate, accounts or other document required by or for the purposes of this Act or a standard:

- (a) that the person knows is false or misleading in a material particular, or
- (b) that has omitted from it a matter or thing the omission of which makes the information misleading in a material particular.

Maximum penalty: 100 penalty units.

### **214 Power to examine defaulting officers**

(1) In this section:

***co-operative housing body to which this section applies*** means a co-operative housing body:

- (a) that has been, or is being, wound-up, or
  - (b) that is under the management of an administrator, or
  - (c) in relation to which a receiver or manager has been appointed, whether by the Court or under the powers contained in any instrument, or
  - (d) that has ceased to carry on business or is unable to pay its debts, or
  - (e) that has entered into a compromise or scheme of arrangement with its creditors.
- (2) For the purposes of subsection (1), a co-operative housing body has ceased to carry on business in the circumstances mentioned in section 207 (2) (Offences by officers).
- (3) This section applies if it appears to the Registrar that an officer or former officer of a co-operative housing body to which this section applies has conducted himself or herself in such a way that the officer or former officer has rendered himself or herself liable to action by the body in relation to the performance of the person's duties as an officer of the body.

- (4) The Registrar, or a person who is authorised by the Registrar in that behalf, may apply ex parte to the Court for an order that the officer or former officer must attend before the Court on a day appointed by the Court to be examined as to the person's conduct and dealings as an officer of the co-operative housing body.
- (5) An examination under this section:
  - (a) must not be held in open court unless the Court otherwise orders, and
  - (b) may, if the Court so directs and subject to the rules, be held before any District Court Judge named for the purpose by the Court, and the powers of the Court in relation to the conduct of the examination under this section may be exercised by such a Judge.
- (6) The Court, on making the order under subsection (4) or at any subsequent time, on the application of any person concerned, may give such directions as to the matters to be inquired into and as to the procedure to be followed in relation to the examination as it considers appropriate.
- (7) The applicant and, with the leave of the Court, a creditor or member of the co-operative housing body, may take part in the examination either personally or by a legal practitioner.
- (8) The person examined:
  - (a) must be examined on oath, and
  - (b) must answer all questions that the Court or, if the examination is to be held before a District Court Judge, that Judge puts or allows to be put, and
  - (c) is not entitled to refuse to answer a question that is relevant or material to the examination on the ground that the answer might tend to incriminate the person.
- (9) The answer to a question put to a person under this section is not admissible in evidence against the person in a criminal proceeding (other than a proceeding in relation to the falsity of the answer) if:
  - (a) before answering the question, the person claims that answering the question might tend to incriminate the person, and
  - (b) answering the question might in fact tend to incriminate the person.
- (10) A person ordered to be examined under this section may be represented by a legal practitioner who is at liberty to put to the person examined any questions for the purpose of enabling the person to explain or qualify any answer given.
- (11) Notes of the examination:
  - (a) must be reduced to writing, and

- (b) must be read over to and signed by the person examined, and
  - (c) may, subject to subsection (9), be used in evidence in a legal proceeding against the person examined, and
  - (d) may be inspected and copied by the person examined, the Registrar or the applicant or, with the consent of the Court, by a creditor or member of the co-operative housing body.
- (12) The Court or, if the examination is held before a District Court Judge, that Judge may adjourn the examination from time to time.
- (13) If the Court is satisfied that an order for an examination under this section was obtained without reasonable cause, it may order the whole or any part of the costs incurred by the person ordered to be examined to be paid by the applicant or another person who with the consent of the Court takes part in the examination.

#### **215 Power of Court to assess damages against certain persons**

- (1) In this section:

***co-operative housing body to which this section applies*** means a co-operative housing body:

- (a) that is being wound-up, or
- (b) that is under the management of an administrator, or
- (c) in relation to which a receiver or manager has been appointed, whether by the Court or under the powers contained in any instrument, or
- (d) that has ceased to carry on business or is unable to pay its debts, or
- (e) that has entered into a compromise or scheme of arrangement with its creditors.

***prescribed person*** means:

- (a) a liquidator or provisional liquidator of the co-operative housing body concerned, or
  - (b) if the co-operative housing body concerned is under the management of an administrator—the administrator or a member of the body, or
  - (c) a person authorised by the Registrar to apply under subsection (3).
- (2) For the purposes of subsection (1), a co-operative housing body has ceased to carry on business in the circumstances mentioned in section 207 (2) (Offences by officers).
- (3) If, on application by the Registrar or a prescribed person, the Court is satisfied that a person who has taken part in the formation, promotion, administration, management



or winding-up of a co-operative housing body to which this section applies:

- (a) has misapplied or retained or become liable or accountable for property of the co-operative housing body, or
- (b) has been guilty of negligence, default, breach of trust or breach of duty in relation to the co-operative housing body and that the body has suffered, or is likely to suffer, loss or damage as a result,

the Court may make 1 or both of the orders mentioned in subsection (4).

(4) The orders that may be made under subsection (3) are:

- (a) an order directing the person to pay money or transfer property to the co-operative housing body, and
- (b) an order directing the person to pay to the co-operative housing body the amount of the loss or damage.

(5) This section applies to the receipt of any money or property by an officer or former officer of the co-operative housing body, whether by way of salary or otherwise, that appears to the Court to have been unfair or unjust to the body or its members.

(6) This section applies despite the fact that the person concerned may be criminally liable in relation to the matters in relation to which the order is sought.

(7) If the Court is satisfied that an application was made under this section without reasonable cause, it may order the whole or any part of the costs incurred by the person against whom the order was sought to be paid by the applicant.

## **216 False copies of rules**

A person must not:

- (a) give to a member of a co-operative housing body or a person intending or applying to become a member, a copy of any rules or any alterations of the rules other than those that have been duly registered, representing that they are binding on the body's members, or
- (b) make any alteration in any of the rules of the co-operative housing body after they have been duly registered and circulate them representing that they have been duly registered.

Maximum penalty: 10 penalty units.

## **217 Fraud or misappropriation**

A person must not:

- (a) by false representation or imposition obtain possession of property of a co-operative

housing body, or

- (b) having property of a co-operative housing body in the person's possession, withhold or misapply that property, or wilfully apply part of the property, to purposes other than those specified or authorised in the body's rules or by or under this Act.

Maximum penalty: 20 penalty units.

### **218 Commissions**

- (1) An officer of a co-operative housing body must not accept a commission, fee or reward, whether pecuniary or otherwise, from a person for or in connection with that person's transaction with the body.

Maximum penalty: 20 penalty units.

- (2) An officer of a co-operative housing body who commits an offence against subsection (1) is indebted to the body for double the value or amount of the commission, fee or reward.

### **219 Co-operative housing bodies to comply with standards**

A co-operative housing body must comply with all applicable standards.

Maximum penalty: 100 penalty units.

### **220 Officers and other persons in default**

If this Act provides that an officer of a co-operative housing body or other body corporate who is in default commits an offence, the reference to the officer who is in default is, in relation to a contravention of, or an offence against, this Act, a reference to an officer of the co-operative housing body or other body corporate (including a person who subsequently ceased to be such an officer) who is in any way by act or omission, directly or indirectly, knowingly concerned in or party to the contravention or offence.

## **Division 3 Proceedings**

### **221 Proceedings for offences**

- (1) A proceeding for an offence against this Act may be brought by:
  - (a) the Registrar, or
  - (b) a person authorised in writing by the Registrar.
- (2) A proceeding may be started within:
  - (a) for an alleged offence not punishable by imprisonment—2 years, and
  - (b) for an alleged offence punishable by imprisonment—5 years,

after the alleged offence is committed or, with the consent of the Minister, at any later time.

