Western Australia

Co-operatives Act 2009

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Western Australia

Co-operatives Act 2009

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Defined Terms

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Western Australia

Co-operatives Act 2009

An Act to provide a legislative framework for the formation, registration and management of co-operatives and for related purposes.

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

Division 1 — Introductory

1. Short title

This is the *Co-operatives Act 2009*.

2. Commencement

This Act comes into operation as follows —

(a) sections 1 and 2 — on the day after assent day;

(b) the rest of the Act, other than sections 490 and 491, and Part 20 Divisions 1 and 3 — on a day fixed by proclamation;

(c) sections 490 and 491, and Part 20 Division 3 — on the last day of the period of 2 years after the day fixed under paragraph (b);

(d) Part 20 Division 1 — on the day that Co-operative Bulk Handling Limited becomes registered under this Act.

3. Objects of this Act

The objects of this Act are to —

(a) enable the formation, registration and operation of co-operatives; and

(b) promote co-operative philosophy, principles, practices and objectives; and

(c) protect the interests of co-operatives, their members and the public in the operations and activities of co-operatives; and

(d) ensure that the directors of co-operatives are accountable for their actions and decisions to the members of co-operatives; and

(e) encourage and facilitate self-management by co-operatives at all levels; and

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(f) encourage the development, integration and strengthening of co-operatives at local, regional, national and international levels by supporting and fostering State and national peak organisations and co-operative instrumentalities.

4. Terms used in this Act

(1) In this Act —

active member has the meaning given to that term in section 111;

active membership provision has the meaning given to that term in section 112;

agreement means an agreement, arrangement or understanding —

(a) whether formal or informal or partly formal and partly informal; and

(b) whether written or oral or partly written and partly oral; and

(c) whether or not having legal or equitable force and whether or not based on legal or equitable rights;

alter, in relation to the rules of a co-operative, includes to add to, substitute or rescind;

associate has the meaning given to that term in Schedule 2 Division 2;

board means the board of directors of a co-operative and in circumstances where a person or committee is exercising a power of the board delegated under the rules of a co-operative, includes that person or committee;

chief executive officer, of a co-operative or a subsidiary of a co-operative, means the principal executive officer of the co-operative or subsidiary for the time being, by whatever name called, and whether or not that officer is a director or the secretary;

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constitution, of a co-operative, includes the articles of association, memorandum, rules and other constituent documents;

co-operative means a body registered under this Act as a co-operative;

co-operative capital unit has the meaning given to that term in section 257(1);

co-operative group means a co-operative that has a membership as described in section 57;

corporation has the meaning given to that term in the Corporations Act;

Corporations Act means the Commonwealth *Corporations Act 2001*;

debenture means a document issued by a co-operative that evidences or acknowledges indebtedness of the co-operative in respect of money that is or may be deposited with or lent to the co-operative, whether constituting a charge on property of the co-operative or not, and includes a unit of a debenture, except that it does not include —

(a) a cheque, order for the payment of money or bill of exchange; or

(b) a promissory note having a face value of not less than $50 000; or

(c) any other document of a class that is prescribed by the regulations as exempt from this definition;

deed of arrangement means a deed of company arrangement in force under the Corporations Act Part 5.3A as that Part applies under this Act or a deed of that type as varied and in force from time to time;

deposit taking co-operative means a co-operative that is permitted under section 246 to accept money on deposit;

distributing co-operative means a co-operative as described in section 13;

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eligible member means a person considered by the board of a co-operative to be eligible to become a member of that co-operative;

financial records includes —

(a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers;

(b) documents of prime entry;

(c) working papers and other documents needed to explain —

(i) the methods by which financial statements are made up; and

(ii) adjustments to be made in preparing financial statements;

financial report means an annual financial report or a half-year financial report prepared under the Corporations Act Chapter 2M;

financial services business has the meaning given to that term in the Corporations Act section 761A;

financial services licensee has the meaning given to that term in the Corporations Act section 761A;

financial statements means annual financial statements under the Corporations Act section 295 or half-year financial statements applying under the Corporations Act section 303;

foreign co-operative means a corporation that is registered, incorporated or formed under, or subject to, a law in force outside this State, including outside Australia, that regulates co-operatives or organisations having attributes the same as or similar to co-operatives except that it does not include —

(a) a body incorporated under the Corporations Act or under another law of the Commonwealth; or

(b) an authorised deposit-taking institution as defined in the Commonwealth *Banking Act 1959* section 5;

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inspector means a person appointed as an inspector under Part 15;

model rules means the model rules prescribed by the regulations under section 101;

mortgage includes lien, charge or other security over property;

non-distributing co-operative means a co-operative as described in section 14;

officer, of a co-operative, means —

(a) a director or secretary of the co-operative; or

(b) a person who is concerned, or takes part, in the management of the co-operative, whether or not as a director; or

(c) a receiver and manager, appointed under a power contained in an instrument, of property of the co-operative; or

(d) an administrator of a deed of arrangement executed by the co-operative; or

(e) a liquidator or provisional liquidator appointed in a voluntary winding-up of the co-operative; or

(f) an administrator of the co-operative appointed under —

(i) the Corporations Act Part 5.3A as applying under this Act; or

(ii) Part 12 Division 5 of this Act;

or

(g) a trustee or other person administering a compromise or arrangement made between the co-operative and another person;

primary activity, of a co-operative, means an activity stated in the rules of the co-operative to be a primary activity of the co-operative;

records includes books, financial records, financial statements, minutes, registers, deeds, writings, documents and other sources

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of information compiled, recorded or stored in written form or on microfilm, or by electronic process, or in any other manner or by any other means;

Registrar means the Registrar of Co-operatives under section 451;

related corporation has the meaning given to that term in Schedule 2 Division 3;

relevant interest in —

(a) a right to vote has the meaning given to that term in Schedule 2 Division 1 clause 2(1); and

(b) a share has the meaning given to that term in Schedule 2 Division 1 clause 2(2);

rules, of a co-operative, means the rules of the co-operative for the time being applying under this Act;

seal, of a co-operative, means the common seal or official seal of the co-operative;

share means share in the share capital of a co-operative;

subsidiary has the meaning given to that term in the Corporations Act;

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

transfer day, for a particular transferred co-operative, means the day on which that co-operative became registered under this Act;

transferred co-operative means a co-operative that immediately before the commencement of this Act was registered as a co-operative company under the *Companies (Co-operative) Act 1943* or as a registered society under the *Co-operative and Provident Societies Act 1903*.

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(2) A reference in this Act to the Corporations Act or a provision of the Corporations Act applying under this Act (or a part of this Act) is a reference to that Act or provision to the extent that it is declared to apply to a matter for the purposes of the *Corporations (Ancillary Provisions) Act 2001* Part 3 as a law of this State.

Division 2 — Qualified privilege

5. Qualified privilege

(1) If this Act provides that a person has qualified privilege for an act, matter or thing, the person, in relation to the act, matter or thing —

(a) has qualified privilege in proceedings for defamation; and

(b) is not, in the absence of malice on the person's part, liable to an action for defamation at the suit of a person.

(2) In subsection (1) —

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

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

Division 3 — The co-operative principles

6. Co-operative principles

The co-operative principles are the principles set out in the following Table.

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Table of co-operative principles

Principle
1. Voluntary and open membership A co-operative is a voluntary organisation, open to all persons able to use its services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.
2. Democratic member control A co-operative is a democratic organisation controlled by its members, who actively participate in setting policies and making decisions. Members serving as elected representatives are accountable to the membership. In co-operatives other than co-operative groups members have equal voting rights (one member, one vote). Co-operative groups are organised in a democratic manner.
3. Member economic participation Members contribute equitably to, and democratically control, the capital of their co-operative. Usually, at least part of that capital is the common property of the co-operative. Usually, members receive limited compensation, if any, for capital subscribed as a condition of membership. Members of a co-operative allocate surplus to be used for any or all of the purposes of — (a) developing the co-operative, possibly by setting up reserves, at least part of which are indivisible; and (b) benefiting members in proportion to their transactions with the co-operative; and (c) supporting other activities approved by the membership.
4. Autonomy and independence A co-operative is an autonomous, self-help organisation controlled by its members. If a co-operative enters into agreements with other organisations, including governments, or raises capital from external sources, it does so on terms that ensure democratic control by its members and maintain its autonomy.

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Principle
5. Education, training and information A co-operative provides education and training for its members, elected representatives, managers and employees so they can contribute effectively to the development of the co-operative. A co-operative informs the general public, particularly young people and opinion leaders, about the nature and benefits of co-operatives.
6. Co-operation among co-operatives Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures.
7. Concern for the community Co-operatives, while focusing on member needs, work for the sustainable development of their communities through policies accepted by their members.

7. Interpretation to promote co-operative principles

In the interpretation of a provision of this Act, a construction that would promote co-operative principles is to be preferred to a construction that would not promote co-operative principles.

Division 4 — Application of Corporations Act to co-operatives

8. Definitions

In this Division —

company has the meaning given to that term in the Corporations Act section 9;

Corporations legislation means the Corporations legislation to which the Corporations Act Part 1.1A applies;

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

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9. Excluded matter

(1) A co-operative is declared to be an excluded matter for the purposes of the Corporations Act section 5F in relation to the whole of the Corporations legislation other than to the extent specified in subsection (2).

(2) Subsection (1) does not exclude the application of the following provisions of the Corporations legislation to co-operatives to the extent that the provisions would otherwise be applicable to them —

(a) provisions relating to a matter that the regulations provide is not to be excluded from the operation of the Corporations legislation;

(b) provisions relating to the role of a co-operative in the formation of a company;

(c) provisions relating to the registration of a co-operative as a company under the Corporations Act Chapter 5B;

(d) provisions relating to substantial shareholdings, by or involving a co-operative, in a company;

(e) provisions conferring or imposing functions on a co-operative as a member, or former member, of a corporation;

(f) provisions relating to dealings by a co-operative in financial products of a corporation, other than financial products of the co-operative itself;

(g) provisions conferring or imposing functions on a co-operative in its dealings with a corporation, not being dealings in financial products of the co-operative;

(h) provisions relating to financial products of a co-operative, other than shares in, co-operative capital units in, debentures of or deposits with a co-operative;

(i) provisions relating to financial markets and participants in financial markets;

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(j) provisions relating to financial services licensees whose licence covers dealing in, or providing advice about, financial products;

(k) provisions relating to carrying on a financial services business;

(l) provisions relating to financial statements, and audits of financial statements, of financial services licensees whose licence covers dealing in, or providing advice about, financial products;

(m) provisions relating to clients of financial services licensees whose licence covers dealing in, or providing advice about, financial products;

(n) provisions relating to registers of interests in financial products.

(3) To remove doubt it is declared that subsection (1) does not operate to exclude the operation of the following provisions of the Corporations Act, except in relation to shares in, co-operative capital units in, debentures of, or deposits with, a co-operative —

(a) Part 1.2A;

(b) Chapter 2L;

(c) Chapter 6CA;

(d) Chapter 6D;

(e) Part 7.10.

(4) If a co-operative is directed by an order of the Supreme Court under section 84(i) to become registered as a company under the Corporations Act, the provisions referred to in subsection (2)(c) apply to the extent necessary for the co-operative to be registered as a company under Chapter 5B of that Act.

10. Applying the Corporations legislation to co-operatives

(1) The regulations may declare a matter relating to co-operatives to be an applied Corporations legislation matter for the purposes of

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the *Corporations (Ancillary Provisions) Act 2001* Part 3 in relation to any excluded Corporations legislation provision or provisions, with any modifications that are specified in the declaration.

(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 the function under an agreement referred to in section 11(8) or (9A)(b) of the new ASIC Act; and

(ii) ASIC is authorised to exercise that function under section 11 of the new ASIC Act;

and

(c) specify that a reference to ASIC in an excluded Corporations legislation provision that is the subject of the declaration is to be a reference to another person; and

(d) identify an excluded Corporations legislation provision to which the declaration relates by reference to the provision as in force at a particular time; and

(e) specify a court (other than the Supreme Court) to exercise a function conferred on a court or the Court by an excluded Corporations legislation provision to which the declaration relates.

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

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11. Modifications to applied provisions

(1) If a provision of this Act or the regulations declares a matter to be an applied Corporations legislation matter for the purposes of the *Corporations (Ancillary Provisions) Act 2001* Part 3 (the ***declaratory provision***) in relation to any provisions of the Corporations legislation (the ***applied provisions***), the declaratory provision is taken to specify the following modifications —

(a) a reference in the applied provisions to articles or a memorandum of association or a constitution or replaceable rules is to be read as a reference to rules;

(b) a cross-reference in the applied provisions to another provision of the Corporations Act is, if that cross-reference is not appropriate (because for example the provision cross-referred to is not among the applied provisions), to be read as a cross-reference to the equivalent provision of this Act;

(c) a reference in the applied provisions to the *Gazette* is to be read as a reference to the Western Australian *Government Gazette*;

(d) a reference in the applied provisions to the Commonwealth is to be read as a reference to this State;

(e) any of the applied provisions that are not relevant to co-operatives or that are incapable of application to co-operatives are to be ignored;

(f) modifications prescribed under a regulation under subsection (2).

(2) The regulations may prescribe the modifications that are necessary or desirable for the effective operation of the applied provisions.

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Part 2 — Formation

Division 1 — Types of co-operatives

12. Types of co-operatives

(1) A body may be registered under this Act as a co-operative.

(2) A co-operative may be either —

(a) a distributing co-operative; or

(b) a non-distributing co-operative.

13. Distributing co-operatives

(1) A distributing co-operative must have a share capital.

(2) A distributing co-operative is a co-operative whose rules allow it to give returns or distributions on surplus or share capital.

(3) A distributing co-operative must have a membership of —

(a) for a co-operative group, 2 or more co-operatives; and

(b) for any other distributing co-operative —

(i) if a lesser number than 5 is prescribed by the regulations, at least that number of active members; or

(ii) otherwise, 5 or more active members.

14. Non-distributing co-operatives

(1) A non-distributing co-operative is a co-operative whose rules prohibit it from giving returns or distributions on surplus or share capital to members, other than the nominal value of shares, if any, at winding-up.

(2) A non-distributing co-operative may or may not have a share capital.

(3) A non-distributing co-operative must have a membership of —

(a) for a co-operative group, 2 or more co-operatives; and

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(b) for any other non-distributing co-operative —

(i) if a lesser number than 5 is prescribed by the regulations, at least that number of active members; or

(ii) otherwise, 5 or more active members.

Division 2 — Formation meeting

15. Formation meeting

(1) Before a proposed co-operative, other than an existing corporation, can be registered, a formation meeting must be held in accordance with this section.

(2) At the formation meeting —

(a) a person must act as chairman, and a person must be specified to act as secretary; and

(b) in the case of a proposed distributing co-operative, a disclosure statement approved under section 16 must be presented to the meeting; and

(c) the proposed rules of the co-operative approved under section 17 in respect of the proposed co-operative, must be agreed to by two-thirds of the eligible members attending the meeting; and

(d) the eligible members attending the meeting must sign the application for membership; and

(e) the eligible members attending the meeting must elect the first directors of the proposed co-operative in accordance with the proposed rules; and

(f) the eligible members attending the meeting must authorise a person —

(i) to apply to the Registrar for registration of the proposed co-operative; and

(ii) to do anything necessary to have the proposed co-operative registered.

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(3) The formation meeting must be held by —

(a) for a co-operative group, not less than 2 suitably qualified co-operatives; and

(b) for any other co-operative, not less than 5 persons, or if a lesser number than 5 is prescribed by the regulations, not less than the prescribed number of persons, suitably qualified to be members of the proposed co-operative.

(4) For the purposes of subsection (3), a person or a co-operative is suitably qualified to be a member if —

(a) there are reasonable grounds to believe the person or co-operative will be an active member of the proposed co-operative; and

(b) for an individual, the person has attained the age of 18; and

(c) the person satisfies any other requirements for membership set out in the proposed rules.

(5) Each co-operative forming a proposed co-operative group may be represented at the formation meeting by one person.

Division 3 — Approval of disclosure statement and rules

16. Approval of disclosure statement

(1) A draft disclosure statement of a proposed distributing co-operative must be submitted to the Registrar at least 35 days (or a shorter period the Registrar may allow in a particular case) before the formation meeting is due to be held.

(2) The draft disclosure statement submitted under subsection (1) must be accompanied by a written statement specifying the date on which the formation meeting is due to be held.

(3) The disclosure statement must contain the information necessary to ensure that eligible members are adequately informed of the nature and extent of a person's financial

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involvement or liability as a member of the co-operative including so far as applicable —

(a) the estimated costs of formation; and

(b) the active membership provisions of the proposed co-operative; and

(c) the rights and liabilities attaching to shares in the proposed co-operative; and

(d) the capital required for the co-operative at the time of formation; and

(e) the projected income and expenditure of the co-operative for its first year of operation; and

(f) information about any pre-registration contractual obligations of the co-operative under Part 3 Division 5; and

(g) any other information that the Registrar directs.

(4) The disclosure statement cannot include a statement purporting to be made by an expert or to be based on a statement made by an expert unless —

(a) the expert has given, and has not withdrawn, the expert's written consent to the submission of the disclosure statement with the statement included in the form and context in which it is included; and

(b) there appears in the disclosure statement a statement that the expert has given, and has not withdrawn, the expert's consent.

(5) The Registrar may —

(a) approve the draft statement as submitted; or

(b) amend the draft statement, or require a stated amendment of the draft, and then approve the amended statement; or

(c) approve a different statement to that submitted; or

(d) refuse to approve the statement; or

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(e) require the person submitting the disclosure statement to give the Registrar any additional information the Registrar reasonably requires, and then act under paragraph (a), (b), (c) or (d).