## **222 Continuing offences**

(1) If:

- (a) under this Act anything is required or directed to be done within a particular period or before a particular time, and
- (b) failure to do the thing within the period or before the time constitutes an offence, and
- (c) the thing is not done within the period or before the time,

then:

- (d) the obligation to do the thing continues, despite the fact that the period has expired or the time has passed, until the thing is done, and
- (e) if a person is convicted of an offence that is constituted by failure to do the thing within that period or before the time—the person commits a separate and further offence in relation to each day after the day of the conviction during which the failure to do the thing continues, and
- (f) the penalty applicable to each such separate and further offence is 0.5 penalty units.

(2) If:

- (a) under this Act anything is required or directed to be done but no period within which or time by which the thing is to be done is specified, and
- (b) failure to do the thing constitutes an offence, and
- (c) a person is convicted of an offence in relation to a failure to do the thing,

the person commits a separate and further offence in relation to each day after the day of the conviction during which the failure to do the thing continues and the penalty applicable to each such separate and further offence is 0.5 penalty units.

## **223 Injunctions**

- (1) If 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
  - (b) attempting to contravene this Act, or

- (c) aiding, abetting, counselling or procuring a person to contravene this Act, or
- (d) inducing or attempting to induce (whether by threats, promises or otherwise) a person to contravene this Act, or
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act, or
- (f) conspiring with others to contravene this Act,

the Court may, on the application of the Registrar or a person whose interests have been, are or would be affected by the conduct, grant an injunction restraining the person from engaging in the conduct and, if in the Court's opinion it is desirable to do so, requiring that person to do anything.

- (2) If a person has failed, is failing, or is proposing to fail, to do anything that the person is required to do under this Act, the Court may, on the application of:
  - (a) the Registrar, or
  - (b) a person whose interests have been, are or would be affected by the failure to do the thing,grant an injunction, requiring the person to do the thing.
- (3) If an application is made for an injunction under subsection (1) or (2), the Court may grant an injunction by consent of all the parties to the proceeding, whether or not the Court is satisfied that the subsection applies.
- (4) The Court may grant an interim injunction pending determination of an application under subsection (1).
- (5) The Court may discharge or vary an injunction granted under this section, and may grant an injunction on conditions.
- (6) 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 the conduct, 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 another person if the person engages, or continues to engage, in the conduct.
- (7) The power of the Court to grant an injunction requiring a person to do a thing may be exercised:

- (a) whether or not it appears to the Court that the person intends to fail again, or to continue to fail, to do the thing, and
  - (b) whether or not the person has previously failed to do the thing, and
  - (c) whether or not there is an imminent danger of substantial damage to another person if the person fails, or continues to fail, to do the thing.
- (8) If the Registrar applies to the Court for the grant of an injunction under this section, the Court must not require the applicant or another person, as a condition of granting an interim injunction, to give an undertaking as to damages.
- (9) In a proceeding under this section against a person, the Court may make an order under section 107 (Prohibition on transfer of money) in relation to the person.
- (10) 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 thing, the Court may, either in addition to or in substitution for the grant of the injunction, order the person to pay damages to another person.
- (11) The Court's powers under this section are in addition to its other powers.

#### **224 Power to grant relief**

- (1) This section applies to a person who is:
- (a) an officer of a co-operative housing body, or
  - (b) an auditor of a co-operative housing body, whether or not the auditor is an officer of the body, or
  - (c) an expert in relation to a matter in relation to which the civil proceeding has been taken or the claim will or might arise, or
  - (d) a receiver, receiver and manager, liquidator or other person appointed or directed by the Court to carry out any duty in relation to a co-operative housing body.
- (2) If, in a civil proceeding against a person to whom this section applies for negligence, default, breach of trust or breach of duty in a capacity by virtue of which the person is such a person, it appears to the court before which the proceeding is taken that the person is or may be liable in relation to the negligence, default or breach but has acted honestly and, having regard to all the circumstances of the case, including those connected with the person's appointment, ought fairly to be excused for the negligence, default or breach, the court may relieve the person either wholly or partly from the liability on such terms as the court considers appropriate.
- (3) If a person to whom this section applies has reason to apprehend that any claim will or might be made against the person in relation to any negligence, default, breach of

trust or breach of duty in a capacity by virtue of which the person is such a person, the person may apply to the Court for relief, and the Court has the same power to grant relief as it would have had under subsection (2) if it had been a court before which a proceeding against the person for negligence, default, breach of trust or breach of duty had been brought.

## **Part 10 General**

### **225 Regulations**

- (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.
  - (1A) In particular, regulations may be made for or with respect to the 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.
  - (1B) Regulations relating to fees:
    - (a) may prescribe different fees for different classes of cases, and
    - (b) may authorise the Registrar to waive, reduce or refund fees in particular cases or classes of cases.
- (2) A regulation may create an offence punishable by a penalty not exceeding 50 penalty units.

### **226 Repeal of 1923 Act and other Acts and instruments**

The following Acts and statutory instruments are repealed:

- *Co-operation Act 1923*
- *Co-operation (Amendment) Act 1985*
- *Co-operation (Amendment) Act 1986*
- *Co-operation (Leeton Fruitgrowers' Agreements) Act 1951*
- *Co-operation (Starr-Bowkett and Co-operative Housing Societies) Regulation 1994*
- *Co-operation (1986 Amendment) Transitional Regulation (No 2) 1988*

### **227 Savings and transitional provisions**

Schedule 5 has effect.

### **228 (Repealed)**

## **229 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 General interpretative provisions**

(Section 3 (2))

### **Part 1 Preliminary**

#### **1 Displacement of Schedule by contrary intention**

The application of this Schedule may be displaced, wholly or partly, by a contrary intention appearing in this Act.

### **Part 2 General**

#### **2 Act includes statutory instruments under Act**

In this Act, a reference to this Act or another Act, or a provision of this Act or another Act, includes a reference to the statutory instruments made under, or in force under or for the purposes of, this Act, the other Act or the provision.

#### **3 Act to be construed not to exceed legislative power of Legislature**

- (1) This Act is to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the Legislature of this State.
- (2) If a provision of this Act, or the application of a provision of this Act to a person, subject matter or circumstance, would, but for this clause, be construed as being in excess of the legislative power of the Legislature of this State:
  - (a) it is a valid provision to the extent to which it is not in excess of the power, and
  - (b) the remainder of this Act, and the application of the provision to other persons, subject matters or circumstances, is not affected.
- (3) This clause applies in addition to, and without limiting the effect of, any other provision of this Act.

#### **4 Every section to be a substantive enactment**

Every section of this Act has effect as a substantive enactment without introductory words.

#### **5 Material that is, and is not, part of this Act**

- (1) The heading to a Part, Division, Subdivision, section, subsection or another provision of this Act is part of this Act.
- (2) A Schedule to this Act is part of this Act.
- (3) Punctuation in this Act is part of this Act.
- (4) A footnote to this Act or to a provision of this Act, and an endnote to this Act, are not part of this Act.

#### **6 References to particular Acts and to enactments**

- (1) In this Act:
  - (a) an Act of this State may be cited:
    - (i) by its short title, or
    - (ii) by reference to the year in which it was passed and its number,
  - (b) a Commonwealth Act may be cited:
    - (i) by its short title, or
    - (ii) in another way sufficient in a Commonwealth Act for the citation of such an Act,  
together with a reference to the Commonwealth,
  - (c) an Act of another State may be cited:
    - (i) by its short title, or
    - (ii) in another way sufficient in an Act of the State for the citation of such an Act,  
together with a reference to the State.
- (2) An enactment may be cited by reference to the provision of the Act in which it is contained.
- (3) The reference is to be made according to the copy of the Act printed by the person authorised by law to print the Act.
- (4) In this clause:



**enactment** means any portion of an Act or statutory instrument.

## **7 References taken to be included in Act**

- (1) A reference in this Act to an Act includes a reference to:
  - (a) the Act as originally enacted, and as amended from time to time since its original enactment, and
  - (b) if the Act has been repealed and re-enacted (with or without modification) since the enactment of the reference—the Act as re-enacted, and as amended from time to time since its re-enactment.
- (2) A reference in this Act to a provision of this or any other Act includes a reference to:
  - (a) the provision as originally enacted, and as amended from time to time since its original enactment, and
  - (b) if the provision has been omitted and re-enacted (with or without modification) since the enactment of the reference—the provision as re-enacted, and as amended from time to time since its re-enactment.
- (3) Subclauses (1) and (2) apply to a reference in this Act to a law of the Commonwealth or another State as they apply to a reference in this Act to an Act and to a provision of an Act.

## **8 Interpretation best achieving Act's purpose**

- (1) In the interpretation of a provision of this Act, the interpretation that will best achieve the purpose of this Act is to be preferred to any other interpretation.
- (2) Subclause (1) applies whether or not the purpose is expressly stated in this Act.

## **9 Use of extrinsic material in interpretation**

- (1) In this clause:

**extrinsic material** means relevant material not forming part of this Act, including, for example:

- (a) material that is set out in the document containing the text of this Act as printed by the person authorised by law to print the Act, and
- (b) a report of a Royal Commission, Law Reform Commission, commission or committee of inquiry, or a similar body, that was laid before either House of Parliament before the provision concerned was enacted, and
- (c) a report of a committee of either House of Parliament that was made to either House before the provision was enacted, and

- (d) a treaty or other international agreement that is mentioned in this Act, and
- (e) an explanatory note or memorandum relating to the Bill that contained the provision, and
- (f) any relevant document that was laid before, or given to the members of, either House of Parliament by the member bringing in the Bill before the provision was enacted, and
- (g) the speech made to either House of Parliament by the member in moving a motion that the Bill be read a second time, and
- (h) material in the Votes and Proceedings of the Legislative Assembly or in any official record of debates in either House of Parliament, and
- (i) a document that is declared by this Act to be a relevant document for the purposes of this clause.

**ordinary meaning** means the ordinary meaning conveyed by a provision having regard to its context in this Act and to the purpose of this Act.

- (2) Subject to subclause (3), in the interpretation of a provision of this Act, consideration may be given to extrinsic material capable of assisting in the interpretation:
  - (a) if the provision is ambiguous or obscure—to provide an interpretation of it, or
  - (b) if the ordinary meaning of the provision leads to a result that is manifestly absurd or is unreasonable—to provide an interpretation that avoids such a result, or
  - (c) in any other case—to confirm the interpretation conveyed by the ordinary meaning of the provision.
- (3) In determining whether consideration should be given to extrinsic material, and in determining the weight to be given to extrinsic material, regard is to be had to:
  - (a) the desirability of a provision being interpreted as having its ordinary meaning, and
  - (b) the undesirability of prolonging proceedings without compensating advantage, and
  - (c) other relevant matters.

## **10 Effect of change of drafting practice and use of examples**

- (1) If:
  - (a) a provision of this Act expresses an idea in particular words, and
  - (b) a provision enacted later appears to express the same idea in different words for

the purpose of implementing a different legislative drafting practice, including, for example:

- (i) the use of a clearer or simpler style, or
- (ii) the use of gender-neutral language,

the ideas must not be taken to be different merely because different words are used.

(2) If this Act includes an example of the operation of a provision:

- (a) the example is not exhaustive, and
- (b) the example does not limit, but may extend, the meaning of the provision, and
- (c) the example and the provision are to be read in the context of each other and the other provisions of this Act, but, if the example and the provision so read are inconsistent, the provision prevails.

## 11 Compliance with forms

(1) If a form is approved by or for the purpose of this Act, strict compliance with the form is not necessary and substantial compliance is sufficient.

(2) If a form approved by or for the purpose of this Act requires:

- (a) the form to be completed in a specified way, or
- (b) specified information or documents to be included in, attached to or given with the form, or
- (c) the form, or information or documents included in, attached to or given with the form, to be verified in a specified way,

the form is not properly completed unless the requirement is complied with.

## 12 Jurisdiction of courts and tribunals

If a provision of this Act, whether expressly or by implication, authorises a proceeding to be instituted in a particular court or tribunal in relation to a matter, the provision is taken to confer jurisdiction in the matter on the court or tribunal.

## Part 3 Terms and references

### 13 Definitions

(1) In this Act:

**Act** means an Act of the Parliament of this State.

**adult** means an individual who is 18 or more.

**affidavit**, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration and promise.

**amend** includes:

- (a) omit or omit and substitute, and
- (b) alter or vary, and
- (c) amend by implication.

**appoint** includes reappoint.

**Australia** means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory.

**business day** means a day that is not:

- (a) a Saturday or Sunday, or
- (b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done.

**calendar month** means a period starting at the beginning of any day of 1 of the 12 named months and ending:

- (a) immediately before the beginning of the corresponding day of the next named month, or
- (b) if there is no such corresponding day—at the end of the next named month.

**calendar year** means a period of 12 months beginning on 1 January.

**commencement**, in relation to this Act or another Act or a provision of this Act or another Act, means the time at which this Act, the other Act or provision comes into operation.

**Commonwealth** means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory.

**confer**, in relation to a function, includes impose.

**contravene** includes fail to comply with.

**country** includes:

- (a) a federation, or
- (b) a state, province or other part of a federation.

**date of assent**, in relation to an Act, means the day on which the Act receives the

Royal Assent.

**definition** means a provision of this Act (however expressed) that:

- (a) gives a meaning to a word or expression, or
- (b) limits or extends the meaning of a word or expression.

**document** includes:

- (a) any paper or other material on which there is writing, and
- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them, and
- (c) any disc, tape or other article or any material from which sounds, images, writings or messages are capable of being reproduced (with or without the aid of another article or device).

**estate** includes easement, charge, right, title, claim, demand, lien and encumbrance, whether at law or in equity.

**expire** includes lapse or otherwise cease to have effect.

**external Territory** means a Territory, other than an internal Territory, for the government of which as a Territory provision is made by a Commonwealth Act.

**fail** includes refuse.

**financial year** means a period of 12 months beginning on 1 July.

**foreign country** means a country (whether or not an independent sovereign State) outside Australia and the external Territories.

**function** includes duty.

**Gazette** means the Government Gazette of this State.

**Gazette notice** means notice published in the Gazette.

**gazetted** means published in the Gazette.

**Government Printer** means the Government Printer of this State, and includes any other person authorised by the Government of this State to print an Act or instrument.

**indictment** includes information, inquisition and presentment.

**individual** means a natural person.

**insert**, in relation to a provision of this Act, includes substitute.

**instrument** includes a statutory instrument.

**interest**, in relation to land or other property, means:

- (a) a legal or equitable estate in the land or other property, or
- (b) a right, power or privilege over, or in relation to, the land or other property.

**internal Territory** means the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory.

**Jervis Bay Territory** means the Territory mentioned in the [Jervis Bay Territory Acceptance Act 1915](#) of the Commonwealth.

**land** includes messuages, tenements and hereditaments, corporeal or incorporeal, of any tenure or description, and whatever may be the interest in the land.

**liability** means any liability or obligation (whether liquidated or unliquidated, certain or contingent, or accrued or accruing).

**make** includes issue and grant.

**Minister** has the meaning given by clause 18 (References to Minister).

**minor** means an individual who is under 18.

**modification** includes addition, omission and substitution.

**month** means a calendar month.

**named month** means 1 of the 12 months of the year.

**Northern Territory** means the Northern Territory of Australia.

**number** means:

- (a) a number expressed in figures or words, or
- (b) a letter, or
- (c) a combination of a number so expressed and a letter.

**oath**, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration and promise.

**office** includes position.

**omit**, in relation to a provision of an Act, includes repeal.

**party** includes an individual and a body politic or corporate.

**penalty** includes forfeiture and punishment.

**person** includes an individual and a body politic or corporate.

**power** includes authority.

**prescribed** means prescribed by, or by regulations or standards made or in force for the purposes of or under, the provision of this Act in which the word is used.