(6) The Registrar may approve a disclosure statement with or without conditions.

(7) Subject to subsection (8), the Registrar approves of a disclosure statement by giving written notice of the approval of the statement to the person who submitted the draft statement to the Registrar.

(8) The Registrar is taken to have approved the disclosure statement as submitted to the Registrar unless at least 5 days before the date specified in the written statement submitted under subsection (2), the Registrar gives written notice to the person who submitted the draft statement that the Registrar —

(a) has approved an amended or different disclosure statement; or

(b) is still considering the matter; or

(c) refuses to approve the disclosure statement.

17. Approval of rules

(1) A draft of the rules proposed for the co-operative (including active membership provisions in accordance with Part 6) must be submitted to the Registrar at least 35 days (or a shorter period the Registrar may allow in a particular case) before the formation meeting is due to be held.

(2) The draft rules submitted under subsection (1) must be accompanied by a written statement specifying the date on which the formation meeting is due to be held.

(3) The proposed rules must —

(a) be in accordance with section 98; and

(b) be in a form that may reasonably be approved.

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(4) The Registrar may —

(a) approve the proposed rules as submitted; or

(b) approve different proposed rules to those submitted; or

(c) refuse to approve the proposed rules.

(5) Subject to subsection (6), the Registrar approves proposed rules by giving written notice of that approval to the person who submitted the proposed rules to the Registrar.

(6) The Registrar is taken to have approved the proposed rules as submitted to the Registrar unless at least 5 days before the date specified in the written statement submitted under subsection (2), the Registrar gives written notice to the person who submitted the proposed rules that the Registrar —

(a) has approved different proposed rules to those submitted; or

(b) is still considering the matter; or

(c) refuses to approve the proposed rules.

Division 4 — Registration of proposed co-operative

18. Application for registration of proposed co-operative

(1) An application for registration as a co-operative, other than an application by a corporation under Division 5, must —

(a) be made in the form approved by the Registrar; and

(b) be accompanied by the fee prescribed by the regulations; and

(c) be signed by —

(i) for a co-operative group, at least 2 directors elected at the formation meeting; and

(ii) for any other proposed co-operative, at least 5, or if a lesser number than 5 is prescribed under a regulation, at least the prescribed number of,

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suitably qualified members, including 2 directors elected at the formation meeting;

and

(d) be accompanied by —

(i) a copy of the proposed rules, certified in writing by the chairman and secretary for the formation meeting to have been agreed to at the formation meeting in accordance with section 15(2)(c); and

(ii) in the case of a proposed distributing co-operative, a copy of the disclosure statement, certified in writing by the chairman and secretary for the formation meeting to have been presented to that meeting as required by section 15(2)(b); and

(iii) a statement listing the name, address, occupation and place and date of birth of each person elected at the formation meeting in accordance with section 15(2)(e) to be a director of the proposed co-operative and containing a certificate signed by the chairman and secretary verifying that those persons were elected; and

(iv) a certificate signed by the chairman and secretary verifying that a specified person is the person authorised under section 15(2)(f); and

(v) any other particulars that the Registrar may require.

(2) The application must be lodged with the Registrar within 2 months after closure of the formation meeting for the proposed co-operative or within the extended period that the Registrar may allow.

19. Registration of co-operative

(1) When an application is made under this Division for registration of a proposed co-operative, the Registrar must register the

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co-operative and its rules if satisfied that the requirements referred to in subsection (2) have been met.

(2) The requirements for registration of a co-operative under this Division are that —

(a) the proposed rules of the proposed co-operative must be those approved by the Registrar under section 17; and

(b) the requirements of this Act must have been complied with in relation to the proposed co-operative and compliance must be likely to continue; and

(c) the proposed co-operative must be designed to function in accordance with the co-operative principles or, if it is not designed to function entirely in accordance with the co-operative principles, the Registrar must be satisfied that there are special reasons why the co-operative should be registered under this Act; and

(d) there must be no reasonable cause for refusing registration of the proposed co-operative.

(3) If the Registrar is not satisfied that the requirements for registration of the co-operative have been met the Registrar may refuse to register the co-operative and its rules.

(4) The Registrar must give to the applicant written notice of the refusal and the reasons for the refusal.

20. Incorporation and certificate of registration

(1) The incorporation of the co-operative takes effect on the registration of the co-operative.

(2) On the registration of the co-operative, the Registrar must issue a certificate of registration.

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Division 5 — Registration of an existing corporation

21. Existing corporation can be registered

A corporation may apply to the Registrar to be registered as a co-operative under this Act, if the corporation is —

(a) incorporated or registered or deemed to be registered under the Corporations Act; or

(b) incorporated or registered under any other Act relating to the incorporation or registration of bodies corporate.

22. Formation meeting and transitional provision

(1) Before applying for registration as a co-operative, a corporation must pass a special resolution in accordance with its constitution approving of —

(a) the proposed registration; and

(b) any alterations of its existing constitution necessary to enable the corporation to comply with this Act.

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

(a) the proposed rules of the proposed co-operative approved under section 17, and including active membership provisions in accordance with Part 6, must also be passed by special resolution; and

(b) in the case of a proposed distributing co-operative, a disclosure statement approved under section 16 must be presented to the meeting.

(3) For a corporation that on registration under this Division will be a transferred co-operative, the requirement to pass a special resolution approving the proposed registration and the proposed rules is satisfied if the resolution complies with section 177(1)(a) or (b), and (3).

(4) Despite subsection (3), if a transferred co-operative would be registered with rules that give effect to a conversion from being a non-distributing co-operative to a distributing co-operative, or

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vice versa, the requirement to pass a special resolution is not satisfied unless the resolution is passed in accordance with the requirements in section 177(1)(c).

23. Application for registration

(1) An application for registration under this Division must be —

(a) in the form approved by the Registrar; and

(b) accompanied by the fee prescribed by the regulations; and

(c) accompanied by —

(i) a written declaration, signed no more than 28 days before the application for registration by the directors or the committee of management of the corporation, stating that at a meeting of the directors or committee they formed the opinion that the corporation will be able to pay its debts as they fall due; and

(ii) a report in the form approved by the Registrar as to the affairs of the corporation and showing its assets and liabilities, made up to the latest practicable date before the application; and

(iii) a copy of the constitution of the corporation in force at the date of the application; and

(iv) 2 copies of the proposed rules of the co-operative, certified in writing by the directors or the committee of management to have been approved under section 22(2) by special resolution; and

(v) in the case of a proposed distributing co-operative, a copy of the disclosure statement presented to the meeting held under section 22, certified in writing by the directors or committee of management of the corporation to have been presented to that meeting; and

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(vi) a list containing the name, address, occupation and place and date of birth of each director; and

(vii) evidence to the satisfaction of the Registrar of the incorporation of the existing corporation; and

(viii) any other particulars that the Registrar may require.

(2) For a corporation that on registration under this Division will be a transferred co-operative, an application need only comprise the requirements of subsection (1)(a), (c)(iv) and (viii).

24. Requirements for registration

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

(2) The requirements for registration as a co-operative under this Division are as follows —

(a) the proposed rules of the proposed co-operative must be the proposed rules approved by the Registrar under section 17;

(b) the requirements of this Act must have been complied with in relation to the proposed co-operative and compliance must be likely to continue;

(c) there must be no reasonable cause for refusing registration of the proposed co-operative.

(3) If the Registrar is not satisfied that the requirements for registration of the co-operative have been met, the Registrar may refuse to register the co-operative and its rules and must give to the applicant written notice of the refusal and the reasons for the refusal.

(4) If the Registrar has decided under this section to register a corporation under this Act, the corporation must notify the

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authority responsible for registering the corporation under the law under which it was previously registered of that decision.

(5) Despite anything to the contrary in this Division, the registration of a corporation as a co-operative does not take effect until the corporation ceases to be registered under the law under which it was previously registered.

(6) The corporation must notify the Registrar in writing within 7 days after ceasing to be registered under that other law.

25. Transitional provision

(1) This section applies to a corporation that, on registration under this Division, will be a transferred co-operative.

(2) Section 24(4) to (6) does not apply to the corporation.

(3) If the Registrar decides to register the corporation, the Registrar must ensure that the corporation ceases to be registered under the old Act.

26. Certificate of registration

(1) On the registration of a corporation as a co-operative, the Registrar must —

(a) issue a certificate of registration to the corporation; and

(b) publish notice of the issue of the certificate in the *Gazette*.

(2) The corporate name of a corporation registered as a co-operative is the name approved by the Registrar, as specified in the certificate of registration issued by the Registrar.

27. Effect of registration

(1) The corporation is taken to be incorporated under this Act on its registration.

(2) Except as expressly provided in this Act, the registration and incorporation of the corporation as a co-operative does not

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prejudice any right of a member in respect of any shares held at the time of registration and incorporation.

(3) The change of registration and incorporation does not affect the identity of the corporation which is taken to be the same body after registration as a co-operative as it was before and no act, matter or thing is affected by the change.

Division 6 — Conversion of co-operative

28. Conversion of co-operative

(1) A co-operative may, by alteration of its rules, convert from —

(a) a co-operative with share capital to a co-operative without share capital or vice versa; or

(b) a distributing co-operative to a non-distributing co-operative or vice versa.

(2) An alteration of the rules for the conversion of a co-operative with share capital to a co-operative without share capital cannot be passed until at least 2 weeks after a notice has been published in a newspaper circulating generally in the district in which the registered office of the co-operative is situated advising of the proposal to submit the proposed alteration to members of the co-operative.

(3) An alteration of the rules for the conversion of a co-operative must be approved by special resolution passed by means of a special postal ballot.

Division 7 — Reviews

29. Appeal against refusal to approve disclosure statement

The person who submitted a draft disclosure statement to the Registrar under this Act may appeal to the Supreme Court against a failure of the Registrar to approve the statement.

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30. Appeal against refusal to approve draft rules

The person who submitted draft rules to the Registrar under this Act may appeal to the Supreme Court against a failure of the Registrar to approve the rules.

31. Appeal against refusal to register

The applicant for registration of a proposed co-operative under this Part may appeal to the Supreme Court against a failure of the Registrar to register the co-operative.

32. Supreme Court's powers on appeal

The Supreme Court may make any order it considers appropriate to dispose of an appeal under this Division.

Division 8 — General

33. Acceptance of money by proposed co-operative

(1) A proposed co-operative that, or a person on a proposed co-operative's behalf who, accepts money for the proposed co-operative before the proposed co-operative is registered must hold that money on trust until the co-operative is registered.

(2) If a co-operative is not registered within the period of 3 months after the acceptance of money under subsection (1), the proposed co-operative or the person who accepted the money on its behalf must refund the money to the person who paid it.

Penalty: a fine of $6 000.

34. Issue of duplicate certificate

The Registrar must issue a duplicate certificate of registration if —

(a) the Registrar is satisfied that the original certificate is lost or destroyed; and

(b) the fee prescribed by the regulations is paid.

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Part 3 — Legal capacity and powers

Division 1 — General powers

35. Effect of incorporation

As a corporation, a co-operative —

(a) has perpetual succession; and

(b) has a common seal; and

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

(d) subject to this Act, is capable of taking, purchasing, leasing, holding, selling and disposing of real and personal property; and

(e) may do and suffer all acts and things that corporations may by law do and suffer and that are necessary or expedient.

36. Power to form companies and enter into joint ventures

Without limiting any other provision of this Act, a co-operative has power —

(a) to form or participate in the formation of a corporation or unit trust; and

(b) to acquire interests in and sell or otherwise dispose of interests in corporations, unit trusts and joint ventures; and

(c) to form or enter into a partnership, joint venture or other association with other persons or bodies.

Division 2 — Doctrine of ultra vires abolished

37. Interpretation

In this Division —

(a) a reference to the doing of an act by a co-operative includes a reference to the making of an agreement by

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the co-operative and a reference to a transfer of property to or by the co-operative; and

(b) a reference to legal capacity includes a reference to powers.

38. Doctrine of ultra vires abolished

(1) The objects of this Division are —

(a) to provide that the doctrine of ultra vires does not apply to co-operatives; and

(b) without affecting the validity of a co-operative's dealings with others, to ensure that the co-operative's officers and members give effect to the provisions of the co-operative's rules relating to the primary activities or powers of the co-operative.

(2) This Division is to be construed and have effect in accordance with subsection (1).

39. Legal capacity

(1) A co-operative has, both within and outside this State, the legal capacity of an individual.

(2) Without limiting subsection (1), a co-operative has, both within and outside this State, power —

(a) to issue and allot fully or partly paid shares in the co-operative; and

(b) to issue debentures of, and co-operative capital units in, the co-operative; and

(c) to distribute any of the property of the co-operative among the members, in kind or otherwise; and

(d) to give security by charging uncalled capital; and

(e) to grant a charge on property of the co-operative; and

(f) to procure the co-operative to be registered or recognised as a corporation in any place outside this State; and

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(g) to do any other act that it is authorised to do by any other law, including a law of a place outside this State.

(3) Subsections (1) and (2) have effect in relation to a co-operative —

(a) if the co-operative's rules contain an express or implied restriction on, or an express or implied prohibition of, the exercise by the co-operative of any of its powers, despite that restriction or prohibition; and

(b) if the rules of the co-operative contain a provision stating the objects of the co-operative, despite that fact.

(4) The fact that the doing of an act by a co-operative would not be, or is not, in its best interests does not affect its legal capacity to do the act.

40. Restrictions on co-operatives in rules

(1) A co-operative's rules may contain an express restriction on, or an express prohibition of, the exercise by the co-operative of a power of the co-operative.

(2) The exercise of a power or the doing of an act in contravention of subsection (1) is not invalid merely because of the contravention.

(3) A co-operative's rules may set out the object of that co-operative.

(4) The exercise of a power or the doing of an act in contravention of subsection (3) is not invalid merely because of the contravention.

Division 3 — Persons having dealings with co-operatives

41. Assumptions entitled to be made

(1) A person is entitled to make the assumptions in section 42 in relation to —

(a) dealings with a co-operative; and

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(b) dealings with a person who has, or purports to have, directly or indirectly acquired title to property from a co-operative.

(2) If a person is entitled to assume a matter, the co-operative or anyone referred to in subsection (1)(b) is not entitled to assert in proceedings in relation to the dealings that the matter is incorrect.

42. Assumptions

(1) A person may assume that the co-operative's rules have been complied with.

(2) A person may assume that anyone who appears, from information provided by the co-operative that is available to the public from the Registrar, to be a director or officer of the co-operative —

(a) has been properly appointed; and

(b) has authority to exercise the powers and perform the duties customarily exercised or performed by a director or officer of a similar co-operative.

(3) A person may assume that anyone who is held out by the co-operative to be an officer or agent of the co-operative —

(a) has been properly appointed; and

(b) has authority to exercise the powers and to perform the duties customarily exercised or performed by that kind of officer or agent of a similar co-operative.

(4) A person may assume that anyone who is, or may be assumed to be, an officer or agent of the co-operative who has authority to issue a document or a certified copy of a document on its behalf also has authority to warrant that the document is genuine or is a true copy.

(5) A person may assume that a document has been duly executed by the co-operative if it is signed by 2 people, one of whom is, or may be assumed to be, a director of the co-operative, and the

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other is, or may be assumed to be, a director or the secretary of the co-operative.

(6) A person may assume that a document has been duly executed by the co-operative if —

(a) the co-operative's seal appears to have been fixed to the document in accordance with Division 4; and

(b) the fixing of the seal appears to be witnessed by 2 people, one of whom is, or may be assumed to be, a director of the co-operative, and the other is, or may be assumed to be, a director or the secretary of the co-operative.

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

43. Person who knows or ought to know is not entitled to make assumptions

This Division does not entitle a person to make an assumption, and does not prevent an assertion being made in relation to an assumption if —

(a) the person has actual knowledge that the assumption is not correct; or

(b) the person's connection or relationship with the co-operative is such that the person ought to know that the assumption is not correct.

44. Lodgment of documents not to constitute constructive knowledge

(1) A person is not considered to have knowledge of a co-operative's rules, any of the contents of a co-operative's rules, a document, the contents of a document, or any particulars, merely because of either or both of the following —

(a) the rules, the document or the particulars have been lodged with the Registrar;

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(b) the rules, the document or the particulars are referred to in any other document that has been lodged with the Registrar, or lodged with a person under a previous law corresponding to a provision of this Act.

[(2) deleted]

(3) Despite subsection (1), a member of a co-operative is taken to have knowledge of the rules of the co-operative.

[Section 44 amended by No. 42 of 2011 s. 38.]

45. Effect of fraud

(1) A person's entitlement under this Division to make an assumption is not affected merely by the fact that a person —

(a) has acted or is acting fraudulently in relation to the dealing or acquisition or purported acquisition of title to property to which the assumption relates; or

(b) has forged a document that appears to have been sealed on behalf of a co-operative.

(2) A person is not entitled to make an assumption if the person has actual knowledge of the fraudulent action or forgery referred to in subsection (1).

Division 4 — Authentication and execution of documents and confirmation of contracts

46. Common seal

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

47. Official seal

(1) A co-operative may, if authorised by its rules, have, for use in place of its common seal outside the State where its common seal is kept, one or more official seals, each of which must be a

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facsimile of the common seal of the co-operative with the addition on its face of the name of every place where it is to be used.

(2) The person affixing an official seal must, in writing signed by the person, certify on the document to which it is affixed the date on which and the place at which it is affixed.

(3) A document sealed with an official seal is taken to be sealed with the common seal of the co-operative.