**printed** includes typewritten, lithographed or reproduced by any mechanical means.

**proceeding** means a legal or other action or proceeding.

**property** means any legal or equitable estate or interest (whether present or future, vested or contingent, or tangible or intangible) in real or personal property of any description (including money), and includes things in action.

**provision**, in relation to this Act or another Act, means words or other matter that form or forms part of this Act or the other Act, and includes:

- (a) a Chapter, Part, Division, Subdivision, section, subsection, paragraph, subparagraph, sub-subparagraph or Schedule of or to this Act or the other Act, and
- (b) a section, clause, subclause, item, column, table or form of or in a Schedule to this Act or the other Act, and
- (c) the long title and any preamble to the Act.

**purpose**, in relation to an Act, includes object.

**record** includes information stored or recorded by means of a computer.

**regulation** means a regulation made or in force for the purposes of this Act in which the word is used.

**repeal** includes:

- (a) revoke or rescind, and
- (b) repeal by implication, and
- (c) abrogate or limit the effect of the Act or instrument concerned, and
- (d) exclude from, or include in, the application of this Act or instrument concerned any person, subject matter or circumstance.

**sign** includes the affixing of a seal and the making of a mark.

**State** means a State of the Commonwealth.

**statutory declaration** means a declaration made under an Act, or under a Commonwealth Act or an Act of another State, that authorises a declaration to be made otherwise than in the course of a judicial proceeding.

**statutory instrument** means an instrument (including a regulation, standard or rule) made or in force under or for the purposes of this Act, and includes an instrument made or in force under any such instrument.

**swear**, in relation to a person allowed by law to affirm, declare or promise, includes affirm, declare and promise.

**Territory** means a Territory of the Commonwealth.

**this Act** includes any regulations made under this Act.

**word** includes any symbol, figure or drawing.

**writing** includes any mode of representing or reproducing words in a visible form.

(2) In a statutory instrument:

**the Act** means the Act under, or for the purposes of, which the instrument is made or in force.

#### **14 Provisions relating to defined terms and gender and number**

- (1) If this Act defines a word or expression, other parts of speech and grammatical forms of the word or expression have corresponding meanings.
- (2) Definitions in or applicable to this Act apply except so far as the context or subject matter otherwise indicates or requires.
- (3) In this Act, words indicating a gender include each other gender.
- (4) In this Act:
  - (a) words in the singular include the plural, and
  - (b) words in the plural include the singular.

#### **15 Meaning of “may” and “must” etc**

- (1) In this Act, the word **may**, or a similar word or expression, used in relation to a power indicates that the power may be exercised or not exercised, at discretion.
- (2) In this Act, the word **must**, or a similar word or expression, used in relation to a power indicates that the power is required to be exercised.
- (3) This clause has effect despite any rule of construction to the contrary.



## 16 Words and expressions used in statutory instruments

Words and expressions used in a statutory instrument have the same meanings as they have, from time to time, in the Act, or relevant provisions of the Act, under or for the purposes of which the instrument is made or in force.

## 17 Effect of express references to bodies corporate and individuals

In this Act, a reference to a person generally (whether the expression **person**, **party**, **someone**, **anyone**, **no-one**, **one**, **another** or **whoever** or another expression is used):

- (a) does not exclude a reference to a body corporate or an individual merely because elsewhere in this Act there is particular reference to a body corporate (however expressed), and
- (b) does not exclude a reference to an individual or a body corporate merely because elsewhere in this Act there is particular reference to an individual (however expressed).

## 18 References to Minister

(1) In this Act:

- (a) a reference to a Minister is a reference to a Minister of the Crown of this State, and
- (b) a reference to a particular Minister by title, or to **the Minister** without specifying a particular Minister by title, includes a reference to another Minister, or a member of the Executive Council of this State, who is acting for or on behalf of the Minister.

(2) In a provision of this Act, a reference to **the Minister** without specifying a particular Minister by title is a reference to:

- (a) the Minister of this State administering the provision, or
- (b) if, for the time being, different Ministers of this State administer the provision in relation to different matters:
  - (i) if only 1 Minister of this State administers the provision in relation to the relevant matter—the Minister, or
  - (ii) if 2 or more Ministers of this State administer the provision in relation to the relevant matter—any one of the Ministers, or
- (c) if paragraph (b) does not apply and, for the time being, 2 or more Ministers administer the provision—any one of the Ministers.

(3) To allay any doubt, it is declared that if:

- (a) a provision of this Act is administered by 2 or more Ministers of this State, and

(b) the provision requires or permits anything to be done in relation to any of the Ministers,

the provision does not require or permit it to be done in a particular case by or in relation to more than one of the Ministers.

### **19 Production of records kept in computers etc**

If a person who keeps a record of information by means of a mechanical, electronic or other device is required by or under this Act:

- (a) to produce the information or a document containing the information to a court, tribunal or person, or
- (b) to make a document containing the information available for inspection by a court, tribunal or person,

then, unless the court, tribunal or person otherwise directs:

- (c) the requirement obliges the person to produce or make available for inspection, as the case may be, a document that reproduces the information in a form capable of being understood by the court, tribunal or person, and
- (d) the production to the court, tribunal or person of the document in that form complies with the requirement.

### **20 Application of offence provisions to bodies corporate**

- (1) A provision of this Act relating to offences punishable on indictment or summary conviction applies to bodies corporate as well as to individuals.
- (2) If under this Act, a forfeiture or penalty is payable to a party aggrieved, it is payable to a body corporate if the body corporate is the party aggrieved.

### **21 References to this State to be implied**

In this Act:

- (a) a reference to an officer, office or statutory body is a reference to such an officer, office or statutory body in and for this State, and
- (b) a reference to a locality, jurisdiction or other matter or thing is a reference to such a locality, jurisdiction or other matter or thing in and of this State.

### **22 References to officers and holders of offices**

In this Act, a reference to a particular officer, or to the holder of a particular office, includes a reference to the person for the time being occupying or acting in the office concerned.

### 23 Reference to certain provisions of this Act

If a provision of this Act refers:

- (a) to a Part, section or Schedule by a number and without reference to this Act—the reference is a reference to the Part, section or Schedule, designated by the number, of or to this Act, or
- (b) to a Schedule without reference to it by a number and without reference to this Act—the reference, if there is only one Schedule to this Act, is a reference to the Schedule, or
- (c) to a Division, Subdivision, subsection, paragraph, subparagraph, sub-subparagraph, clause, subclause, item, column, table or form by a number and without reference to this Act—the reference is a reference to:
  - (i) the Division, designated by the number, of the Part in which the reference occurs, and
  - (ii) the Subdivision, designated by the number, of the Division in which the reference occurs, and
  - (iii) the subsection, designated by the number, of the section in which the reference occurs, and
  - (iv) the paragraph, designated by the number, of the section, subsection, Schedule or other provision in which the reference occurs, and
  - (v) the paragraph, designated by the number, of the clause, subclause, item, column, table or form of or in the Schedule in which the reference occurs, and
  - (vi) the subparagraph, designated by the number, of the paragraph in which the reference occurs, and
  - (vii) the sub-subparagraph, designated by the number, of the subparagraph in which the reference occurs, and
  - (viii) the section, clause, subclause, item, column, table or form, designated by the number, of or in the Schedule in which the reference occurs,as the case requires.

### 24 Headings part of provision etc

- (1) The heading to a Part, Division, Subdivision, section, subsection, Schedule or another provision of this Act forms part of the provision to which it is a heading.
- (2) The word **and**, **or** or **but**, or a similar word, at the end of a paragraph, subparagraph, sub-subparagraph or another provision of this Act forms part of the provision

concerned.

## **25 Reference to provisions of this Act or Act is inclusive**

In this Act, a reference to a portion of this or another Act includes:

- (a) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other provision of this Act or the Act referred to that forms the beginning of the portion, and
- (b) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other provision of this Act or the Act referred to that forms the end of the portion.