48. Authentication need not be under seal

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

49. Co-operative may authorise person to execute deed

(1) A co-operative may, by writing under its common seal, empower a person, either generally or in relation to a specified matter, as its agent or attorney (***authorised attorney***) to execute deeds on its behalf.

(2) A deed signed by an authorised attorney on behalf of the co-operative and under the seal of the attorney, or under the appropriate official seal of the co-operative, binds the co-operative and has effect as if it were under the common seal of the co-operative.

(3) The authority of an authorised attorney, as between the co-operative and a person dealing with the attorney, continues during the period, if any, specified in the instrument conferring the authority or, if no period is specified, until notice of the revocation or termination of the authority of the attorney has been given to the person dealing with the attorney.

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50. Execution under seal

A contract or other document executed, or purporting to have been executed, under the seal of a co-operative is not invalid merely because a person attesting the affixing of the seal was in any way, whether directly or indirectly, interested in the contract or other document or in the matter to which the contract or other document relates.

51. Contractual formalities

(1) So far as concerns the formalities of making, varying or discharging a contract, a person acting under the express or implied authority of a co-operative may make, vary or discharge a contract in the name of, or on behalf of, the co-operative as if that contract were made, varied or discharged by an individual.

(2) The making, varying or discharging of a contract under subsection (1) is effectual in law and binds the co-operative and other parties to the contract.

(3) This section does not prevent a co-operative from making, varying or discharging a contract under its seal.

52. Other requirements as to consent or sanction not affected

This Division does not affect the operation of a law that requires some consent or sanction to be obtained, or some procedure to be complied with, in relation to the making, varying or discharging of a contract.

Division 5 — Pre-registration contracts

53. Contracts before registration

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

(a) within a reasonable period after the contract is entered into; or

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(b) within any period agreed to by the parties to the contract.

(2) The person is released from any liability under the pre-registration contract if the co-operative enters into another contract in substitution for it —

(a) within a reasonable period after the pre-registration contract is entered into; or

(b) within any period agreed to by the parties to the pre-registration contract.

(3) The person is liable to pay damages to each other party to the pre-registration contract if the co-operative is not registered, or the co-operative is registered but does not ratify the contract or enter into a substitute for it —

(a) within a reasonable period after the contract is entered into; or

(b) within the period agreed to by the parties to the contract.

(4) The maximum amount of damages the person is liable to pay to a party is the amount the co-operative would be liable to pay to the party if the co-operative had been registered and had ratified the contract and then completely failed to perform it.

(5) If proceedings are brought to recover damages under subsection (3) because the co-operative is registered but does not ratify the pre-registration contract or enter into a substitute for it, the court may do anything that it thinks just in the circumstances, including ordering the co-operative —

(a) to pay all or part of the damages that the person is liable to pay; or

(b) to transfer property that the co-operative received because of the contract to a party to the contract; or

(c) to pay an amount to a party to the contract.

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(6) If the co-operative ratifies the pre-registration contract but fails to perform all or part of it, the court may order the person to pay all or part of the damages that the co-operative is ordered to pay.

54. Person may be released from liability but is not entitled to indemnity

(1) Any of the parties to the pre-registration contract may release the person who entered into, or purported to enter into, the contract from any liability in relation to that contract.

(2) The release must be in writing.

(3) The party giving the release is not entitled to recover damages under section 53 from the person.

(4) Despite any rule of law or equity, the person does not have a right of indemnity against the co-operative in respect of the person's liability under this Division even if the person was acting, or purporting to act, as trustee for the co-operative.

55. This Division replaces other rights and liabilities

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

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Part 4 — Membership

Division 1 — General

56. Becoming a member

(1) On the registration of a co-operative, the persons who signed the application for registration become members of the co-operative.

(2) Other persons may be admitted as members of the co-operative as provided by its rules.

(3) A person under 18 years of age may be admitted as a member of the co-operative unless the rules of the co-operative provide otherwise.

(4) A corporation is not, merely because it is a corporation, disqualified from being a member of a co-operative unless the co-operative's rules provide that corporations are disqualified from being members.

(5) If 2 or more co-operatives merge, the members of the merged co-operative are —

(a) the members of the merging co-operatives; and

(b) other persons admitted as members of the merged co-operative in accordance with its rules.

57. Members of co-operative group

(1) The members of a co-operative group are —

(a) the co-operatives by which the co-operative group is formed; and

(b) any other co-operative, admitted to membership in accordance with the rules of the co-operative group; and

(c) any other corporation or other body admitted to membership in accordance with subsection (2).

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(2) A corporation or other body, not being a co-operative, may be admitted to membership of the co-operative group if —

(a) it is incorporated or registered under any other law, whether or not a law of this State; and

(b) in the opinion of the board of the co-operative group, it is designed to function in accordance with co-operative principles; and

(c) it is eligible to be admitted to membership in accordance with the rules of the co-operative group.

58. Qualification for membership and transitional provision

(1) Subject to subsection (3), a person is not qualified to be admitted to membership of a co-operative unless —

(a) there are reasonable grounds for believing that the person will be an active member of the co-operative; and

(b) the person is otherwise eligible under the rules of the co-operative.

(2) The rules of a co-operative must contain provisions that —

(a) impose a duty on all persons who become members to be active members; and

(b) explain the consequences of failing to be or ceasing to be an active member.

(3) A person who was a member of a co-operative immediately before that co-operative became a transferred co-operative is qualified to be admitted to membership of the co-operative despite the absence of reasonable grounds for believing that the person will be an active member of the co-operative.

59. Membership may be joint

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

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60. Members under 18 years of age

(1) A member of a co-operative is not entitled to avoid any obligation or liability as a member under any contract, deed or other document entered into as a member on any ground relating to minority.

(2) A person under 18 years of age is not competent to hold an office in a co-operative.

(3) A member of a co-operative who is under 18 years of age is entitled to vote.

(4) This section applies only to individuals.

61. Representatives of corporations

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

(2) The power to appoint a representative is subject to any restriction imposed by the rules of the co-operative as to the entitlement of a person to represent a corporation.

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

62. Notification of shareholders and shareholdings

On the request of the board of directors of the co-operative, a corporation that is a corporate member must provide the board of directors of the co-operative with —

(a) a list of the names of all the shareholders of the corporation and the number of shares held by each shareholder; or

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(b) in the case of a corporation without share capital, a list of the members of the corporation,

within 7 days of the request.

Penalty: a fine of $2 000.

63. Circumstances in which membership ceases — all co-operatives

(1) A person ceases to be a member of a co-operative in each of the following circumstances and as otherwise provided by this Act —

(a) if the member's membership is cancelled under Part 6;

(b) if the member is expelled or resigns in accordance with the rules of the co-operative;

(c) if —

(i) the individual member becomes bankrupt or the corporate member becomes insolvent; or

(ii) the member's property becomes subject to control under the law relating to bankruptcy,

unless provision is made to the contrary in the rules of the co-operative;

(d) on death;

(e) if the contract of membership is rescinded on the ground of misrepresentation or mistake;

(f) in the case of a member that is a corporation, if the body is deregistered.

(2) On the death of a member, the member's estate remains liable under section 67 as the member until the member's personal representative or some other person is registered in the member's place.

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64. Additional circumstances in which membership ceases — co-operatives with share capital

In the case of a co-operative that has a share capital, in addition to the circumstances in section 63, a member ceases to be a member in each of the following circumstances —

(a) the member's total shareholding is transferred to another person in accordance with the rules of the co-operative, and the transferee is registered as holder;

(b) the member's total shareholding is forfeited in accordance with this Act or the rules of the co-operative;

(c) the member's total shareholding is sold by the co-operative under a power conferred by the rules of the co-operative, and the purchaser is registered as holder;

(d) the member's total shareholding is purchased by the co-operative in accordance with this Act;

(e) the amount paid up to the stated nominal value on the member's shares is repaid to the member in accordance with the rules of the co-operative.

65. Carrying on business with too few members

(1) A person who is a director of a co-operative commits an offence if the person knowingly allows the co-operative to continue to carry on business with fewer than the minimum number of members for more than 28 days after the number of members falls below the minimum number.

Penalty: a fine of $2 000.

(2) Each person who is found guilty of an offence under subsection (1) is also liable to satisfy all obligations of the co-operative incurred after the 28 days referred to in subsection (1), and may be sued without any other member being joined in the action.

(3) The minimum number of members allowed is —

(a) for a co-operative group, 2; or

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(b) for any other co-operative, 5, or if a lesser number is prescribed by the regulations, the prescribed number.

(4) The Registrar may, by written notice, extend and further extend in a particular case the period of 28 days referred to in subsection (1).

(5) An application for an extension must be made —

(a) in a form approved by the Registrar; and

(b) before the period to be extended ends.

Division 2 — Rights and liabilities of members

66. Rights of membership not exercisable until registered etc.

(1) A member of a co-operative is not entitled to exercise any rights of membership until —

(a) the member's name appears as a member in the register of members, directors and shares referred to in section 230(1)(a); and

(b) the member has made a payment to the co-operative for membership or acquired a share or interest that is provided for in the rules of the co-operative.

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

Penalty: a fine of $2 000.

67. Liability of members to co-operative

(1) A member of a co-operative is not, as a member, under any personal liability to the co-operative, except as provided by this Division.

(2) A member of a co-operative with a share capital is liable to the co-operative for the amount, if any, unpaid on the shares held by

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the member together with any charges payable by the member to the co-operative as required by the rules of the co-operative.

(3) A member of a co-operative without a share capital is liable to the co-operative for any charges payable by the member to the co-operative as required by the rules of the co-operative.

68. Co-operative to make information available to person intending to become a member

(1) The board of a co-operative must give written notice to each person intending to become a member of the co-operative and eligible to do so that the person may request to either inspect at the co-operative's nearest office, or be sent —

(a) a consolidated copy of the rules of the co-operative; and

(b) a copy of all special resolutions applicable to the member and passed by the members of the co-operative since its last annual general meeting, except special resolutions providing for an alteration of the rules of the co-operative; and

(c) a copy of the last annual report of the co-operative under section 235.

(2) If a person who has received notice under this section makes a request referred to in subsection (1), the co-operative must comply with that request.

69. Entry fees and regular subscriptions

(1) The rules of a co-operative may —

(a) require the payment by members of entry fees and regular subscriptions; and

(b) provide for the repayment of those fees and subscriptions on a person ceasing to be a member.

(2) The calculation of the amount of a particular member's regular subscription may be based on the amount of business the member does with the co-operative.

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(3) A co-operative must give a person intending to become a member written notice of entry fees or regular subscriptions payable by the member to the co-operative.

(4) A person who becomes a member of a co-operative is not liable to pay entry fees or regular subscriptions except —

(a) those fees or subscriptions of which the person was given written notice before becoming a member; and

(b) any regular subscriptions that may be imposed in accordance with the rules and of which the member has been given notice.

70. Members etc. may be required to deal with co-operative

(1) The rules of a co-operative may contain provisions that require a member to have specified dealings with the co-operative for a fixed period and to enter into a contract for that purpose.

(2) A co-operative may, if authorised by its rules, make a contract with a member containing provisions that require the member to have specified dealings with the co-operative for a fixed period.

(3) In particular, the provisions of the rules or a contract may require a member —

(a) to sell products through or to the co-operative; or

(b) to obtain supplies or services through or from the co-operative; or

(c) to pay to the co-operative a stated amount as liquidated damages for any failure to comply with a requirement authorised by this section.

(4) An amount required to be paid to the co-operative as liquidated damages is, for the purposes of section 72, a debt payable by the member to the co-operative.

(5) A contract authorised by this section is binding on the co-operative and all other parties even though, but for this Act, the contract would be invalid as being in restraint of trade.

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(6) Rules authorised by this section are authorised even though, but for this section, the rules might be invalid as being in restraint of trade.

71. Fines payable by members

(1) A co-operative may impose a fine on a member for an infringement of the rules of the co-operative if the rules of the co-operative so provide.

(2) A fine imposed under subsection (1) cannot exceed the maximum fine fixed by the rules in accordance with section 98.

(3) A fine cannot be imposed unless —

(a) 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 to show cause why the fine should not be imposed.

(4) The co-operative may set off the whole or any part of the fine against an amount payable to the member for produce delivered by the member to the co-operative, but no part of the fine is to be set off against any advance that, in accordance with the rules of the co-operative, is payable to the member from the co-operative, for produce so delivered.

72. Charge and set off of co-operative

(1) A co-operative has, in relation to a debt payable by a member or former member to the co-operative, a charge on each of the following —

(a) the share or interest in the capital and the credit balance and deposits of the member or former member;

(b) any rebate, bonus, dividend or interest payable to the member or former member;

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(c) any entry fees and regular subscriptions required to be repaid to a member when the member ceases to be a member.

(2) The co-operative may set off any amount paid on account of that share or other thing, or any amount credited or payable to the member or former member, in or towards payment of the debt.

(3) The charge created by this section may be enforced by the appropriation by the co-operative of the thing that is subject to the charge, but only after at least 7 days notice has been given to the member or former member.

(4) Any share in respect of which capital has been so appropriated must be cancelled.

73. Repayment of shares on resignation or expulsion

(1) When a member resigns from a co-operative or is expelled from a co-operative under its rules, the co-operative must —

(a) within 12 months after the date of resignation or expulsion, repay to the former member an amount (the ***repayable amount***) made up of the amount paid up to the stated nominal value of the shares held by the member at the resignation or expulsion date, less any amount owed by the member to the co-operative at the resignation or expulsion date under the rules of the co-operative or any contract or otherwise; or

(b) in the case of a transferred co-operative the rules of which state how to calculate the repayable amount owing to a former member at the time of resignation or expulsion, within 3 years after the date of resignation or expulsion, repay to the former member an amount in accordance with those rules; or

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(c) within 12 months after the date of resignation or expulsion, apply the repayable amount under subsection (2) if —

(i) the board considers repayment would adversely affect the financial position of the co-operative; or

(ii) the board and the former member agree.

(2) The repayable amount may be applied in one of the following ways —

(a) the co-operative may appropriate the amount as a donation to the co-operative, but only if the former member consents in writing to the donation;

(b) if the co-operative is a deposit taking co-operative, the co-operative may apply the amount as a deposit by the former member with the co-operative, subject to the requirements of section 128 as to interest on the deposit;

(c) the co-operative may issue debentures or co-operative capital units to the former member in satisfaction of the amount.

(3) If the balance sheet of the co-operative last issued before the resignation or expulsion of a member of the co-operative disclosed a loss or deficiency or a significant change in the financial position or prospects of the co-operative is subsequently reported prior to the resignation or expulsion, the paid up value of the member's shares may, for the purposes of calculating the repayable amount, be reduced as described in subsection (4).

(4) The paid up value of the member's shares may be reduced by an amount that bears to the amount of the loss or deficiency so disclosed the same proportion as the number of shares held by the member bore to the total number of shares held by all members of the co-operative as at the date of resignation or expulsion of the member.

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(5) Shares for which capital has been repaid under subsection (1)(a) or applied under subsection (1)(c) must be cancelled.

Division 3 — Death of member

74. Meaning of *interest*

In this Division —

interest, of a deceased member in a co-operative, includes —

(a) the member's membership; and

(b) any credit balance due to the member; and

(c) any loan from or to or deposit with the co-operative; and

(d) any surplus arising on the sale by the co-operative as mortgagee of any property mortgaged by the deceased to the co-operative;

transfer, of an interest, includes the payment of money.

75. Transfer of share or interest on death of member

Subject to sections 76 and 159, on the death of a member, the board must transfer the deceased member's share or interest in the co-operative to —

(a) the personal representative of the deceased member; or

(b) the person that the deceased's personal representative specifies in an application made to the co-operative within 3 months after the death of the member.

76. Transfer of small shareholdings and interests on death

(1) Subject to section 159, if the total value of a deceased member's shares or interest in a co-operative is less than $10 000 (or such other amount as may be prescribed), the board may, on the basis of such evidence as it considers sufficient, transfer the shares or interest in accordance with whichever of the following paragraphs is appropriate —

(a) if the member or person dies testate, to the person who appears to the board to be entitled to the shares or

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interest under the will of the deceased member or person;

(b) if the member or person dies intestate, to any person who appears to the board to be entitled to obtain a grant of administration of the estate of the deceased and that person must then hold the shares or interest on the same trusts as if he or she had obtained that grant.

(2) A transfer cannot be made under this section after evidence has been produced to the co-operative of the grant of letters of administration of the estate, or probate of the will, of the deceased member.

77. Value of shares and interests

The value of the shares or interest of a deceased member must be determined for the purposes of this Division in accordance with the rules of the co-operative.

78. Co-operative protected

Any transfer of property made by the board of a co-operative in accordance with this Division is valid and effectual against any demand made on the co-operative by any other person.

Division 4 — Disputes involving members

79. Grievance procedure

(1) The rules of a co-operative must set out a grievance procedure for dealing with any dispute under the rules —

(a) between a member and another member; and

(b) between a member and the co-operative.

(2) A member may appoint any person to act on behalf of the member in the grievance procedure.

(3) The grievance procedure must allow for natural justice to be applied.

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(4) In this section and section 80 —

member includes any person who was a member not more than 6 months before the dispute occurred.

80. Application to Supreme Court

(1) The Supreme Court may, on the application of a member of a co-operative, or a co-operative, make an order declaring and enforcing —

(a) the rights or obligations of members of the co-operative between themselves; or

(b) the rights or obligations of the co-operative and any member between themselves.

(2) An order may be made under this section whether or not a right of a proprietary nature is involved and whether or not the applicant has an interest in the property of the co-operative.

(3) The Supreme Court may refuse to make an order on the application or may make an order for costs against a party, whether successful or not, if the Court is of the opinion that —

(a) the issue raised in the application is trivial; or

(b) having regard to the importance of the issue, the nature of the co-operative, any other available method of resolving the issue, the costs involved, lapse of time, acquiescence or any other relevant circumstance, it was unreasonable to make the application; or

(c) the unreasonable or improper conduct of a party —

(i) has been responsible for the making of the application; or

(ii) has added to the cost of the proceedings.

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Division 5 — Oppressive conduct of affairs

81. Interpretation

In this Division, a reference to a member of a co-operative includes, in the case of a co-operative that has a share capital, a reference to a person to whom a share in the co-operative has been transmitted by will or by operation of law.

82. Application of Division

This Division does not apply in respect of anything done under Part 6.

83. Who may apply for court order

The following persons may apply to the Supreme Court for an order under this Division —

(a) the Registrar;

(b) a member who believes that the affairs of the co-operative are being conducted in a way that is —

(i) oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member; or

(ii) contrary to the interests of the members as a whole;

(c) a member who believes that an act or omission, or a proposed act or omission, by or on behalf of the co-operative, or a resolution, or a proposed resolution, of members, was or would be —

(i) oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member; or

(ii) contrary to the interests of the members as a whole.

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84. Orders that the Supreme Court may make

On application under this Division, the Supreme Court may make any order that it considers appropriate including (without being limited to) one or more of the following orders —

(a) an order that the Registrar appoint an administrator of the co-operative;

(b) an order that the co-operative be wound-up;

(c) an order for regulating the conduct of affairs of the co-operative in the future;

(d) an order for the repayment of the member's shares in accordance with the provisions of this Act for repayment of share capital;

(e) an order for the purchase of the shares of any member by the co-operative and for the reduction accordingly of the co-operative's capital;

(f) an order directing the co-operative to institute, prosecute, defend or discontinue specified proceedings, or authorising a member or members of the co-operative to institute, prosecute, defend or discontinue specified proceedings in the name and on behalf of the co-operative;

(g) an order appointing a receiver or a receiver and manager of property of the co-operative;

(h) an order restraining a person from engaging in specified conduct or from doing a specified act or thing;

(i) an order directing a co-operative to become registered as a company under the Corporations Act;

(j) an order requiring a person to do a specified act or thing;

(k) an order as to costs.

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85. Basis on which Supreme Court makes orders

The Supreme Court may make an order under this Division if it considers that —

(a) the affairs of a co-operative are being conducted in a way that is —

(i) oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member (the ***oppressed member***), whether or not in the capacity of a member; or

(ii) contrary to the interests of the members as a whole;

or

(b) an act or omission, or a proposed act or omission, by or on behalf of a co-operative, or a resolution, or a proposed resolution, of members of a co-operative, was or would be —

(i) oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member (the ***oppressed member***), whether or not in the capacity of a member; or

(ii) contrary to the interests of the members as a whole.

86. Winding-up need not be ordered if oppressed members prejudiced

The Supreme Court need not make an order under this Division for the winding-up of a co-operative if the Court considers that the winding-up of the co-operative would unfairly prejudice an oppressed member.

87. Application of winding-up provisions

If an order that a co-operative be wound-up is made under this Division, the provisions of this Act relating to the winding-up of co-operatives apply, with any changes that are necessary, as if

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the order had been made on an application filed in the Supreme Court by the co-operative.

88. Changes to rules

(1) If an order under this Division makes an alteration to the rules of a co-operative —

(a) the alteration has effect as if it had been properly made by special resolution of the co-operative; and

(b) the co-operative cannot (despite any other provisions of this Act) without the leave of the Supreme Court make any further alteration to the rules inconsistent with the provisions of the order.

(2) On receiving a copy of an order altering the rules of a co-operative the Registrar must register the alteration.

89. Copy of order to be lodged with Registrar

An applicant for an order under this Division must lodge an office copy of the order with the Registrar within 14 days after it is made.

Penalty: a fine of $1 000.

Division 6 — Proceedings on behalf of a co-operative by members and others

90. Bringing, or intervening in, proceedings on behalf of a co-operative

(1) A person may bring proceedings on behalf of a co-operative, or intervene in proceedings to which a co-operative is a party for the purpose of taking responsibility on behalf of the co-operative for those proceedings, or for a particular step in those proceedings (for example, compromising or settling them), if —

(a) the person is —

(i) a member, former member, or person entitled to be registered as a member, of the co-operative or of a related corporation; or

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(ii) an officer or former officer of the co-operative; or

(iii) the Registrar;

and

(b) the person is acting with leave granted under section 91.

(2) Proceedings brought on behalf of a co-operative may be brought in the co-operative's name.

91. Applying for and granting leave

(1) A person referred to in section 90(1)(a) may apply to the Supreme Court for leave to bring, or to intervene in, proceedings.

(2) The Supreme Court may grant the application if it is satisfied that —

(a) it is probable that the co-operative will not itself bring the proceedings, or properly take responsibility for them, or for a step in them; and

(b) the applicant is acting in good faith; and

(c) it is in the best interests of the co-operative that the applicant be granted leave; and

(d) if the applicant is applying for leave to bring proceedings, there is a serious question to be tried; and

(e) either —

(i) at least 14 days before making the application, the applicant gave written notice to the co-operative of the intention to apply for leave and of the reasons for applying; or

(ii) it is appropriate to grant leave even if subparagraph (i) is not satisfied.

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92. Substitution of another person for the person granted leave

(1) Any of the following persons may apply to the Supreme Court for an order that they be substituted for a person to whom leave has been granted under section 91 —

(a) a member, former member, or person entitled to be registered as a member, of the co-operative or a related corporation;

(b) an officer, or former officer, of the co-operative;

(c) the Registrar.

(2) The application may be made whether or not the other person has already brought the proceedings or made the intervention.

(3) The Supreme Court may make the order if it is satisfied that —

(a) the applicant is acting in good faith; and

(b) in all the circumstances, it is appropriate to make the order.

(4) An order substituting one person for another person has the effect that —

(a) the grant of leave is taken to have been made in favour of the substituted person; and

(b) if the other person has already brought the proceedings or intervened, the substituted person is taken to have brought those proceedings or to have made that intervention.

93. Effect of ratification by members

(1) A ratification or approval of conduct by members of a co-operative —

(a) does not prevent a person from bringing or intervening in proceedings with leave under section 91 or from applying for leave under that section; and

(b) does not have the effect that proceedings brought or intervened in with leave under section 91 must be

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decided in favour of the defendant, or that an application for leave under that section must be refused.

(2) The Supreme Court may take into account a ratification or an approval of the conduct by members of a co-operative in deciding what order or judgment (including as to damages) to make in proceedings brought or intervened in with leave under section 91 or in relation to an application for leave under that section.

(3) In taking a ratification or approval into account under subsection (2), the Supreme Court may have regard to —

(a) how well-informed about the conduct the members were when deciding whether to ratify or approve that conduct; and

(b) whether the members who ratified or approved the conduct were acting for proper purposes.

94. Leave to discontinue, compromise or settle proceedings brought, or intervened in, with leave

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

95. General powers of the Supreme Court

(1) The Supreme Court may make any order, and give any direction, that it thinks just in relation to proceedings brought or intervened in with leave, or in relation to an application for leave, including —

(a) interim orders; and

(b) directions about the conduct of the proceedings, including requiring mediation; and

(c) an order directing the co-operative, or an officer of the co-operative, to do, or not to do, any act; and

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(d) an order appointing an independent person to investigate, and report to the Supreme Court, on —

(i) the financial affairs of the co-operative; or

(ii) the facts or circumstances that gave rise to that cause of action the subject of the proceedings; or

(iii) the costs incurred in the proceedings and the person granted leave.

(2) A person appointed by the Supreme Court under subsection (1)(d) is entitled, on giving reasonable notice to the co-operative, to inspect and make copies of any books of the co-operative for any purpose connected with their appointment.

96. Power of Supreme Court to make costs order

At any time, the Supreme Court may, in relation to proceedings brought or intervened in with leave under section 91 or an application for leave under that section, make any orders it thinks just about the costs of the person who applied for or was granted leave, of the co-operative or of any other party to the proceedings or application, including an order requiring indemnification for costs.

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Part 5 — Rules

97. Effect of rules

(1) The rules of a co-operative have the effect of a contract under seal —

(a) between the co-operative and each member; and

(b) between the co-operative and each director, the secretary and the chief executive officer of the co-operative; and

(c) between a member and each other member.

(2) Under the contract, each of those persons agrees to observe and perform the provisions of the rules as in force for the time being so far as those provisions apply to that person.

98. Content of rules

(1) The rules of a co-operative must state or otherwise make provision for the matters specified in Schedule 1.

(2) The rules must be divided into paragraphs numbered consecutively.

(3) The rules may state the objects of the co-operative.

(4) The rules may incorporate any provision of the model rules.

(5) The rules may provide for the co-operative to impose a fine, payable to the co-operative, on a member for an infringement of the rules.

(6) If the rules provide for the imposition of a fine, the rules must specify the maximum fine that may be imposed on a member.

(7) The maximum fine fixed by the rules cannot be more than an amount prescribed by the regulations as the maximum fine.

(8) The rules may contain other provisions not inconsistent with this Act.

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99. Purchase and inspection of copy of rules

(1) A member is entitled to obtain from a co-operative a copy of its rules on payment of the amount required by the rules of the co-operative or, if the rules do not prescribe an amount, on payment of $5.

(2) The amount required by the rules cannot be more than the fee prescribed by the regulations for obtaining a copy of the rules from the Registrar.

(3) A person is entitled to obtain from the Registrar a copy of the rules of a co-operative on payment of the fee prescribed by the regulations.

100. False copies of rules

(1) A person who gives to a member of a co-operative or to a person intending or applying to become a member of a co-operative a copy of any rules or any alterations of rules, other than those which have been duly registered, representing that they are binding on the members of the co-operative is guilty of an offence.

Penalty: a fine of $1 000.

(2) A person who alters any of the rules of a co-operative after they have been registered and circulates them representing that they have been duly registered when they have not been is guilty of an offence.

Penalty: a fine of $1 000.

101. Model rules

(1) The regulations may prescribe model rules.

(2) The model rules may make provision for any matter for which the rules of a co-operative may make provision.

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102. Rules can only be altered in accordance with this Act

The rules of a co-operative cannot be altered except in accordance with this Act.

103. Approval of alteration of rules

(1) A proposed alteration of the rules of a co-operative must be approved by the Registrar before the resolution altering the rules is passed by the co-operative or the board of the co-operative.

(2) A draft of the proposed alteration must be submitted to the Registrar at least 21 days (or a shorter period the Registrar may allow in a particular case) before —

(a) the notice of the proposed special resolution altering the rules is due to be given to the members by the co-operative; or

(b) the resolution is due to be passed by the board of the co-operative.

(3) The proposed alteration submitted under subsection (2) must be accompanied by a written statement specifying the date on which the notice is due to be given to members or the resolution is due to be passed by the board, as the case may be.

(4) The proposed alteration must —

(a) be in accordance with section 98; and

(b) be made in a form approved by the Registrar; and

(c) be accompanied by a statement setting out the reasons for the alteration.

(5) The Registrar may —

(a) approve the proposed alteration as submitted; or

(b) approve a different alteration to that submitted; or

(c) refuse to approve the proposed alteration.

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(6) Subject to subsection (7), the Registrar approves a proposed alteration by giving written notice of the approval to the co-operative.

(7) The Registrar is taken to have approved a proposed alteration as submitted to the Registrar unless at least 5 days before the date specified in the written statement submitted under subsection (3), the Registrar gives written notice to the co-operative that the Registrar —

(a) has approved a different alteration to that submitted; or

(b) has refused to approve the proposed alteration; or

(c) is still considering the matter.

104. Alteration by special resolution

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

105. Alteration by resolution of board

(1) The rules of a co-operative may be altered by a resolution passed by the board if the alteration does no more than give effect to a requirement, restriction or prohibition imposed under the authority of this Act.

(2) If the rules of a co-operative are altered under this section, the co-operative must cause the alteration to be notified in writing to its members as soon as practicable after the alteration takes effect and in any event not later than the day when notice is given to the members of the next annual general meeting of the co-operative after the alteration takes effect.

106. Alteration does not take effect until registered

(1) An alteration of the rules of a co-operative does not take effect unless and until it is registered by the Registrar.

(2) An application for registration of an alteration must —

(a) be made in a form approved by the Registrar; and

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(b) be made within 28 days, or a shorter or longer period prescribed by the regulations, after the resolution to alter the rules is passed; and

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

(3) The Registrar must register the alteration unless —

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

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

(4) A certificate of registration of an alteration of the rules of a co-operative given by the Registrar is, in favour of any person advancing money to the co-operative on the faith of the certificate or in favour of any guarantor of that advance, evidence that the alteration in the rules was properly made.

107. Appeal against refusal to approve alteration

A co-operative may appeal to the Supreme Court against a failure of the Registrar to approve an alteration of its rules.

108. Appeal against refusal to register

A co-operative may appeal to the Supreme Court against a failure of the Registrar to register an alteration of its rules.

109. Supreme Court's powers on appeal

The Supreme Court may make any order it considers appropriate to dispose of an appeal under section 107 or 108.

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Part 6 — Active membership

Division 1 — Definitions

110. Meaning of *active membership resolution*

In this Part —

active membership resolution has the meaning given in section 112(2).

111. What is active membership

For the purposes of this Act, a member of a co-operative is an active member of the co-operative if the member —

(a) uses or supports an activity of, or maintains a relationship or an arrangement with, the co-operative, for carrying on a primary activity of the co-operative, in the way and to the extent that the rules of the co-operative provide is sufficient to establish active membership; or

(b) maintains any other relationship or arrangement with the co-operative for carrying on a primary activity of the co-operative that the regulations provide is sufficient to establish active membership.

112. What are active membership provisions and resolutions

(1) Active membership provisions in the rules of a co-operative are provisions in the rules that state —

(a) which of the activities of the co-operative are the primary activities of the co-operative; and

(b) the way in which and the extent to which a member of the co-operative must use or support an activity of, or maintain a relationship or an arrangement with, the co-operative for carrying on a primary activity of the co-operative, in order to establish active membership of the co-operative.

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(2) An active membership resolution is a resolution that would, if given effect to, make or amend active membership provisions in the rules of a co-operative.

Division 2 — Rules to contain active membership provisions

113. Number of primary activities required

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

114. Rules to contain active membership provisions

The board of a co-operative must ensure that the rules of the co-operative contain active membership provisions in accordance with this Part.

115. Factors and considerations for determining primary activities etc.

(1) The board of a co-operative must ensure that the relevant factors and considerations are taken into account in deciding —

(a) which of the activities of a co-operative are its primary activities; and

(b) the way and extent to which a member is required to use or support an activity of, or maintain a relationship or an arrangement with, a co-operative, for carrying on a primary activity of the co-operative, in order to establish active membership of the co-operative.

(2) The relevant factors and considerations are —

(a) the primary activity or, if more than one, the primary activities taken together must form the basic purpose for which the co-operative exists and a significant contribution to the business of the co-operative; and

(b) the way and extent of the required utilisation, support, relationship or arrangement should be reasonable when considered in relation to the activities of the co-operative as a whole; and

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(c) any other factors and considerations that are prescribed by the regulations.

(3) The regulations may —

(a) provide for the matters to be taken into account in deciding whether an activity makes a significant contribution to the business of the co-operative; and

(b) specify minimum percentages of turnover, minimum amounts of income or minimum amounts of business necessary to constitute that significant contribution.

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

116. Active membership provisions — distributing co-operatives

The only active membership provisions that are permitted to be contained in the rules of a distributing co-operative are —

(a) provisions requiring a member to use an activity of the co-operative for carrying on a primary activity specified in the provisions to establish active membership; and

(b) any other active membership provisions that the Registrar may approve.

117. Regular subscription — active membership of non-distributing co-operative

(1) Active membership provisions for a non-distributing co-operative may provide that the payment of a regular subscription by a member of the co-operative, to be applied to a primary activity of the co-operative, is sufficient to establish active membership of the co-operative.

(2) A member of a co-operative who would, on payment of the subscription, be an active member of a co-operative is taken to be an active member until the subscription is payable.

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Division 3 — Active membership resolutions

118. Notice of meeting

(1) At least 21 days notice must be given to members of a co-operative of a meeting at which an active membership resolution is to be proposed.

(2) The notice must, in addition to the other matters required under this Act to be stated —

(a) contain the full text of the proposed resolution; and

(b) contain a copy of section 120.

119. Eligibility of directors to vote on proposal at board meeting

If the board of a co-operative is meeting to consider a proposal to submit an active membership resolution to a meeting of the co-operative all the directors are eligible to vote on that proposal at the meeting of the board.

Division 4 — Cancellation of membership of inactive or missing members

120. Cancellation of membership of inactive or missing member

(1) In this section —

required period, in relation to a co-operative, means —

(a) 3 years; or

(b) a shorter period if specified in the rules of the co-operative.

(2) Subject to subsection (3), sections 123 and 124, the board of a co-operative must declare the membership of a member cancelled if —

(a) the whereabouts of the member are not presently known to the co-operative and have not been known to the

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co-operative for at least the required period before that time; or

(b) the member is not presently an active member of the co-operative and has not been an active member of the co-operative at any time during the required period immediately before that time.

(3) Subsection (2) applies to a member only if he or she was a member of the co-operative throughout the required period.

(4) Whether a member was an active member at a particular time in the past is to be decided by reference to the active membership provisions in force at that time.

(5) The board's declaration under this section has the effect of cancelling the membership concerned.

(6) A person may apply to the Supreme Court for an order under section 126 in relation to the cancellation of the person's membership under this section.