Example:

A reference to sections 5 to 9 includes both section 5 and section 9. It is not necessary to refer to sections 5 to 9 (both inclusive) to ensure that the reference is given an inclusive interpretation.

## **Part 4 Functions and powers**

### **26 Performance of statutory functions etc**

- (1) If this Act confers a function or power on a person or body, the function may be performed, or the power may be exercised, from time to time as occasion requires.
- (2) If this Act confers a function or power on a particular officer or the holder of a particular office, the function may be performed, or the power may be exercised, by the person for the time being occupying or acting in the office concerned.
- (3) If this Act confers a function or power on a body (whether or not incorporated), the performance of the function, or the exercise of the power, is not affected merely because of vacancies in the membership of the body.

### **27 Power to make instrument or decision includes power to amend or repeal**

If this Act authorises or requires the making of an instrument or decision:

- (a) the power includes power to amend or repeal the instrument or decision, and
- (b) the power to amend or repeal the instrument or decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or decision.

### **28 Matters for which statutory instruments may make provision**

- (1) If this Act authorises or requires the making of a statutory instrument in relation to a matter, a statutory instrument made under this Act may make provision for the matter by applying, adopting or incorporating (with or without modification) the provisions of:
  - (a) an Act or statutory instrument, or

- (b) another document (whether of the same or a different kind),  
as in force at a particular time or as in force from time to time.
- (2) If a statutory instrument applies, adopts or incorporates the provisions of a document, the statutory instrument applies, adopts or incorporates the provisions as in force from time to time, unless the statutory instrument otherwise expressly provides.
- (3) A statutory instrument may:
- (a) apply generally throughout this State or be limited in its application to a particular part of this State, or
  - (b) apply generally to all persons, matters or things or be limited in its application to:
    - (i) particular persons, matters or things, or
    - (ii) particular classes of persons, matters or things, or
  - (c) otherwise apply generally or be limited in its application by reference to specified exceptions or factors.
- (4) A statutory instrument may:
- (a) apply differently according to different specified factors, or
  - (b) otherwise make different provision in relation to:
    - (i) different persons, matters or things, or
    - (ii) different classes of persons, matters or things.
- (5) A statutory instrument may authorise a matter or thing to be from time to time determined, applied or regulated by a specified person or body.
- (6) If this Act authorises or requires a matter to be regulated by statutory instrument, the power may be exercised by prohibiting by statutory instrument the matter or any aspect of the matter.
- (7) If this Act authorises or requires provision to be made with respect to a matter by statutory instrument, a statutory instrument made under this Act may make provision with respect to a particular aspect of the matter despite the fact that provision is made by this Act in relation to another aspect of the matter or in relation to another matter.
- (8) A statutory instrument may provide for the review of, or a right of appeal against, a decision made under the statutory instrument and may, for that purpose, confer jurisdiction on any court, tribunal, person or body.
- (9) A statutory instrument may require a form prescribed by or under the statutory

instrument, or information or documents included in, attached to or given with the form, to be verified by statutory declaration.

### **29 Presumption of validity and power to make**

- (1) All conditions and preliminary steps required for the making of a statutory instrument are presumed to have been satisfied and performed in the absence of evidence to the contrary.
- (2) A statutory instrument is taken to be made under all powers under which it may be made, even though it purports to be made under a particular provision of this Act.

### **30 Appointments may be made by name or office**

- (1) If this Act authorises or requires a person or body:
  - (a) to appoint a person to an office, or
  - (b) to appoint a person or body to exercise a power, or
  - (c) to appoint a person or body to do another thing,the person or body may make the appointment by:
  - (d) appointing a person or body by name, or
  - (e) appointing a particular officer, or the holder of a particular office, by reference to the title of the office concerned.
- (2) An appointment of a particular officer, or the holder of a particular office, is taken to be the appointment of the person for the time being occupying or acting in the office concerned.

### **31 Acting appointments**

- (1) If this Act authorises a person or body to appoint a person to act in an office, the person or body may, in accordance with this Act, appoint:
  - (a) a person by name, or
  - (b) a particular officer, or the holder of a particular office, by reference to the title of the office concerned,to act in the office.
- (2) The appointment may be expressed to have effect only in the circumstances specified in the instrument of appointment.
- (3) The appointer may:
  - (a) determine the terms and conditions of the appointment, including remuneration

and allowances, and

- (b) terminate the appointment at any time.
- (4) The appointment, or the termination of the appointment, must be in, or evidenced by, writing signed by the appointer.
- (5) The appointee must not act for more than 1 year during a vacancy in the office.
- (6) If the appointee is acting in the office otherwise than because of a vacancy in the office and the office becomes vacant, then, subject to subclause (2), the appointee may continue to act until:
  - (a) the appointer otherwise directs, or
  - (b) the vacancy is filled, or
  - (c) the end of a year from the day of the vacancy,whichever happens first.
- (7) The appointment ceases to have effect if the appointee resigns by instrument in writing signed and delivered to the appointer.
- (8) While the appointee is acting in the office:
  - (a) the appointee has all the powers and functions of the holder of the office, and
  - (b) this Act and other laws apply to the appointee as if the appointee were the holder of the office.
- (9) Anything done by or in relation to a person purporting to act in the office is not invalid merely because:
  - (a) the occasion for the appointment had not arisen, or
  - (b) the appointment had ceased to have effect, or
  - (c) the occasion for the person to act had not arisen or had ceased.
- (10) If this Act authorises the appointer to appoint a person to act during a vacancy in the office, an appointment to act in the office may be made by the appointer whether or not an appointment has previously been made to the office.

### **32 Powers of appointment imply certain incidental powers**

- (1) If this Act authorises or requires a person or body to appoint a person to an office:
  - (a) the power may be exercised from time to time as occasion requires, and
  - (b) the power includes:

- (i) power to remove or suspend, at any time, a person appointed to the office, and
  - (ii) power to appoint another person to act in the office if a person appointed to the office is removed or suspended, and
  - (iii) power to reinstate or reappoint a person removed or suspended, and
  - (iv) power to appoint a person to act in the office if it is vacant (whether or not the office has ever been filled), and
  - (v) power to appoint a person to act in the office if the person appointed to the office is absent or is unable to discharge the functions of the office (whether because of illness or otherwise).
- (2) The power to remove or suspend a person under subclause (1) (b) may be exercised even if this Act provides that the holder of the office to which the person was appointed is to hold office for a specified period.
- (3) The power to make an appointment under subclause (1) (b) may be exercised from time to time as occasion requires.
- (4) An appointment under subclause (1) (b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.

### **33 Delegation of powers**

- (1) If this Act authorises a person or body to delegate a power, the person or body may, in accordance with this Act, delegate the power to:
- (a) a person or body by name, or
  - (b) a particular officer, or the holder of a particular office, by reference to the title of the office concerned.
- (2) The delegation may be:
- (a) general or limited, and
  - (b) made from time to time, and
  - (c) revoked, wholly or partly, by the delegator.
- (3) The delegation, or a revocation of the delegation, must be in, or evidenced by, writing signed by the delegator or, if the delegator is a body, by a person authorised by the body for the purpose.
- (4) A delegated power may be exercised only in accordance with any conditions to which the delegation is subject.
- (5) The delegate may, in the exercise of a delegated power, do anything that is incidental



to the delegated power.

- (6) A delegated power that purports to have been exercised by the delegate is taken to have been duly exercised by the delegate unless the contrary is proved.
- (7) A delegated power that is duly exercised by the delegate is taken to have been exercised by the delegator.
- (8) If, when exercised by the delegator, a power is, under this Act, dependent on the delegator's opinion, belief or state of mind in relation to a matter, the power, when exercised by the delegate, is dependent on the delegate's opinion, belief or state of mind in relation to the matter.
- (9) If a power is delegated to a particular officer or the holder of a particular office:
  - (a) the delegation does not cease to have effect merely because the person who was the particular officer or the holder of the particular office when the power was delegated ceases to be the officer or the holder of the office, and
  - (b) the power may be exercised by the person for the time being occupying or acting in the office concerned.
- (10) A power that has been delegated may, despite the delegation, be exercised by the delegator.
- (11) Subject to subclause (12), this clause applies to a subdelegation of a power in the same way as it applies to a delegation of a power.
- (12) If this Act authorises the delegation of a power, the power may be subdelegated only if this Act expressly authorises the power to be subdelegated.

#### **34 Exercise of powers between enactment and commencement**

- (1) If a provision of this Act (the **empowering provision**) that does not commence on its enactment would, had it commenced, confer a power:
  - (a) to make an appointment, or
  - (b) to make a statutory instrument of a legislative or administrative character, or
  - (c) to do another thing,then:
  - (d) the power may be exercised, and
  - (e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect,before the empowering provision commences.

(2) If a provision of an Act (the **empowering provision**) that does not commence on its enactment would, had it commenced, amend a provision of this Act so that it would confer a power:

- (a) to make an appointment, or
- (b) to make a statutory instrument of a legislative or administrative character, or
- (c) to do another thing,

then:

- (d) the power may be exercised, and
- (e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect,

before the empowering provision commences.

(3) If:

- (a) a provision of this Act that has commenced confers a power to make a statutory instrument (the **basic instrument-making power**), and
- (b) a provision of an Act that does not commence on its enactment would, had it commenced, amend this Act so as to confer additional power to make a statutory instrument (the **additional instrument-making power**),

then:

- (c) the basic instrument-making power and the additional instrument-making power may be exercised by making a single instrument, and
- (d) any provision of the instrument that required an exercise of the additional instrument-making power is to be treated as made under subclause (2).

(4) If an instrument, or a provision of an instrument, is made under subclause (1) or (2) that is necessary for the purpose of:

- (a) enabling the exercise of a power mentioned in the subclause, or
- (b) bringing an appointment, instrument or other thing made or done under such a power into effect,

the instrument or provision takes effect:

- (c) on the making of the instrument, or
- (d) on such later day (if any) on which, or at such later time (if any) at which, the instrument or provision is expressed to take effect.

- (5) If:
- (a) an appointment is made under subclause (1) or (2), or
  - (b) an instrument, or provision of an instrument, made under subclause (1) or (2) is not necessary for a purpose mentioned in subclause (4),
- the appointment, instrument or provision takes effect:
- (c) on the commencement of the relevant empowering provision, or
  - (d) on such later day (if any) on which, or at such later time (if any) at which, the appointment, instrument or provision is expressed to take effect.
- (6) Anything done under subclause (1) or (2) does not confer a right, or impose a liability, on a person before the relevant empowering provision commences.
- (7) After the enactment of a provision mentioned in subclause (2) but before the provision's commencement, this clause applies as if the references in subclauses (2) and (5) to the commencement of the empowering provision were references to the commencement of the provision mentioned in subclause (2) as amended by the empowering provision.
- (8) In the application of this clause to a statutory instrument, a reference to the enactment of the instrument is a reference to the making of the instrument.

## **Part 5 Distance, time and age**

### **35 Matters relating to distance, time and age**

- (1) In the measurement of distance for the purposes of this Act, the distance is to be measured along the shortest road ordinarily used for travelling.
- (2) If a period beginning on a given day, act or event is provided or allowed for a purpose by this Act, the period is to be calculated by excluding the day, or the day of the act or event, and:
- (a) if the period is expressed to be a specified number of clear days or at least a specified number of days—by excluding the day on which the purpose is to be fulfilled, and
  - (b) in any other case—by including the day on which the purpose is to be fulfilled.
- (3) If the last day of a period provided or allowed by this Act for doing anything is not a business day in the place in which the thing is to be or may be done, the thing may be done on the next business day in the place.
- (4) If the last day of a period provided or allowed by this Act for the filing or registration of a document is a day on which the office is closed where the filing or registration is

to be or may be done, the document may be filed or registered at the office on the next day that the office is open.

- (5) If no time is provided or allowed for doing anything, the thing is to be done as soon as possible, and as often as the prescribed occasion happens.
- (6) If, in this Act, there is a reference to time, the reference is, in relation to the doing of anything in a State, a reference to the legal time in the State.
- (7) For the purposes of this Act, a person attains an age in years at the beginning of the person's birthday for the age.

## **Part 6 Service of documents**

### **36 Service of documents and meaning of service by post etc**

- (1) If this Act requires or permits a document to be served on a person (whether the expression **deliver**, **give**, **notify**, **send** or **serve** or another expression is used), the document may be served:
  - (a) on an individual:
    - (i) by delivering it to the person personally, or
    - (ii) by leaving it at, or sending it by post to, the address of the place of residence or place of business of the person last known to the person serving the document, or
    - (iii) by email to an email address specified by the person for the service of documents of that kind, or
    - (iv) by any other method authorised by the regulations for the service of documents of that kind, or
  - (b) on a body corporate:
    - (i) by leaving it at the registered office of the body corporate with an officer of the body corporate, or
    - (ii) by sending it by post to its registered office, or
    - (iii) by email to an email address specified by the body corporate for the service of documents of that kind, or
    - (iv) by any other method authorised by the regulations for the service of documents of that kind.
- (2) Nothing in subclause (1):
  - (a) affects the operation of another law that authorises the service of a document

otherwise than as provided in that subclause, or

- (b) affects the power of a court or tribunal to authorise service of a document otherwise than as provided in that subclause.

### **37 Meaning of service by post etc**

- (1) If this Act requires or permits a document to be served by post (whether the expression **deliver, give, notify, send** or **serve** or another expression is used), service:
- (a) may be effected by properly addressing, prepaying and posting the document as a letter, and
- (b) is taken to have been effected at the time at which the letter would be delivered in the ordinary course of post, unless the contrary is proved.
- (2) If this Act requires or permits a document to be served by a particular postal method (whether the expression **deliver, give, notify, send** or **serve** or another expression is used), the requirement or permission is taken to be satisfied if the document is posted by that method or, if that method is not available, by the equivalent, or nearest equivalent, method provided for the time being by Australia Post.

### **38 Time of Act or provision ceasing to have effect**

If this Act or a provision of this Act is expressed:

- (a) to expire on a specified day, or
- (b) to remain or continue in force, or otherwise have effect, until a specified day,
- this Act or the provision has effect until the last moment of the specified day.

## **Part 7 Effect of repeal, amendment or expiration**

### **39 Repealed provisions not revived**

If this Act or a provision of this Act is repealed or amended by another Act or a provision of another Act, this Act or the provision is not revived merely because the other Act or the provision of the other Act:

- (a) is later repealed or amended, or
- (b) later expires.

### **40 Saving of operation of repealed provisions etc**

- (1) The repeal, amendment or expiry of this Act or a provision of this Act does not:
- (a) revive anything not in force or existing at the time the repeal, amendment or

expiry takes effect, or

- (b) affect the previous operation of this Act or the provision or anything suffered, done or begun under this Act or the provision, or
- (c) affect a right, privilege or liability acquired, accrued or incurred under this Act or the provision, or
- (d) affect a penalty incurred in relation to an offence arising under this Act or the provision, or
- (e) affect an investigation, proceeding or remedy in relation to such a right, privilege, liability or penalty.

(2) Any such penalty may be imposed and enforced, and any such investigation, proceeding or remedy may be begun, continued or enforced, as if this Act or the provision had not been repealed or amended or had not expired.

#### **41 Continuance of repealed provisions**

If an Act repeals some or all of the provisions of this Act and enacts new provisions in substitution for the repealed provisions, the repealed provisions continue in force until the new provisions commence.

#### **42 Act and amending Acts to be read as one**

This Act and all Acts amending this Act are to be read as one.