121. Share to be forfeited if membership cancelled

(1) If a co-operative has a share capital, the board of the co-operative must declare the shares of a member to be forfeited at the same time as the member's membership is cancelled under section 120.

(2) The board's declaration has the effect of forfeiting the shares concerned.

(3) Nothing in this section affects the operation of section 127.

122. Failure to cancel membership — offence by director

If the board of a co-operative fails to cancel the membership of a member as required by this Part, a director of the co-operative who did not use all due diligence to prevent the failure commits an offence.

Penalty: a fine of $2 000.

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123. Deferral of forfeiture by board

(1) The board of a co-operative may by resolution defer cancellation of a member's membership for a period of up to 12 months (the ***deferral period***) —

(a) if the board has reasonable grounds to believe that a member has ceased to be an active member because of unusual circumstances that prevent the member fulfilling his or her active membership obligations; or

(b) if —

(i) the board thinks that during the deferral period an active membership resolution may be put to the members of the co-operative; and

(ii) the effect of the resolution would be relevant to the question of whether the member is an active member.

(2) The board of the co-operative must review the resolution to defer within the deferral period to determine if a further resolution should be made under subsection (1).

124. Cancellation of membership prohibited in certain circumstances

Unless the regulations otherwise provide, the board of a co-operative must not declare the membership of a member to be cancelled under this Part —

(a) if the co-operative is insolvent; or

(b) if the co-operative is under administration under the Corporations Act Part 5.3A as applying under this Act; or

(c) if a compromise or an arrangement is being administered in relation to the co-operative; or

(d) if the co-operative is in the course of being wound-up; or

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(e) if an appointment of a receiver, whether or not a receiver and manager, of any property of the co-operative is in force; or

(f) if the co-operative has, for the purposes of being registered as a company under the Corporations Act, lodged with the Registrar a copy of the entry made in the minute book of the co-operative under section 185; or

(g) in other circumstances as may be prescribed by the regulations.

125. Notice of intention to cancel membership

(1) Unless subsection (2) applies, the board of a co-operative must ensure that notice of its intention to declare the membership of a member to be cancelled is given to the member not less than 28 days prior to the day of the cancellation.

(2) Notice is not required to be given under this section if —

(a) the member's whereabouts are unknown to the co-operative; or

(b) the amount required to be repaid to the member in relation to the cancelled membership, whether because of the cancellation of shares or otherwise, does not exceed the amount prescribed by the regulations, or if an amount is not prescribed, $100.

126. Order of Supreme Court against cancellation

(1) If the Supreme Court is satisfied that the cancellation of a member's membership under section 120 was or would be unreasonable, the Court may by order direct that the membership should not have been cancelled or should not be cancelled.

(2) While an order is in force under this section —

(a) the membership concerned is not required to be cancelled and any shareholding of the member is not required to be forfeited; and

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(b) the person whose membership was cancelled is entitled to be reinstated as a member of the co-operative with all the rights and entitlements, including any shareholding, attaching to or arising from the former membership.

(3) Reinstatement of a member under this section is to be effected in accordance with the directions of the Supreme Court.

127. Repayment of amounts due because of cancelled membership

(1) If the membership of a member of a co-operative is cancelled under this Part, the co-operative must —

(a) within 12 months after the date of cancellation, repay to the former member an amount (the ***repayable amount***) made up of the amount paid up to the stated nominal value of the shares forfeited by the member at the time of cancellation less any amount owed by the member to the co-operative at that time under the rules of the co-operative or any contract or otherwise; or

(b) in the case of a transferred co-operative the rules of which state how to calculate the repayable amount owing to a former member at the time of cancellation of membership, within 3 years after the date of cancellation, repay to the former member an amount in accordance with those rules; or

(c) within 12 months after the date of cancellation, apply the repayable amount under subsection (2) if —

(i) the board considers that repayment would adversely affect the financial position of the co-operative; or

(ii) the board and the former member agree.

(2) The repayable amount may be applied in one of the following ways —

(a) if the co-operative is a deposit-taking co-operative, the co-operative may apply the amount as a deposit by the

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former member with the co-operative, subject to the requirements of section 128 as to interest on the deposit;

(b) the co-operative may issue debentures or co-operative capital units to the former member in satisfaction of the amount;

(c) the co-operative may appropriate the amount as a donation to the co-operative, but only if the former member consents in writing to the donation.

(3) If the balance sheet of the co-operative last issued before the cancellation of a member's membership disclosed a loss or deficiency or a significant change in the financial position or prospects of the co-operative is subsequently reported prior to the loss or deficiency, the paid up value of the member's shares may, for the purposes of calculating the repayable amount, be reduced as described in subsection (4).

(4) The paid up value of the member's shares may be reduced by an amount that bears to the amount of the loss or deficiency so disclosed the same proportion as the number of shares held by the member bore to the total number of shares held by all members of the co-operative at the time of cancellation.

(5) If the former member is subsequently readmitted to membership, any amount held by the co-operative under this section must, if the member so requests, be applied towards the cost of admission to membership, including any subscription for share capital.

(6) Despite subsection (2)(c), if —

(a) the co-operative cannot, after taking all reasonable action, find the former member; and

(b) the payment due is less than the amount prescribed by the regulations, or if an amount is not prescribed, $100,

the co-operative may appropriate the payment as a donation to the co-operative.

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128. Interest on deposits, debentures and co-operative capital units

(1) This section applies when —

(a) the amount payable to a former member under section 73 or 127 is applied as a deposit with the co-operative; or

(b) the co-operative allots or issues debentures or co-operative capital units to the former member in satisfaction of that amount.

(2) The deposit, debenture or co-operative capital unit bears interest during any period —

(a) in the case of a co-operative with share capital —

(i) at the rate, or if there is more than one rate, at the higher or highest rate, of dividend payable for that period on the share capital of the co-operative; or

(ii) if the rate of dividend payable for that period has not been determined, at the rate, or the higher or highest rate, payable for the immediately preceding period for which a rate has been decided; or

(iii) if a rate of dividend has never been determined in relation to the share capital of the co-operative, at the rate that the board of the co-operative considers reasonable;

or

(b) in the case of a co-operative without share capital, at the rate that the board of the co-operative considers reasonable; or

(c) if the rules provide for a rate to be payable that is higher than the rate applicable under paragraph (a) or (b), at that higher rate.

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(3) A former member may agree to the rate of interest being less than that which would otherwise be payable under this section and may agree to no interest being paid.

(4) The following provisions of the Corporations Act, as applied by section 250 of this Act, do not apply to an allotment or issue of debentures or co-operative capital units under this section —

(a) Chapter 2L;

(b) Chapter 6D.

129. Repayment of deposits, and redemption of debentures and co-operative capital units

(1) A deposit, debenture or co-operative capital unit to which an amount payable to a former member is applied under this Division or section 73(2) is to be repaid or redeemed, as the case may be, as soon as repayment or redemption would not, in the opinion of the board, adversely affect the financial position of the co-operative.

(2) The deposit, debenture or co-operative capital unit must in any case be repaid or redeemed within 10 years, or within any shorter period that the rules of the co-operative may require, after cancellation of the member's membership.

130. Register of cancelled memberships

A co-operative must keep a register stating the particulars, as prescribed by the regulations, of persons whose membership has been cancelled under this Part.

Division 5 — Entitlements of former members of distributing co-operatives

131. Application of Division

(1) This Division only applies to distributing co-operatives.

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(2) Sections 132, 133 and 134 apply to the extent they are not inconsistent with the rules of each particular distributing co-operative.

132. Former shareholders to be taken to be shareholders for certain purposes

(1) Even though a person's shares in a co-operative have been forfeited under this Part, the person is to be taken to be the holder of shares in the co-operative (the same in all respects as those that were forfeited) for the following purposes —

(a) the entitlements of a shareholder in relation to the purchase of shares in the co-operative pursuant to an offer described in section 289(a), (b) or (c) or the purchase of all the shares in the co-operative, if the offer or purchase occurs within 2 years after the person's shares were forfeited;

(b) the entitlement of a shareholder when the co-operative becomes registered as a company if the relevant special resolution under section 306 is passed within 2 years after the person's shares were forfeited;

(c) the entitlement of a shareholder to a distribution of surplus in a winding-up of the co-operative that commences within 2 years after the person's shares were forfeited.

(2) Subsection (1)(a) does not apply to —

(a) an offer described in section 289(a) or (c) that is made by another co-operative; or

(b) the purchase of all the shares in the co-operative by another co-operative.

(3) Subsection (1)(c) does not apply if the winding-up is for the purposes of a merger under Part 12 Division 1.

(4) For the removal of doubt, it is declared that the entitlement under subsection (1)(a) of a person whose shares have been forfeited does not include an entitlement to vote on any matter.

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(5) This section does not apply to a forfeited shareholding in a co-operative if section 133 operates to require that forfeited shareholding to be regarded as a forfeited shareholding in another co-operative.

133. Entitlements of former shareholders on mergers etc.

(1) This section applies when a person's shares in a co-operative (the ***original co-operative***) are forfeited under this Part and within 2 years after that forfeiture —

(a) the original co-operative becomes a subsidiary of another co-operative (the ***new co-operative***); or

(b) another co-operative (the ***new co-operative***) is created as a result of a merger under Part 12 Division 1 involving the original co-operative; or

(c) the engagements of the original co-operative are transferred to another co-operative (the ***new co-operative***) under Part 12 Division 1.

(2) A person referred to in subsection (1) is, for the purposes of the operation of section 132, and the further operation of this section, taken to have held shares in the new co-operative and as having had those shares in the new co-operative forfeited under this Part when the person's shares in the original co-operative were forfeited.

(3) The extent of the forfeited shareholding in the new co-operative is determined as follows —

(a) if the entitlement of active members of the original co-operative in the circumstances concerned is solely an entitlement to be allotted shares in the new co-operative, the forfeited shareholding in the new co-operative is the shareholding to which the person would have been entitled had the person's shares in the original co-operative not been forfeited;

(b) in any other case, the forfeited shareholding in the new co-operative is the shareholding that is the same in all

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respects as the forfeited shareholding in the original co-operative.

(4) The determination under subsection (3)(a) of the person's shareholding in the new co-operative must be made —

(a) solely on the basis of the person's shareholding in the original co-operative when the shares were forfeited or, in a further operation of this section in respect of the person, when the person was first to be regarded as having a forfeited shareholding in the original co-operative; and

(b) without regard to any additional shareholding in the original co-operative to which the person would have become entitled had the shares not been forfeited, whether as a result of any bonus share issue or otherwise.

134. Set off of amounts repaid etc. on forfeited shares

(1) If a person has an entitlement because of the operation of section 133, the entitlement operates to end any liability of the co-operative —

(a) to repay to the person under section 127 any amount for the forfeited shares concerned; or

(b) in respect of a deposit held by the co-operative, or debentures allotted or issued to the person, or co-operative capital units issued under section 127 for the forfeited shares concerned, except a liability to pay interest that is payable but unpaid.

(2) If an amount has been repaid to a person under section 127 or 129, the amount repaid is to be set off against any entitlement of the person under section 132 for the forfeited shares concerned.

(3) If the amount repaid cannot be set off against the entitlement because the entitlement is not, or is only partly, an entitlement to money, the entitlement is lost unless the person pays to the

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co-operative the amount repaid to the person and does so within the period required under subsection (4).

(4) If the circumstances referred to in subsection (3) arise, the co-operative concerned must —

(a) give written notice of the matter by post to the person concerned at the person's address last known to the co-operative, specifying a period of not less than 28 days after the notice is given during which any amount repaid must be paid to the co-operative; and

(b) publish a general notice to that effect in a newspaper circulating generally in the district in which the registered office of the co-operative is situated.

135. Regulations may exempt co-operatives from provisions

The regulations may exempt a co-operative from a provision of this Division.

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Part 7 — Shares

Division 1 — Nature of share

136. Nature of share in co-operative

(1) A share or other interest in a co-operative —

(a) is personal property; and

(b) is transferable or transmissible as provided by this Act and the rules of the co-operative; and

(c) is, subject to the rules of the co-operative, capable of devolution by will or by operation of law.

(2) Subject to subsection (1) —

(a) the laws applying to ownership of and dealing with personal property apply to a share or other interest of a member in a co-operative as they apply to other property; and

(b) equitable interests in respect of a share or other interest of a member in a co-operative may be created, dealt with and enforced as in the case of other personal property.

Division 2 — Disclosure

137. Disclosure to intending shareholders in distributing co-operative

(1) An eligible person who intends to apply for shares in a co-operative and is not already a shareholder in the co-operative may request, from the board of the distributing co-operative, a current disclosure statement that —

(a) has been approved by the Registrar under section 16(5); or

(b) complies with section 138 and has been lodged by the co-operative with the Registrar.

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(2) The board of the distributing co-operative is to respond to a request for a current disclosure statement within 7 days.

138. Content of disclosure statement to intending shareholders

(1) A disclosure statement given to a person under section 137 must contain —

(a) a statement of the rights and liabilities attaching to shares; and

(b) a statement that the person may request to either inspect at the co-operative's nearest office, or be sent —

(i) the last annual report of the co-operative under section 235(2); and

(ii) any other relevant information about the financial position and prospects of the co-operative if there has been a significant change since the date of the last annual report;

and

(c) any other information the Registrar directs.

(2) If a person who has received a disclosure statement makes a request under subsection (1)(b), the co-operative must comply with that request within 7 days.

139. Exemptions for disclosure statements

(1) The Registrar may, by order published in the *Gazette*, exempt the board of a distributing co-operative, or the boards of a class of distributing co-operatives from a requirement under section 137 or 138.

(2) An exemption under subsection (1) may be given only if the Registrar is satisfied that compliance with the requirement would be inappropriate in the circumstances or would impose an unreasonable burden.

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Division 3 — Issues of shares

140. Shares — general

(1) The share capital of a co-operative varies in amount according to the nominal value of shares from time to time subscribed.

(2) Shares are to be of a fixed amount which is to be specified in the rules of the co-operative.

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

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

141. Application of Corporations Act for particular share subscriptions

(1) If subsection (2) applies to shares of a co-operative, the shares are declared to be applied Corporations legislation matters for the *Corporations (Ancillary Provisions) Act 2001* Part 3 in relation to the Corporations Act sections 716(2), 722, 723(2), 724(1)(a) and (2)(a) and 734, subject to the following modifications —

(a) the provisions apply as if a co-operative were a company;

(b) a reference in the provisions to ASIC is to be read as a reference to the Registrar;

(c) a reference in the provisions to a disclosure document is to be read as a reference to a disclosure statement, of any type, under this Act;

(d) a reference in the provisions to securities is to be read as a reference to shares;

(e) any other modifications, within the meaning of the *Corporations (Ancillary Provisions) Act 2001* Part 3, that are prescribed by the regulations.

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(2) Shares in a co-operative are subject to the declaration under subsection (1) if —

(a) the shares are offered to persons who are not shareholders in the co-operative; or

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

142. Minimum paid up amount

(1) A share in a co-operative other than a transferred co-operative must not be allotted unless at least 10% of the nominal value of the share has been paid.

(2) Any balance unpaid for shares at the time of allotment must be paid in a way specified in the rules of the co-operative or permitted by this Act.

(3) This section does not apply to a bonus share issued under section 147 or 271.

143. Shares not to be issued at a discount

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

144. Issue of shares at a premium

(1) A distributing co-operative may issue shares at a premium.

(2) A premium may be in the form of cash or other valuable consideration.

(3) If a distributing co-operative issues shares for which it receives a premium, an amount equal to the total amount or value of the premiums on the shares must be transferred to a share premium account.

(4) The share premium account is to be treated as paid up share capital of the distributing co-operative and may be applied in any one or more of the following ways —

(a) in paying up unissued shares to be issued to members of the co-operative as fully paid bonus shares;

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(b) in paying up, in whole or in part, the balance unpaid on shares previously issued to members of the co-operative;

(c) in the payment of dividends, if those dividends are satisfied by the issue of shares to members of the co-operative;

(d) in writing off the expenses incurred in establishing the co-operative;

(e) in providing for the premium payable on redemption of shares, debentures or co-operative capital units.

145. Joint ownership of shares

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

146. Members may be required to take up additional shares

(1) The board of a distributing co-operative may require a member to take up or subscribe for additional shares under a proposal approved by a special resolution of the co-operative.

(2) The board of a distributing co-operative may deduct amounts in payment for additional shares from money payable to members for dealings with the co-operative, under a proposal approved by a special resolution of the co-operative.

(3) A proposal to require a member to take up or subscribe for additional shares must —

(a) be accompanied by a disclosure statement, approved by the Registrar, that explains the purpose for which the funds raised by the issue of the additional shares are to be used; and

(b) clearly show the total number of additional shares to be issued and the basis on which the shares are to be apportioned among members; and

(c) be accompanied by a statement informing the member that the member may inform the board by notice on or

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before the date specified in the statement, being a date before the passing of the special resolution, that the member resigns on the passing of the special resolution.

(4) A proposal to deduct amounts in payment for additional shares from amounts payable to members for dealings with the distributing co-operative must clearly show —

(a) the basis on which the deductions are to be made; and

(b) the time and way of making those deductions.

(5) A proposal approved under this section is binding on —

(a) all members of the distributing co-operative at the date of the passing of the special resolution, other than a member who has given a notice of resignation in accordance with subsection (3)(c); and

(b) all persons who become members of the distributing co-operative after that date and before the total number of shares to be issued under the proposal has been issued.

(6) Sections 16 (except subsection (3)) and 29 apply to the approval of a disclosure statement under this section with any necessary changes and in particular as if any reference in section 16 to a formation meeting were a reference to the special resolution.