### **Part 8 Offences**

#### **43 Penalty at end of provision**

In this Act, a penalty specified at the end of:

- (a) a section (whether or not the section is divided into subsections), or
- (b) a subsection (but not at the end of a section), or
- (c) a section or subsection and expressed in such a way as to indicate that it applies only to part of the section or subsection,

indicates that an offence mentioned in the section, subsection or part is punishable on conviction or, if no offence is mentioned, a contravention of the section, subsection or part constitutes an offence against the provision that is punishable on conviction:

- (d) if a minimum as well as a maximum penalty is specified—by a penalty not less than the minimum and not more than the maximum, or
- (e) in any other case—by a penalty not more than the specified penalty.

#### **44 Penalty other than at end of provision**

- (1) In this Act, a penalty specified for an offence, or a contravention of a provision, indicates that the offence is punishable on conviction, or the contravention constitutes an offence against the provision that is punishable on conviction:
  - (a) if a minimum as well as a maximum penalty is specified—by a penalty not less than the minimum and not more than the maximum, or
  - (b) in any other case—by a penalty not more than the specified penalty.
- (2) This clause does not apply to a penalty to which clause 43 (Penalty at end of provision) applies.

#### **45 Indictable offences and summary offences**

- (1) An offence against this Act that is not punishable by imprisonment is punishable summarily.
- (2) An offence against this Act that is punishable by imprisonment is, subject to subclause (3), punishable on indictment.
- (3) If:
  - (a) a proceeding for an offence against this Act that is punishable by imprisonment is brought in a court of summary jurisdiction, and
  - (b) the prosecutor requests the court to hear and determine the proceeding, the offence is punishable summarily and the court must hear and determine the proceeding.
- (4) A court of summary jurisdiction must not:
  - (a) impose, in relation to a single offence against this Act, a period of imprisonment of more than 2 years, or
  - (b) impose, in relation to offences against this Act, cumulative periods of imprisonment that are, in total, more than 5 years.
- (5) Nothing in this clause renders a person liable to be punished more than once in relation to the same offence.

#### **46 Double jeopardy**

If an act or omission constitutes an offence:

- (a) under this Act, and
- (b) under another law of this State or a law of another State,

and the offender has been punished in relation to the offence under a law mentioned in paragraph (b), the offender is not liable to be punished in relation to the offence under this Act.

#### **47 Aiding and abetting, attempts etc**

- (1) A person who aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly concerned in or a party to, the commission of an offence against this Act is taken to have committed that offence and is liable to the penalty for the offence.
- (2) A person who attempts to commit an offence against this Act commits an offence and is punishable as if the attempted offence had been committed.

### **Part 9 Instruments under Act**

#### **48 Schedule applies to statutory instruments**

- (1) This Schedule applies to a statutory instrument, and to things that may be done or are required to be done under a statutory instrument, in the same way as it applies to this Act, and things that may be done or are required to be done under this Act, except so far as the context or subject matter indicates or requires.
- (2) The fact that a provision of this Schedule refers to this Act and not also to a statutory instrument does not, by itself, indicate that the provision is intended to apply only to this Act.

### **Schedule 2 Matters to be provided for in rules of co-operative housing societies**

(Section 61 (1))

- 1** The name of the society.
- 2** Where the registered office of the society is to be situated.
- 3** The objects of the society.
- 4** Whether the society intends to avail itself of any powers authorised by this Act as incidental to its objects and, if it does, within what limits it proposes to exercise the powers.
- 5** The way in which the capital of the society is to be raised.
- 6** The way in which the funds of the society 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 society.
- 7** The purposes to which the funds of the society are to be applied, and the way in which they are to



be invested.

- 8** The way in which any gain or surplus that may result from the transactions of the society is to be distributed among members.
- 9** The way in that any loss which may result from the transactions of the society is to be provided for.
- 10** The method and conditions of admission to membership, and the payment to be made or the share or interest to be acquired before the exercise of the rights of membership.
- 11** The circumstances in which members may be expelled, and the rights and liabilities of expelled members.
- 12** The number of directors, the qualification of directors, and the way of electing, appointing, remunerating, and removing directors and filling a vacancy, whether directors are to be elected annually, the period for which directors are to hold office, and whether directors are to retire by rotation or otherwise.
- 13** The declaration required of a candidate for election or appointment as a director, as to the nature and extent of any interest had by the candidate that could conflict with the performance of the candidate's duties as a director.
- 14** The powers and duties of the board, and the requisite notices of meetings, the quorum for meetings, and the procedure at meetings, of the board.
- 15** The intervals between general meetings, the way of calling general and special general meetings, the requisite notices of meetings, and the quorum for meetings, of the society.
- 16** The procedure at meetings of the society, including the rights of members in voting at meetings, the way of voting, and the majority necessary for carrying resolutions.
- 17** The way of appointing, remunerating and removing officers of the society, the powers and duties of officers, and the security to be given by any officer having the receipt or charge of any money belonging to the society.
- 18** Whether the accounts of the society are to be audited annually or more frequently.
- 19** The way of appointing, remunerating and removing auditors, and the powers and duties of auditors and, in particular, their powers and duties in relation to the inspection of securities belonging to the society.
- 20** Provision for the custody of securities belonging to the society.
- 21** How disputes under the rules between the society and any of its members or a person claiming by

or through a member are to be settled.

- 22** The way of altering and rescinding the rules and making additional rules.
- 23** Provision for the device, custody and use of the society's seal.
- 24** The way in which the society may be wound-up.
- 25** Whether or not shares may be withdrawn and, if so, on what terms.
- 26** The way in which the value of shares is to be ascertained for repayment.
- 27** Such other matters as may be prescribed by the regulations or required by the standards.

### **Schedule 3 Matters to be provided for in rules of Starr-Bowkett societies**

(Section 61)

- 1** The name of the society.
- 2** Where the registered office of the society is to be situated.
- 3** The objects of the society.
- 4** Whether the society intends to avail itself of any powers authorised by this Act as incidental to its objects and, if it does, within what limits it proposes to exercise the powers.
- 5** The way in which the capital of the society is to be raised and the way in which any shares are issued and transferred.
- 6** The way in which the funds of the society 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 society.
- 7** The purposes to which the funds of the society are to be applied, and the way in which they are to be invested.
- 8** The way in which any gain or surplus that may result from the transactions of the society is to be distributed among members.
- 9** The way in which any loss that may result from the transactions of the society is to be provided for.
- 10** The method and conditions of admission to membership, and the payment to be made or the share or interest to be acquired before the exercise of the rights of membership.
- 11** In respect of advances authorised to be made by the society:
  - (a) the manner in which an application for an advance is to be made, and
  - (b) the conditions with which an applicant for an advance is to comply, and
  - (c) the manner in which an advance is to be made and repaid, and

(d) the deduction, if any, for premium, and

(e) the conditions on which a borrower may redeem the amount due from the borrower before the expiration of the period for which the advance is made, and

(f) the terms on which a mortgage may be redeemed.

- 12** The way in which any share or interest of members may be transferred.
- 13** The circumstances in which members may be expelled, and the rights and liabilities of expelled members.
- 14** The number of directors, the qualification of directors, and the way of electing, appointing, remunerating, and removing directors and filling a vacancy, whether directors are to be elected annually, the period for which directors are to hold office, and whether directors are to retire by rotation or otherwise.
- 15** The declaration required of a candidate for election or appointment as a director, as to the nature and extent of any interest had by the candidate that could conflict with the performance of the candidate's duties as a director.
- 16** The powers and duties of the board, and the requisite notices of meetings, the quorum for meetings, and the procedure at meetings, of the board.
- 17** The intervals between general meetings, the way of calling general and special general meetings, the requisite notices of meetings, and the quorum for meetings, of the society.
- 18** The procedure at meetings of the society, including the rights of members in voting at meetings, the way of voting, and the majority necessary for carrying resolutions.
- 19** The way of appointing, remunerating and removing officers of the society, and the powers and duties of officers.
- 20** Whether the accounts of the society are to be audited annually or more frequently.
- 21** The way of appointing, remunerating and removing auditors, and the powers and duties of auditors and, in particular, their powers and duties in relation to the inspection of securities belonging to the society.
- 22** Provision for the custody of securities belonging to the society.
- 23** The charges, including any charges on admission, that are payable by a member of the society.
- 24** The circumstances in which fines and forfeitures may be imposed on members of the society, and the amount of the fines (being not more than the prescribed maximum amount).
- 25** How disputes under the rules between the society and any of its members or a person claiming by

or through a member are to be settled.