(7) This section does not apply to the issue of bonus shares to a member under section 271(2).

147. Bonus share issues

(1) In addition to section 271(2) a distributing co-operative may issue bonus shares to members of the co-operative if the assets of the co-operative —

(a) have been sold at a profit; or

(b) have been revalued at a greater value than that disclosed before the revaluation in the books of the co-operative.

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(2) This section does not apply if the assets were acquired for resale at a profit.

148. Restrictions on bonus shares

Bonus shares issued under section 147 may be issued in accordance with the rules of the co-operative, subject to the following restrictions —

(a) each issue must have been approved by a special resolution of the co-operative;

(b) they are to be issued as fully paid up shares with no payment required to be made by a member of the co-operative to whom they are issued;

(c) they are to be issued only for shares of the same class of shares that are fully paid up as at the date of issue of the bonus shares;

(d) the total nominal value of bonus shares issued by a co-operative in any one year cannot be more than 20%, or another percentage prescribed by the regulations, of the nominal value of the issued share capital of the co-operative immediately before the date of issue of the bonus shares.

149. Notice about bonus shares

Notice of the meeting or postal ballot at which a resolution is to be proposed as a special resolution for the purpose of approving a bonus share issue must be accompanied by —

(a) a statement of the value of the assets concerned as disclosed in the books of the co-operative before the sale or revaluation; and

(b) if the issue arises from, or partly from, a sale of assets, a statement of the price for which the assets were sold; and

(c) if the issue arises from, or partly from, a revaluation of assets, a certificate of value of the assets, being a certificate given in relation to a valuation made not more

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than 12 months before the date of the notice by a person prescribed by the regulations or a person having qualifications prescribed by the regulations; and

(d) particulars of acquisitions of shares in the co-operative made within the 3 years immediately preceding the date of the notice by or on behalf of each of its directors and his or her spouse (or de facto partner) and the father, mother, children, brothers and sisters of each such director and spouse (or de facto partner); and

(e) a certificate signed by 2 directors of the co-operative stating that to the best of their knowledge and belief the issue of bonus shares would not be imprudent and that no circumstances are known to them as to why the issue should not take place.

Division 4 — Beneficial and non-beneficial interest in shares

150. Direction to disclose

The board of a co-operative may direct a person to disclose matters as described in section 151 if the person is —

(a) a member of the co-operative; or

(b) a person named in a disclosure made in response to a previous direction under this section as having a relevant interest in, or having given instructions about, shares in the co-operative.

151. Disclosure by member of relevant interests and instructions

(1) A person given a direction under section 150 must, unless subsection (2) applies, disclose to the board —

(a) full details of the person's relevant interest in the shares of the co-operative (the ***relevant shares***) and of the circumstances that gave rise to the interest; and

(b) the name and address of each other person who has a relevant interest in the relevant shares together with full details of —

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(i) the nature and extent of the interest; and

(ii) the circumstances that gave rise to the other person's interest;

and

(c) the name and address of each person who has given the person instructions about —

(i) the acquisition or disposal of the shares; or

(ii) the exercise of any voting or other rights attached to the shares; or

(iii) any other matter relating to the shares,

together with full details of those instructions, including the date or dates on which they were given.

Penalty: a fine of $3 000.

(2) A matter referred to in subsection (1)(b) or (c) need only be disclosed to the extent to which the matter is ascertainable by the person required to make the disclosure.

(3) The disclosure must be made within the period of 5 days after the person is given the direction, unless within that period the person applies in writing to the Registrar for an exemption from compliance with the direction.

(4) The Registrar may, in writing, exempt a person from complying with a direction if the Registrar believes the direction is unjustified.

(5) If the Registrar refuses to give an exemption under subsection (4), the disclosure required by the direction must be made within the period of 5 days after the person receives written notice of that refusal.

(6) A board that receives information from a person acting on a direction given to the person by the board must pay to the person the fee, if any, prescribed by the regulations.

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152. Registration as trustee etc. on death of owner of shares

(1) A trustee, executor or administrator of the estate of a dead person who was the registered holder of a share in a co-operative may be registered as the holder of the share as trustee, executor or administrator of that estate.

(2) A trustee, executor or administrator of the estate of a dead person who was entitled in equity to a share in a co-operative may, with the consent of the co-operative and of the registered holder of the share, be registered as the holder of the share as trustee, executor or administrator of that estate.

153. Registration as administrator of estate on incapacity of shareholder

(1) This section applies to a person (the ***appointed person***) who is appointed under a law of a State or Territory relating to the administration of the estates of persons who, through mental or physical infirmity, are incapable of managing their affairs, to administer the estate of another person (the ***incapable person***).

(2) If the incapable person is the registered holder of a share in a co-operative, the appointed person may be registered as the holder of that share as administrator of the estate of the incapable person.

(3) If the incapable person is entitled in equity to a share in a co-operative, the appointed person may, with the consent of the co-operative and of the registered holder of that share, be registered as the holder of the share as administrator of the estate of the incapable person.

154. Registration as Official Trustee in Bankruptcy

(1) This section applies when a share in a co-operative that is the property of a bankrupt vests by force of the *Bankruptcy Act 1966* (Commonwealth) in the Official Trustee in Bankruptcy.

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(2) If the bankrupt is the registered holder of the share, the Official Trustee may be registered as the holder of the share as the Official Trustee in Bankruptcy.

(3) If the bankrupt is entitled in equity to the share, the Official Trustee may, with the consent of the co-operative and of the registered holder of the share, be registered as the holder of the share as the Official Trustee in Bankruptcy.

155. Liabilities of person registered as trustee or administrator

(1) A person registered under section 152, 153 or 154 is, while so registered, subject to the same liabilities in relation to the share as those to which the person would have been subject if the share had remained, or had been, registered in the name of the dead person, the incapable person or the bankrupt.

(2) The person registered is subject to no other liabilities in relation to the share.

156. Notice of trusts in register of members

Shares held by a trustee under a particular trust may, with the consent of the co-operative, be marked in the register of members, directors and shares referred to in section 230(1)(a) in a way that identifies the shares as being held under the trust.

157. No notice of trust except as provided by this Division

Except as provided in this Division —

(a) no notice of a trust, whether express, implied or constructive, is to be entered on a register or be receivable by the Registrar; and

(b) no liabilities are affected by anything done under this Division; and

(c) nothing done under this Division affects a co-operative with notice of a trust.

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Division 5 — Sale or transfer of shares

158. Sale or transfer of shares

(1) A share in a co-operative cannot be sold or transferred except —

(a) in accordance with Part 4 Division 3 and section 159, on the death of a member; or

(b) to a person appointed to administer the estate of a shareholder under a law relating to the administration of the estates of persons who, through mental or physical infirmity, are incapable of managing their affairs; or

(c) with the consent of the board, to any person if there are reasonable grounds for believing that the person will be an active member of the co-operative; or

(d) in accordance with Part 11 Division 2.

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

159. Transfer on death of member

(1) Despite sections 75 and 76, on the death of a member, the member's share in the co-operative may be transferred to a person other than an administrator or executor with the consent of the board of the co-operative.

(2) The board may only give its consent under subsection (1) if there are reasonable grounds for believing that the person will be an active member of the co-operative.

160. Restriction on total shareholding

The board of a co-operative must not consent under section 158(1)(c) to the issue, sale or transfer of a share if, as a result of the issue, sale or transfer, the nominal value of the shares held by the purchaser or transferee would be more than the maximum permissible level of share interest applying under section 278.

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161. Transfer not effective until registered

A transferor of a share remains the holder of the share until the transferee is noted as the holder of the share in the register of members, directors and shares referred to in section 230(1)(a).

162. Non-members become members on registration

Where a share in a co-operative is transferred to a non-member under this Part or Part 4, the transferee becomes a member of the co-operative on the transferee being noted as a member in the register of members, directors and shares referred to in section 230(1)(a).

Division 6 — Repurchase of shares

163. Purchase and repayment of shares

(1) The rules of a co-operative may authorise the co-operative to —

(a) purchase any share of a member in the co-operative at the request of the member; and

(b) repay to a member, with the member's consent, all or any part of the amount paid up to the stated nominal value on any share held by the member when the amount repaid is not required for the activities of the co-operative.

(2) The amount paid by a co-operative under this section in purchasing shares or repaying an amount paid up to the stated nominal value on shares, or both, in any financial year of the co-operative must not be more than the total of —

(a) 5% of the nominal value of the issued share capital of the co-operative immediately before the start of that financial year; and

(b) the amount of any additional share capital of the co-operative subscribed for during that year.

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(3) The members of a co-operative may by special resolution exempt a co-operative from the operation of subsection (2) in relation to a particular financial year, either unconditionally or on conditions.

(4) The amount paid for a share when it is repurchased may be an amount decided by the board that is less than the nominal value of the share but only —

(a) if the records of the co-operative disclose that the amount paid is the net shareholder's equity per share in the undertaking of the co-operative; or

(b) in accordance with the rules of the co-operative.

(5) This section does not apply if the member has resigned or has been expelled from the co-operative or the member's membership has been otherwise cancelled.

164. Deposit, debentures or co-operative capital units instead of payment when share repurchased

(1) If a co-operative repurchases a share of a member, the co-operative may instead of paying the purchase price to the member —

(a) in the case of a deposit-taking co-operative, apply the amount as an interest bearing deposit by the member with the co-operative; or

(b) allot or issue debentures or co-operative capital units of the co-operative to the member in satisfaction of the amount.

(2) Subsection (1) applies only if —

(a) the board considers that payment of the repurchase price would adversely affect the financial position of the co-operative; or

(b) the board and the member so agree.

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(3) The deposit, debenture or co-operative capital unit bears interest during any period —

(a) in the case of a co-operative with share capital —

(i) at the rate (or, if there is more than one rate, at the higher or highest rate) of dividend payable for that period on the share capital of the co-operative; or

(ii) if the rate of dividend payable for that period has not been decided, at the rate (or the higher or highest rate) payable for the immediately preceding period for which a rate has been decided; or

(iii) if a rate of dividend has never been decided for the share capital of the co-operative, at the rate that the board of the co-operative considers reasonable;

or

(b) in the case of a co-operative without share capital, at the rate that the board of the co-operative considers reasonable; or

(c) if the rules provide for a rate to be payable that is higher than the rate applicable under paragraph (a) or (b), at the higher rate.

(4) The deposit, debenture or co-operative capital unit must be repaid to the member or redeemed, as the case may be, as soon as repayment or redemption would not, in the opinion of the board, adversely affect the financial position of the co-operative.

(5) The deposit, debenture or co-operative capital unit must in any case be repaid or redeemed within 10 years (or within any shorter period that the rules of the co-operative require) after the repurchase of the shares concerned.

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165. Cancellation of shares

(1) A co-operative must cancel any share purchased by or forfeited to the co-operative in accordance with this Act or the rules of the co-operative.

(2) Any shares held by a co-operative in itself at the time the co-operative is registered under this Act are cancelled under this section.

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Part 8 — Voting and meetings

Division 1 — Voting entitlements

166. Application of Part to voting

The provisions of this Part applying to voting apply to voting on all resolutions.

167. Voting

(1) The right to vote attaches to membership and not shareholding.

(2) Except as provided in subsections (3) and (4), each member has only one vote at a meeting of the co-operative.

(3) If its rules so provide, a member of a co-operative group may have the number of votes (up to 5) at a general meeting that is specified in the rules.

(4) If the rules so provide, the chairman has a casting vote at a board meeting or general meeting.

(5) In the case of joint membership —

(a) the joint members have only one vote between them; and

(b) that vote may be exercised, subject to the grant of a proxy or power of attorney, only by the joint member determined in accordance with the rules.

168. Voting by proxy

(1) If the rules so provide, voting may be by proxy at a general meeting.

(2) The instrument of proxy may state the way in which a proxy is to vote on a particular resolution.

(3) The proxy must vote in the way authorised by an instrument of proxy referred to in subsection (2).

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(4) The rules of a co-operative may limit the number of persons for whom a person may act as a proxy on the same question.

(5) A person cannot exercise more than one proxy vote during a vote on the same question unless the vote is conducted by poll demanded under section 194.

169. Control of the right to vote

(1) Subject to subsection (3), a person must not directly or indirectly control the exercise of the right to vote of a member.

Penalty: a fine of $12 000.

(2) If a person controls the exercise of the right to vote of a member at a meeting of a co-operative —

(a) the vote of the member is invalid; and

(b) if the person is a member, the vote of the person is invalid.

(3) Nothing in this section prevents —

(a) the exercise of a vote by means of a proxy or power of attorney; or

(b) a director controlling the vote of a corporate member; or

(c) an agreed purchaser controlling a member's vote pending settlement.

170. Effect of disposal of shares on voting rights

A member of a co-operative cannot vote if the member has sold or transferred, or disposed of the beneficial interest in, the member's shares, or has agreed to do so.

171. Effect of relevant share and voting interests on voting rights

(1) A member of a co-operative cannot vote if another person, whether or not a member of the co-operative, has a relevant interest in any share held by the member or in the right to vote of the member.

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(2) A member who cannot vote because of this section may apply to the Registrar to review the matter.

(3) The Registrar may order that the member may vote if the Registrar is satisfied in the circumstances of the case that loss of the right to vote would be unjust or unreasonable, and the order of the Registrar has effect accordingly.

172. Rights of representatives

A person appointed under this Act to represent a member of a co-operative —

(a) is deemed to receive any notice of meetings given to the member represented; and

(b) is entitled to exercise the same rights to vote as the member represented.

173. Other rights and duties of members not affected by ineligibility to vote

A provision of this Act that disentitles a member of a co-operative to vote, either generally or in relation to a particular matter, does not affect any other right, entitlement, obligation or duty of the member as a member.

174. Vote of disentitled member to be disregarded

Any vote cast by or on behalf of a member of a co-operative when not entitled to vote must be disregarded.

Division 2 — Resolutions

175. Decisions to be by ordinary resolution

Unless this Act or the rules of the co-operative provide otherwise, every question for decision by a co-operative must be decided by ordinary resolution.

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176. Ordinary resolutions

An ordinary resolution is a resolution of a co-operative that is passed by a simple majority at a general meeting of the co-operative or in a postal ballot of members.

177. Special resolutions

(1) A special resolution is a resolution of a co-operative that is passed —

(a) by a two-thirds majority at a general meeting of members; or

(b) by a two-thirds majority in a postal ballot, other than a special postal ballot, of members; or

(c) by a three-quarters majority in a special postal ballot of members.

(2) A special resolution may be passed by a postal ballot only if the rules of the co-operative allow, or this Act requires, the special resolution to be passed by postal ballot, including a special postal ballot.

(3) A resolution is not taken to have been passed as a special resolution unless not less than 21 days notice has been given to the members of the co-operative stating —

(a) the intention to propose the special resolution; and

(b) the reasons for proposing the special resolution; and

(c) the effect of the special resolution being passed.

178. How majority obtained is ascertained

(1) A resolution is passed by a particular majority at a meeting if that majority of the members of the co-operative who, being entitled to do so, vote in person or, if proxies are allowed, by proxy at the meeting vote in favour of the resolution.

(2) A resolution is passed by a particular majority in a postal ballot if that majority of the members of the co-operative who, being

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entitled to do so, cast formal votes in the postal ballot vote in favour of the resolution.

179. Declaration of passing of special resolution

(1) At a meeting of a co-operative for the purpose of passing a special resolution, a declaration by the chairman of the meeting that the resolution has been passed as a special resolution is evidence of that fact.

(2) A declaration by the returning officer for a postal ballot to pass a special resolution that the resolution has been passed as a special resolution is evidence of that fact.

(3) Subsection (1) does not apply if a poll is taken at the meeting of the co-operative.

180. Effect of special resolution

(1) A special resolution, other than a special resolution required to be passed by special postal ballot, has effect from the date that it is passed.

(2) A special resolution relating to anything for which a special resolution is required to be passed by special postal ballot has no effect until it is registered under section 182(1).

181. Lodgment of special resolution

(1) A co-operative must lodge 2 copies of each special resolution passed by the co-operative with the Registrar in accordance with this section for registration.

(2) The copies must —

(a) be lodged within 28 days after the passing of a special resolution or a longer period allowed by the Registrar; and

(b) be signed by a director, the secretary of the co-operative or another authorised representative of the co-operative; and

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(c) be accompanied by the lodgment fee prescribed by the regulations.

(3) A co-operative and an officer of the co-operative must not knowingly fail to lodge the required copies under this section.

Penalty: a fine of $2 000.

(4) This section and section 182 do not apply to a special resolution altering the rules of a co-operative.

182. Decision of Registrar on application to register special resolution

(1) If the Registrar is satisfied that the co-operative has complied with this Act, and that a special resolution passed by special postal ballot is not contrary to this Act, the Registrar must register the special resolution.

(2) If the Registrar considers that the effect of a special resolution lodged for registration would be in contravention of this Act or any other law, the Registrar —

(a) may refuse to register the special resolution; and

(b) must give written notice to the co-operative that the special resolution —

(i) in the case of a special resolution referred to in section 180(2), has no effect; and

(ii) in any other case, has no effect as from the date that it was passed.

(3) A certificate of registration of a special resolution given by the Registrar is, in favour of any person advancing money to the co-operative on the faith of the certificate or in favour of any guarantor of that advance, evidence that the resolution was properly passed.

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Division 3 — Resolution by circulated document

183. Application of Division 3

This Division applies to a resolution of a co-operative, including a resolution appointing an officer or auditor or approving of or agreeing to any act, matter or thing, if —

(a) the co-operative has fewer than 50 members; and

(b) the resolution is required or permitted under this Act or the rules of the co-operative to be passed at a general meeting of the co-operative.