- 26** The way of altering and rescinding the rules and making additional rules.
- 27** Provision for the device, custody and use of the society's seal.
- 28** The way in which the society may be wound-up.
- 29** Such other matters as may be prescribed by the regulations or required by a standard.

## **Schedule 4 (Repealed)**

## **Schedule 5 Savings, transitional and other provisions**

(Section 227)

### **Part 1 General**

#### **1 Definitions**

In this Schedule:

**1923 Act** means the *Co-operation Act 1923* as in force immediately before its repeal.

#### **2 Savings and transitional regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) In particular, the regulations may include provision to delay or defer the operation of any specified provisions of the Act concerned in relation to specified matters or matters of a specified kind.
- (3) A provision of a regulation authorised by this clause may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.
- (4) To the extent to which a provision of a regulation authorised by this clause takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate:
  - (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 Existing societies

### 3 Existing societies become societies under this Act

- (1) A body that is a co-operative housing society under the 1923 Act immediately before the repeal of that Act becomes on that repeal a co-operative housing society under this Act.
- (2) A body that is a Starr-Bowkett society under the 1923 Act immediately before the repeal of that Act becomes on that repeal a Starr-Bowkett society under this Act.
- (3) A body that becomes a society under this Act by operation of this clause is the same legal entity as and a continuation of the society that it was under the 1923 Act and accordingly has the same name, rules, membership, assets, rights and liabilities as it had under the 1923 Act.

### 4 Existing approvals for use of name

Any approval in force under a provision of the 1923 Act for the use of a name by a body that becomes a co-operative housing body under this Act, being an approval in force immediately before the repeal of the 1923 Act, is taken to have been given under the equivalent provision of this Act.

## Part 3 Associations under 1992 Act

### 5 Transfer of associations from the 1992 Act

- (1) On the commencement of this clause, each of the bodies listed at the end of this clause (which are associations registered as co-operatives under the [Co-operatives Act 1992](#)) become associations registered under this Act and cease to be co-operatives registered under that Act.
- (2) It does not matter that the membership of such a body does not comply with the requirements of this Act as to the membership of associations and the provisions of its rules as to the bodies that can be admitted to membership are valid and have effect despite those requirements.
- (3) A body that becomes an association under this Act by operation of this clause is the same legal entity as and a continuation of the body that it was under the [Co-operatives Act 1992](#) and accordingly has the same name, rules, membership, assets, rights and liabilities as it had under that Act.
- (4) When a body becomes an association under this Act by operation of this clause, its registration under the [Co-operatives Act 1992](#) is to be cancelled.

Building Societies Administration Co-op. Ltd

Co-operative Housing Societies Association of New South Wales Ltd

Fidelity-St. George Administration Co-operative Limited  
Newtown United Co-operative Building Association Limited  
North South West Co-operative Housing Society Group Ltd  
Northside Co-operative Housing Societies Group Limited  
Parramatta District Association of Co-operative Housing Societies Limited  
Southern Districts-Holroyd Administration Co-operative Limited  
State Wide Association of CHS & Originators Limited  
The Association of Starr-Bowkett Co-operative Home Loans Societies Ltd  
The Earlwood-Canterbury Association of Co-operative Housing Societies Limited  
The Greater Newcastle Co-operative Building and Hunter River Starr-Bowkett Societies Association Limited

## Part 4 General

### 6 Indemnities and guarantees not affected

- (1) The repeal of the 1923 Act does not affect any indemnity or guarantee given under a provision of that Act.
- (2) The fact that a society becomes a society under this Act by the operation of this Schedule does not affect any indemnity or guarantee in respect of any obligation of the society and does not give rise to any remedy by a party to any such indemnity or guarantee or cause or permit the termination of any such indemnity or guarantee.
- (3) This clause applies in particular to an indemnity under section 17AB of the 1923 Act and a Government guarantee under section 17AC of the 1923 Act.

## Part 5 Provisions consequent on enactment of **Statute Law (Miscellaneous Provisions) Act (No 2) 2010**

### 7 Definitions

- (1) In this Part:

**amending Act** means the *Statute Law (Miscellaneous Provisions) Act (No 2) 2010*.

**applied charges registration provisions** means the provisions of Chapter 2K of the Corporations Act (as applied by section 88 and modified by that section and the regulations immediately before the commencement time).

**Charges Register** means the Register of Co-operative Housing Society Charges kept under the applied charges registration provisions, and includes the information in the Register that is required to be kept during the transitional period under clause 12.

**commencement time** means the time when section 88 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 charge to which the applied charges registration provisions applied (as in force before that time) when it was created.

**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 applied charges registration provisions continued in effect by this Part.

## **8 Applied charges registration provisions cease to have effect at commencement time**

- (1) The applied charges registration provisions cease to have effect at the commencement time, except as otherwise provided by this Part.
- (2) If a provision of the applied charges registration provisions (the **primary provision**) is continued in effect by this Part:
  - (a) any other provision of the applied 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 applied charges registration provisions until regulations provide otherwise.

## **9 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*.

## **10 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 section 265 of the Corporations Act (as applied by section 88 and modified by that section and the regulations immediately before the commencement time) concerning the provisional registration of a charge.

#### **11 Lodgment of certain documents not required during pre-transitional period**

Section 263 (1) (b) and (c), (2) and (4) (b)-(d) of the Corporations Act (as applied by section 88 and modified by that section and the regulations immediately before the commencement time) cease to apply during the pre-transitional period in respect of charges created during that period.

#### **12 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) Section 274 of the Corporations Act (as applied by section 88 and modified by that section and the regulations immediately before the commencement time) continues to apply during the transitional period in relation to an existing charge.

### **13 Certificates of Charges Register**

- (1) Section 272 of the Corporations Act (as applied by section 88 and modified by that section and the regulations immediately before the commencement time) continues to apply during the transitional period in relation to:
  - (a) a certificate issued under that section 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 section 272 of the Corporations Act (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.

### **14 Inspection of charges documents**

A person's rights under section 23 (1) 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 by the regulations for the purposes of that subsection.

### **15 Certain charges void against liquidator or administrator**

- (1) Subject to this clause, if an existing charge is void under section 266 of the Corporations Act (as applied by section 88 and modified by that section and the regulations immediately before the commencement time), that section (other than section 266 (4)) 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 a current registrable charge not to be, and never to have been, void under section 266 of the Corporations Act (as applied by section 88 and modified by that section and the regulations immediately before the commencement time) if:
  - (a) before the commencement time, the charge is void under that section, and
  - (b) an application:
    - (i) is, immediately before the commencement time, pending under section 266 (4) 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 section 266 (4) as in force immediately before the commencement time.

#### **16 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.

#### **17 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.

#### **18 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*.

## **Part 6 Provisions consequent on enactment of Statute Law (Miscellaneous Provisions) Act 2016**

### **19 Definition**

In this Part, **repeal day** means the day on which Part 8 of this Act is repealed by the *Statute Law (Miscellaneous Provisions) Act 2016*.

### **20 Abolition of Standards Committee**

On the repeal day:

- (a) the Standards Committee is abolished, and
- (b) a person holding office as a member of that Committee ceases to hold that office and is not entitled to compensation because of ceasing to hold that office.

### **21 Existing standards**

A standard that was in force under section 192 immediately before the repeal day:

- (a) continues in force under this Act as if Part 8 of this Act had not been repealed, and
- (b) may be amended or repealed by the Minister, by notice published in the Gazette.

## **Schedule 6 (Repealed)**