184. Resolution by circulation of document — fewer than 50 members

(1) If all the members of a co-operative have signed a document that sets out the terms of a resolution and contains a statement that they are in favour of the resolution, the resolution is taken to have been passed at a general meeting of the co-operative.

(2) The meeting is taken to have been held —

(a) if all the members signed the document on the one day, on that day and at the time the document was signed by the last member to sign; or

(b) if the members signed the document on different days, on the day, and at the time, the document was signed by the last member to sign.

(3) The document need not exist as a single document, but may exist in the form of 2 or more documents in identical terms.

(4) The document is taken to constitute a minute of the general meeting.

(5) Anything attached to the document and signed by the members signing the document is taken to have been laid before the co-operative at the general meeting.

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(6) The document is signed by all members of a co-operative only if the document is signed by each person who was a member of the co-operative at the time the document was signed by the last member to sign.

(7) Nothing in this section affects or limits any rule of law about the effectiveness of the assent of a member of a co-operative given to a document, or to an act, matter or thing, otherwise than at a general meeting of the co-operative.

Division 4 — Postal ballots

185. Postal ballots

(1) A postal ballot may be conducted in the manner provided by the rules of the co-operative and may, if the rules so allow, incorporate one or more methods of electronic voting.

(2) On the declaration by the returning officer of the result of the ballot, the secretary of the co-operative must make an entry in the minute book of the co-operative showing —

(a) the number of formal votes cast in favour of the proposal concerned; and

(b) the number of formal votes cast against the proposal; and

(c) the number of informal votes cast.

186. Special postal ballots

(1) A special postal ballot is a postal ballot that is conducted as required by this section.

(2) The ballot cannot be held less than 21 days after notice of the ballot is given to members so as to enable sufficient time for a meeting to discuss the proposal that is the subject of the ballot to be convened and held (whether by the board or on the requisition of members).

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(3) The co-operative must send to each member, along with any other material required to be sent in connection with the postal ballot, a disclosure statement approved by the Registrar and containing information about —

(a) the financial position of the co-operative; and

(b) the interests of the directors of the co-operative in the proposal with which the ballot is concerned, including any interests of the directors in another organisation concerned in the proposal; and

(c) any compensation or consideration to be paid to officers or members of the co-operative in connection with the proposal; and

(d) any other matters as the Registrar directs.

(4) If required by the Registrar, the disclosure statement is to be accompanied by a report, made by an independent person approved by the Registrar, about any matters that the Registrar directs.

(5) Sections 16 (except subsection (3)) and 29 apply to the approval of a disclosure statement under this section with any necessary changes and in particular as if any reference in section 16 to a formation meeting were a reference to the notice of the special postal ballot.

187. When a special postal ballot required

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

(a) conversion of —

(i) a share capital co-operative to a non-share capital co-operative or vice versa; or

(ii) a distributing co-operative to a non-distributing co-operative or vice versa;

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(b) transfer of incorporation;

(c) an acquisition or disposal of assets referred to in section 273;

(d) the maximum permissible level of share interest in the co-operative;

(e) takeover;

(f) merger;

(g) transfer of engagements;

(h) members' voluntary winding-up.

188. Holding of postal ballot on requisition

(1) The board of a co-operative must conduct a postal ballot, including a special postal ballot, for the passing of a special resolution on the written requisition of such number of members who together are able to cast at least 20%, or any lesser percentage specified in the rules of the co-operative, of the total number of votes able to be cast at a meeting of the co-operative.

(2) The following provisions apply to a requisition for a postal ballot —

(a) it must state —

(i) the proposed special resolution to be voted on; and

(ii) the reasons for the making of the special resolution; and

(iii) the effect of the special resolution being passed;

(b) it must be signed by the requisitioning members, and may consist of several documents in like form each signed by one or more of the requisitioning members;

(c) it must be served on the co-operative by being lodged at the registered office of the co-operative.

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(3) The postal ballot must be conducted as soon as practicable and in any case must be conducted within 2 months after the requisition is served.

(4) If the special resolution for which the requisitioned postal ballot is conducted is not passed, the co-operative may recover the expenses of the postal ballot from the members who requisitioned the postal ballot as a debt due to the co-operative.

(5) The members' liability under subregulation (4) is joint and several.

189. Expenses involved in postal ballots on requisition

(1) All reasonable expenses incurred by a co-operative in and in connection with preparing for and holding a special postal ballot are to be considered to constitute the ***expenses of the postal ballot*** for the purposes of section 188(4).

(2) Those expenses include (but are not limited to) the following expenses —

(a) the cost of obtaining expert advice, including legal and financial advice, and of commissioning expert reports;

(b) costs attributable to the use of staff of the co-operative in connection with preparing for and holding the ballot;

(c) the cost of producing, printing and posting the ballot papers and other material associated with the ballot;

(d) the cost of convening and holding a meeting under section 186(2) at the request of the members who requisitioned the postal ballot.

Division 5 — Meetings

190. Annual general meetings

(1) In the case of a co-operative registered under Part 2 Division 4, the first annual general meeting of the co-operative must be held within 18 months after registration under this Act.

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(2) In the case of a co-operative registered under Part 2 Division 5, the first annual general meeting of the co-operative must be held within 18 months after the last annual general meeting held by that co-operative before it was registered under this Act.

(3) The second or any later annual general meeting of a co-operative must be held within —

(a) 5 months after the close of the financial year of the co-operative; or

(b) a further time that may be allowed by the Registrar or is prescribed by the regulations.

191. Special general meetings

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

192. Notice of meetings

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

193. Quorum at meetings

(1) The quorum for a meeting of a co-operative must be specified in the rules.

(2) An item of business cannot be transacted at a meeting of a co-operative unless a quorum of members entitled to vote is present during the transaction of that item.

194. Decision at meetings

(1) Unless subsection (4) requires it to be determined by a poll, a question for decision at a general meeting is to be determined by a show of hands.

(2) A proxy may exercise only one vote on a question determined by a show of hands.

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(3) A proxy may exercise more than one vote on a question determined by a poll.

(4) A question is to be determined by a poll if —

(a) 5 members, present in person at the meeting or represented at the meeting by a proxy, demand the poll; or

(b) the chairman directs that the question will be determined by poll.

(5) In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded may exercise a casting vote if the rules so provide.

195. Calling of general meeting on requisition

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

(2) The following provisions apply to a requisition for a general meeting —

(a) it must state the objects of the meeting;

(b) it must be signed by the requisitioning members, and may consist of several documents in like form each signed by one or more of the requisitioning members;

(c) it must be served on the co-operative by being lodged at the registered office of the co-operative.

(3) The meeting must be called and held as soon as practicable and in any case must be held within 2 months after the requisition is served.

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(4) If the board does not call a meeting within 35 days after a requisition is served, the following provisions apply —

(a) the requisitioning members, or any of them representing at least half their total voting rights, may call the meeting in the same way as nearly as possible as meetings are called by the board;

(b) for that purpose they may request the co-operative to supply a written statement setting out the names and addresses of the persons entitled when the requisition was served to receive notice of general meetings of the co-operative;

(c) the board must send the requested statement to the requisitioning members within 7 days after the request for the statement is made;

(d) the meeting called by the requisitioning members must be held not later than 3 months after the requisition is served;

(e) any reasonable expenses incurred by the requisitioning members because of the board's failure to call the meeting must be paid by the co-operative;

(f) any amount required to be paid by the co-operative under paragraph (e) must be retained by the co-operative out of any money due from the co-operative by way of fees or other remuneration in respect of their services to such of the directors as were in default.

196. Minutes

(1) Minutes of —

(a) each general meeting; and

(b) each meeting of the board; and

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(c) each meeting of a committee to which the board's functions have been delegated under section 204(1),

must be entered in the appropriate records within one month after the meeting and confirmed at, and signed by the chairman of, the next meeting.

(2) The minutes of each general meeting must be available for inspection by members.

(3) Minutes must be kept in the English language.

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Part 9 — Management and administration of co-operatives

Division 1 — The Board

197. Board of directors

(1) Subject to this Act and the rules of the co-operative, the business of a co-operative is to be managed by a board of directors.

(2) The board of directors may exercise all the powers of the co-operative that are not, by this Act or the rules of the co-operative, required to be exercised by the co-operative in a general meeting or by postal ballot.

(3) The acts of a director are valid despite any defect that may afterwards be discovered in his or her appointment or qualification.

198. Election of directors

(1) Except as provided in subsections (2), (3) and (4), the directors of a co-operative are to be elected in the manner specified in the rules of the co-operative.

(2) The first directors of —

(a) a co-operative formed under this Act are to be elected at its formation meeting; and

(b) a co-operative that was a corporation incorporated under another Act are to be the directors in office at the date of registration under this Act.

(3) If authorised by the rules of the co-operative, a board of directors may appoint a person to fill a casual vacancy in the office of a director until the next annual general meeting.

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(4) A resolution passed at a general meeting of a co-operative electing 2 or more directors is void unless —

(a) the meeting previously resolved that the nominations for election could be voted on together; and

(b) no votes were cast against that previous resolution.

(5) Subsection (4) does not affect —

(a) a resolution to appoint directors by an amendment to the co-operative's rules; or

(b) a ballot or poll to elect 2 or more directors if the ballot or poll does not require members voting for one candidate to vote for another specific candidate.

(6) For the purposes of subsection (5), a ballot or poll does not require a member to vote for a candidate merely because the member is required to express a preference among individual candidates in order to cast a valid vote.

(7) A nomination for election or appointment to the office of a director must give details of the qualifications and experience of the person nominated.

(8) Unless this Act or the rules of a co-operative provides otherwise, a director is eligible for re-election at the end of his or her term of office.

199. Qualification of directors

(1) In this section —

member director means a director who is a person qualified to be a director under subsection (2)(a).

(2) A person is not qualified to be a director of a co-operative unless the person is —

(a) a member of the co-operative or a representative of a corporation that is a member of the co-operative; or

(b) an employee of the co-operative or a person qualified as provided by the rules.

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(3) The majority of directors must be member directors.

(4) Subsection (3) does not prevent the rules of a co-operative requiring that a greater number of directors than a majority must be member directors.

200. Disqualified persons

(1) A person must not act as a director or directly or indirectly take part in or be concerned with the management of a co-operative if the person —

(a) is the auditor of the co-operative or a partner, employee or employer of the auditor; or

(b) has been convicted, whether before or after the commencement of this section, within or outside this State —

(i) on indictment of an offence relating to the promotion, formation or management of a corporation; or

(ii) of an offence involving fraud or dishonesty punishable on conviction by imprisonment for not less than 3 months; or

(iii) of an offence under the Corporations Act section 184, 344, 590, 592, 670A or 728; or

(iv) of an offence under a provision of a previous law of this State or of another State or Territory, with which any of the provisions referred to in subparagraph (iii) corresponds,

within 5 years after the conviction or, if sentenced to imprisonment, after the person's release from prison, except with the leave of the Supreme Court.

Penalty: a fine of $24 000 and imprisonment for 2 years.

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(2) A person must not act as a director or directly or indirectly take part in or be concerned with the management of a co-operative if the person —

(a) has been convicted of an offence under this Act, within 5 years after the conviction, except with leave of the Supreme Court; or

(b) is disqualified from managing corporations under the Corporations Act Part 2D.6; or

(c) is an insolvent under administration, as defined in the Corporations Act section 9.

Penalty: a fine of $24 000 and imprisonment for 2 years.

(3) In proceedings for an offence against subsection (1), a certificate by an authority prescribed by the regulations stating that a person was released from prison on a specified date, is evidence that the person was released from prison on that date.

(4) A person who intends to apply for leave of the Supreme Court must give the Registrar at least 21 days notice of the person's intention.

(5) The Supreme Court may grant leave subject to any condition or limitation it considers appropriate.

(6) A person must comply with any condition or limitation subject to which leave is granted.

Penalty: a fine of $24 000 and imprisonment for 2 years.

(7) On the application of the Registrar the Supreme Court may revoke its leave.

(8) Subject to this section, a co-operative is declared to be an applied Corporations legislation matter for the purposes of the *Corporations (Ancillary Provisions) Act 2001* Part 3 in relation to the provisions of the Corporations Act Part 2D.6, subject to the following modifications —

(a) a reference in the provisions to a corporation is to be read as a reference to a co-operative;

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(b) a reference in the provisions to a company is to be read as a reference to a co-operative;

(c) a reference in the provisions to ASIC is to be read as a reference to the Registrar;

(d) any other modifications, within the meaning of the *Corporations (Ancillary Provisions) Act 2001* Part 3, that are prescribed by the regulations.

201. Meeting of the board of directors

(1) In this section —

independent director means a director who is an employee of the co-operative or a person qualified as provided by the rules;

member director has the meaning given to that term in section 199(1).

(2) Meetings of the board of directors must be held at least once every 3 months and may be held as often as may be necessary.

(3) A meeting of the board of directors may be called by a director giving notice individually to every other director.

(4) The board of directors may hold meetings, or allow directors to take part in its meetings by telephone, video link, or another form of communication that allows reasonably contemporaneous and continuous communication between the directors taking part in the meeting.

(5) A quorum of a meeting of the board of directors is 50% of the number of directors or a greater number of directors specified in the rules of the co-operative.

(6) For a quorum, the member directors must outnumber the independent directors by at least one, or, if a greater number is stated in the rules of the co-operative, the greater number.

(7) The chairman of the board may be elected either by the board or at a general meeting of the co-operative, and is to be elected,

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hold office, and retire, and may be removed from office, as provided by the rules of the co-operative.

202. Transaction of business outside meetings

(1) The board of a co-operative may, if it considers appropriate, transact any of its business by the circulation of papers among all of the directors of the board.

(2) A resolution in writing approved in writing by a majority of the directors of the board is taken to be a decision of the board.

(3) Separate copies of a resolution of the board may be signed by the directors if the wording of the resolution and approval is identical in each copy.

(4) For the purpose of approving a resolution under this section, the chairman of the board and each director have the same voting rights as they have at an ordinary meeting of the board.

(5) The resolution is approved when the last director required for the majority signs.

(6) A resolution of a board must be recorded in the minutes of the meetings of the board within 28 days after the resolution is approved.

(7) Papers may be circulated among directors of the board for the purposes of this section by facsimile or other transmission of the information in the papers concerned.

203. Alternate directors

The rules of a co-operative may provide for an alternate director to be appointed to act in the place of a director who is absent from a meeting of the board.

204. Delegation by board

(1) If authorised by the rules of a co-operative, the board of the co-operative may, by resolution, delegate the board's powers,

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other than this power of delegation, specified in the resolution to —

(a) a director; or

(b) a committee of 2 or more directors; or

(c) a committee of members of the co-operative; or

(d) a committee of members of the co-operative and other persons if members form the majority of persons on the committee; or

(e) a committee of directors and other persons.

(2) The board may, by resolution, revoke wholly or in part a delegation under this section.

(3) A function, the exercise of which has been delegated under this section, may be exercised from time to time in accordance with the terms of the delegation while the delegation remains unrevoked.

(4) A delegation under this section may be made subject to conditions or limitations as to the exercise of any of the functions delegated, or as to time or circumstance.

(5) Despite any delegation under this section, the board may continue to exercise all or any of the functions delegated.

205. Removal from and vacation of office

(1) The directors hold office and must retire, and may be removed from office, as provided by the rules of the co-operative.

(2) A director vacates office in the circumstances, if any, provided in the rules of the co-operative and in any of the following cases —

(a) if the director is disqualified from being a director as provided by section 200;

(b) if the director absents himself or herself from 3 consecutive ordinary meetings of the board without its leave;

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(c) if the director resigns the office of director by written notice given by the director to the co-operative;

(d) if the director is removed from office by special resolution of the co-operative;

(e) if the person ceases to hold the qualification by reason of which the person was qualified to be a director;

(f) if an administrator of the co-operative's affairs is appointed under Part 12 Division 5.

Division 2 — Secretary

206. Secretary

(1) A co-operative must have a secretary.

(2) The board of the co-operative is to appoint the secretary.

(3) The board may appoint a person to act as the secretary during the absence or incapacity of the secretary.

(4) A person is not qualified to be appointed as, or to act as, the secretary unless the person is an adult who ordinarily lives in Australia.

Division 3 — Duties and liabilities of directors, officers and employees

207. Meaning of *officer*

In this Division —

officer of a co-operative means —

(a) a director or secretary of the co-operative; or

(b) a person who is concerned, or takes part, in the management of the co-operative, whether or not as a director; or

(c) a receiver, or receiver and manager, of property of the co-operative, or another authorised person who enters

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into possession or assumes control of property of the co-operative for the purpose of enforcing a charge; or

(d) an administrator of a deed of arrangement executed by the co-operative; or

(e) a liquidator or provisional liquidator appointed in a voluntary winding-up of the co-operative; or

(f) an administrator of the co-operative appointed under the Corporations Act Part 5.3A as applying under this Act; or

(g) a trustee or other person administering a compromise or arrangement made between the co-operative and another person or other persons.

208. Officers must act honestly

An officer of a co-operative must at all times act honestly in the exercise of his or her powers and the discharge of the duties of his or her office, both in the State and elsewhere.

Penalty:

(a) for a contravention committed with intent to deceive or defraud the co-operative, members or creditors of the co-operative or creditors of another person or for another fraudulent purpose, a fine of $24 000 and imprisonment for 2 years;

(b) in any other case, a fine of $6 000.

209. Standard of care and diligence required

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

Penalty: a fine of $2 000.

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(2) An officer is not liable to be convicted for a contravention of this section if the co-operative has resolved by ordinary resolution to forgive the contravention.

(3) An officer of a co-operative who makes a business judgment is taken to meet the requirements of subsection (1), and their equivalent duties at common law and in equity, in respect of the judgment if the officer —

(a) makes the judgment in good faith for a proper purpose; and

(b) does not have a material personal interest in the subject matter of the judgment; and

(c) informs himself or herself about the subject matter of the judgment to the extent he or she reasonably believes to be appropriate; and

(d) rationally believes that the judgment is in the best interests of the co-operative.

(4) The officer's belief that the judgment is in the best interests of the co-operative is a rational one unless the belief is one that no reasonable person in their position would hold.

210. Improper use of information or position

(1) An officer or employee or former officer or employee of a co-operative or a member of a committee referred to in section 204(1) must not make improper use of information acquired by reason of his or her position as an officer or employee or member to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the co-operative.

(2) An officer or employee of a co-operative or a member of a committee referred to in section 204(1) must not make improper use of his or her position as an officer or employee or member, to gain, directly or indirectly, an advantage for himself or

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herself or for any other person or to cause detriment to the co-operative.

Penalty:

(a) for a contravention committed with intent to deceive or defraud the co-operative, members or creditors of the co-operative or creditors of another person or for another fraudulent purpose, a fine of $24 000 and imprisonment for 2 years;

(b) in any other case, a penalty not exceeding a fine of $6 000.

211. Recovery of damages by co-operative

(1) If a person contravenes a provision of this Division in relation to a co-operative, the co-operative may, whether or not the person has been convicted of an offence for that contravention, recover an amount from the person as a debt payable to the co-operative.

(2) The amount that the co-operative is entitled to recover from the person is —

(a) if the person or another person made a profit as a result of the contravention, an amount equal to that profit; and

(b) if the co-operative has suffered loss or damage as a result of the contravention, an amount equal to that loss or damage.

212. Other duties and liabilities not affected

This Division has effect in addition to, and does not limit, a law relating to the duty or liability of a person because of the person's office or employment in relation to a co-operative and does not prevent the institution of any civil proceeding for a breach of a duty or for a liability of that type.

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213. Application of Corporations Act concerning indemnities and insurance for officers and auditors

A co-operative is declared to be an applied Corporations legislation matter for the purposes of the *Corporations (Ancillary Provisions) Act 2001* Part 3 in relation to the Corporations Act sections 199A, (except 199A(2)(b)), 199B and 199C, subject to the following modifications —

(a) a reference in the sections to a company is to be read as a reference to a co-operative;

(b) a reference in the sections to ASIC is to be read as a reference to the Registrar;

(c) a reference to section 183 is to be read as a reference to section 210(1) of this Act;

(d) a reference to section 182 is to be read as a reference to section 210(2) of this Act;

(e) any other modifications, within the meaning of the *Corporations (Ancillary Provisions) Act 2001* Part 3, that are prescribed by the regulations.

214. Application of Corporations Act provisions concerning officers of co-operatives

A co-operative is declared to be an applied Corporations legislation matter for the purposes of the *Corporations (Ancillary Provisions) Act 2001* Part 3 in relation to the Corporations Act sections 344, 589 to 598 and 1307, subject to the following modifications —

(a) in section 344, “a company, registered scheme or disclosing entity” is to be read as “a co-operative”;

(b) a reference in the sections, other than section 344, to a company is to be read as a reference to a co-operative;

(c) a reference in the sections to ASIC is to be read as a reference to the Registrar;

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(d) any other modifications, within the meaning of the *Corporations (Ancillary Provisions) Act 2001* Part 3, that are prescribed by the regulations.

Division 4 — Restrictions on directors and officers

215. Directors' remuneration

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

Penalty: a fine of $24 000 or imprisonment for 2 years.

216. Certain financial accommodation to officers prohibited

(1) An officer of a co-operative who is not a director of the co-operative must not obtain financial accommodation from the co-operative 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.

Penalty: a fine of $24 000 or imprisonment for 2 years.

(2) For the purposes of this section, financial accommodation is taken to be obtained by an officer of a co-operative 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 corporation is trustee if the officer is a director or other officer of the corporation.

(3) A co-operative must not give financial accommodation to an officer of the co-operative if —

(a) by giving the financial accommodation, the officer would contravene this section; and

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(b) the co-operative knows or should reasonably know of the contravention.

Penalty: a fine of $50 000.

217. 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 corporation mentioned in paragraph (c) has a beneficial interest;

or

(c) a corporation if —

(i) the director or director's spouse (or de facto partner) has a material interest in shares in the corporation; and

(ii) the nominal value of the shares is not less than 10% of the nominal value of the issued share capital of the corporation.

(2) For the purposes of this section, a person has a ***material interest*** in a share in a corporation if —

(a) the person has power to withdraw the share capital subscribed for the share or to exercise control over the withdrawal of the 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.

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

(a) approved under subsection (4); or

(b) given under a scheme approved under subsection (4); or

(c) provided on terms no more favourable to the director or associate than the terms on which it is reasonable to expect the co-operative would give if dealing with the director or associate at arm's length in the same circumstances.

Penalty: a fine of $50 000.

(4) For the purposes of subsection (3)(a) and (b), financial accommodation or a scheme is approved if —

(a) it is approved by a resolution passed at a general meeting; and

(b) the full details of the accommodation or scheme were made available to members at least 21 days before the meeting.

(5) A director or an associate of a director must not obtain financial accommodation given in contravention of subsection (3).

Penalty: a fine of $24 000 or imprisonment for 2 years.

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

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

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(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.

218. Restriction on directors of certain co-operatives selling land to co-operative

A director of a co-operative the primary activity of which is or includes the acquisition of land in order to settle or retain people on the land, must not sell land to the co-operative except under a special resolution of the co-operative.

Penalty: a fine of $24 000 or imprisonment for 2 years.

219. 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 co-operative agrees to perform the whole, or a substantial part, of the functions of the co-operative, whether under the control of the co-operative or not; or

(b) a co-operative agrees to perform the whole or a substantial part of its functions —

(i) in a particular way; or

(ii) in accordance with the directions of any person; or

(iii) subject to specified restrictions or conditions.

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(2) A co-operative must not enter into a management contract unless that contract has first been approved by special resolution.

(3) A management contract entered into in contravention of subsection (2) is void.

Division 5 — Declaration of interests

220. Declaration of interest

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

Penalty: a fine of $24 000 and imprisonment for 2 years.

(2) In the case of a proposed contract, the declaration must be made —

(a) at the meeting of the board at which the question of entering into the contract is first considered; or

(b) if the director was not at that time interested in the proposed contract, at the next meeting of the board held after the director becomes interested in the proposed contract.

(3) If a director becomes interested in a contract with the co-operative after it is made, the declaration must be made at the next meeting of the board held after the director becomes interested in the contract.

(4) For the purposes of this section, a general written notice given to the board by a director to the effect that the director —

(a) is a member of a specified entity; and

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

is a sufficient declaration.

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

Penalty: a fine of $24 000 and imprisonment for 2 years.

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

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

(i) the person becomes a director; or

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

whichever is the later; or

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

(7) If a director has made a declaration under this section, then unless the board determines otherwise, the director cannot —

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

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

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

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

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

221. Declarations to be recorded in minutes

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

222. Division does not affect other laws or rules

Except as provided in section 223, this Division is in addition to, and does not limit, the operation of a law or a provision in the rules of the co-operative restricting a director from having an interest in contracts with the co-operative or from holding offices or possessing properties involving duties or interests in conflict with his or her duties or interests as director.

223. Certain interests need not be declared

The interest in a contract or proposed contract that a director is required by this Division to declare does not include an interest in —

(a) a contract or proposed contract for a purchase of goods and services by the director from the co-operative; or

(b) a lease of land to the director by the co-operative; or

(c) a contract or proposed contract for the sale of commodities or animals by the director to the co-operative; or

(d) a contract or proposed contract that, under the rules of the co-operative, may be made between the co-operative and a member; or

(e) a contract or proposed contract of a class of contracts prescribed by the regulations,

but only if the contract is made in good faith, in the ordinary course of the business of the co-operative, and on the terms that are usual and proper in similar dealings between the co-operative and its members.

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Division 6 — Financial reports and audit

224. Meaning of *control* and *entity*

In this Division —

control has the same meaning in relation to a co-operative that it has under the Corporations Act in relation to a corporation;

entity has the same meaning in relation to a co-operative that it has under the Corporations Act in relation to a corporation.

225. Requirements for financial records and financial reports

(1) A co-operative is declared to be an applied Corporations legislation matter for the purposes of the *Corporations (Ancillary Provisions) Act 2001* Part 3 in relation to the provisions of the Corporations Act Part 2F.3, sections 249K and 249V and Chapter 2M, subject to the following modifications —

(a) a reference in the provisions to a company or to a public company is to be read as a reference to a co-operative;

(b) a reference in the provisions to the Court is to be read as a reference to the Supreme Court;

(c) a reference in the provisions to "prescribed" is to be read as a reference to "approved by the Registrar";

(d) a reference in the provisions to ASIC is to be read as a reference to the Registrar;

(e) an offence created in relation to the provisions is the offence set out in subsection (2);

(f) any penalty for the offence referred to in paragraph (e) is the penalty set out in subsection (2);

(g) a reference in sections 247A and 300(14) and (15) to the Corporations Act section 237 is to be read as a reference to section 91 of this Act;

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(h) a reference in section 300(8) to the Corporations Act section 199A(2) or (3) is to be read as a reference to section 213 of this Act;

(i) the provisions apply as if sections 247D, 291, 300(12) and (13), 315(3) and (4), 323D(1) and (2), 323DA, 325 and Part 2M.1, Part 2M.4 Division 2, Part 2M.5 and Part 2M.6 of the Corporations Act were omitted;

(j) a reference in Chapter 2M.3 to a small proprietary company is to be read as a reference to a small co-operative within a class prescribed by the regulations for the purpose of this paragraph;

(k) any other modifications, within the meaning of the *Corporations (Ancillary Provisions) Act 2001* Part 3, that are prescribed by the regulations.

(2) A co-operative must —

(a) keep financial records and prepare financial reports as required under this Act; and

(b) ensure that the financial reports are audited in accordance with this Act.

Penalty: a fine of $2 000.

(3) Without limiting the matters for which regulations under this section may make provision, the regulations may make provision for or in relation to the following —

(a) requiring the submission of financial reports to the Australian Accounting Standards Board;

(b) requiring the adoption by a co-operative of the same financial year for each entity that the co-operative controls.

226. Power of Registrar to grant exemptions

The Registrar may, by order published in the *Gazette*, exempt —

(a) a co-operative; or

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(b) a person or firm proposed to be appointed as an auditor of a co-operative; or

(c) a director or auditor of a co-operative,

from compliance with a provision of a regulation made for the purpose of this Part or with a provision of the Corporations Act as that Act applies under section 225.

227. Disclosure by directors

The directors of a co-operative must make the disclosures about the affairs of the co-operative and of any entity that the co-operative controls that are required by the regulations.

Penalty: a fine of $2 000.

228. Protection of auditors etc.

(1) An auditor of a co-operative has qualified privilege in relation to —

(a) a statement that the auditor makes, orally or in writing, in the course of his or her duties as auditor; or

(b) the giving of notice, or the sending of copies of financial reports or other reports, to the Registrar under this Act.

(2) A person has qualified privilege in relation to —

(a) the publishing of a document prepared by an auditor in the course of the auditor's duties and required by or under this Act to be lodged with the Registrar, whether or not the document has been lodged; or

(b) the publishing of a statement made by an auditor referred to in subsection (1).

(3) This section does not limit or affect a right, privilege or immunity that an auditor or other person has, apart from this section, as defendant in proceedings for defamation.

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229. Financial year

(1) The financial year of a co-operative ends on the day in each year that is provided for by the rules of the co-operative.

(2) In the case of a co-operative registered under Part 2 Division 4, the first financial year of the co-operative may extend from the date of its registration to a date not more than 18 months after registration.

(3) In the case of a co-operative registered under Part 2 Division 5, the first financial year of the co-operative is to be a period not extending beyond a date that is 18 months after the end of the co-operative's last financial year before the co-operative registered under this Act.

(4) On an alteration of the rules of a co-operative altering its financial year, the alteration may provide either that the financial year current at the date of alteration is to be extended for a period not exceeding 6 months or that the financial year next following the financial year that is so current is to be a period exceeding 12 months but not exceeding 18 months.

Division 7 — Registers, records and returns

230. Registers to be kept by co-operatives

(1) A co-operative must keep the following registers in accordance with this section —

(a) a register of members, directors and shares, if any;

(b) a register of loans to, securities given by, debentures and co-operative capital units issued by and deposits received by the co-operative;

(c) a register of names of persons who have given loans or deposits to, or who hold securities given by, or who hold debentures or co-operative capital units issued by the co-operative;

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(d) a register of loans made by or guaranteed by the co-operative, and of any securities taken by the co-operative;

(e) a register of holders of co-operative capital units, in accordance with section 257(4);

[(f) deleted]

(g) a register of memberships cancelled under Part 6, in accordance with section 130;

(h) a register of notifiable interests, in accordance with section 284;

(i) a register of undertakings, in accordance with section 472(1);

(j) other registers prescribed by the regulations.

Penalty: a fine of $2 000.

(2) The registers must be kept in the way, and contain the particulars, specified by this Act or prescribed by the regulations.

[Section 230 amended by No. 42 of 2011 s. 39.]

231. Location of registers

(1) A register kept under this Division must be kept at —

(a) the co-operative's registered office; or

(b) an office at the co-operative's principal place of business; or

(c) an office, whether of the co-operative or of someone else, where the work involved in maintaining the register is done; or

(d) another office approved by the Registrar.

(2) The office must be in this State.

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(3) The co-operative must lodge with the Registrar a notice of the address at which the register is kept within 28 days after the register is —

(a) established at an office that is not the co-operative's registered office; or

(b) moved from one office to another.

232. Inspection of registers etc.

(1) A co-operative must have at the office where the registers are kept and available during all reasonable hours for inspection by a member free of charge the following —

(a) a copy of this Act and the regulations;

(b) a current copy of the rules of the co-operative and any order under section 345;

(c) a copy of the minutes of each general meeting of the co-operative;

(d) a copy of the last annual report of the co-operative under section 235;

(e) the register of directors, members and shares;

(f) the register of names of persons who have given loans or deposits to or hold securities, debentures or co-operative capital units given or issued by the co-operative;

(g) other registers prescribed by the regulations.

(2) If a register is not kept on a computer, the person may inspect the register itself.

(3) If the register is kept on a computer, the person may inspect a hard copy of the information on the register unless the person and the co-operative agree that the person can access the information by computer.

(4) A member is entitled to make a copy of entries in a register specified in subsection (1) and to do so free of charge unless the

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rules of the co-operative require a fee to be paid, in which case on payment of the required fee.

(5) The fee required by the rules cannot be more than the fee prescribed for a copy of any entry in the register.

(6) A co-operative must —

(a) permit a member to inspect a document or make a copy of a document that the member is entitled to inspect or make under this section; and

(b) give the member all reasonable assistance to inspect the document or make the copy.

Penalty: a fine of $2 000.

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

Penalty: a fine of $2 000.

233. Use of information on registers

(1) A person must not —

(a) use information about a person obtained from a register kept under this Division to contact or send material to the person; or

(b) disclose information of that kind knowing that the information is likely to be used to contact or send material to the person,

unless that use or disclosure of the information is —

(c) relevant to the holding of the directorship, membership, shares, loans, securities, debentures, co-operative capital units or deposits concerned or the exercise of the rights attaching to them; or

(d) approved by the board; or

(e) necessary to comply with a requirement of this Act.

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(2) A person who contravenes subsection (1) is liable to compensate anyone else who suffers loss or damage because of the contravention.

(3) A person who makes a profit from a contravention of subsection (1) owes a debt to the co-operative.

(4) The amount of the debt is the amount of the profit.

234. Notice of appointment etc. of directors and officers

(1) A co-operative must give notice to the Registrar in accordance with this section of the appointment of a person as a director, chief executive officer or secretary of the co-operative or a subsidiary of the co-operative, and of the cessation of the appointment.

(2) The notice must —

(a) be in the form approved by the Registrar; and

(b) be given within 28 days after the appointment or cessation of appointment; and

(c) state the particulars, prescribed by the regulations, of the appointment or cessation of appointment.

Penalty: a fine of $2 000.

235. Annual report to be lodged with Registrar

(1) For the purposes of subsection (2) the required period is —

(a) 28 days after the annual general meeting of the co-operative; or

(b) if the annual general meeting of the co-operative is not held within the period stated in section 190(3)(a), 28 days after the end of that period.

(2) A co-operative must lodge with the Registrar, within the required period in each year, an annual report containing the following —

(a) a notice in the form approved by the Registrar listing the secretary, the directors and the chief executive officers of the co-operative and of each subsidiary of the

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co-operative, as at the date that the annual report is lodged with the Registrar;

(b) if the co-operative is required under section 225 to prepare a financial report for its most recently ended financial year, a copy of the financial report;

(c) a copy of the financial statements of each subsidiary of the co-operative in relation to the most recently ended financial year of the subsidiary, or a copy of the consolidated financial statements for all subsidiaries of the co-operative in relation to the most recently ended financial year of the subsidiaries;

(d) a copy of any report by the auditors or directors of the co-operative or subsidiary —

(i) prepared under section 225(2); or

(ii) on a financial report referred to in paragraph (b) or a financial statement referred to in paragraph (c);

(e) other particulars prescribed by the regulations.

Penalty: a fine of $2 000.

236. List of members to be provided at request of Registrar

A co-operative must, at the written request of the Registrar, send to the Registrar, within the time and in the way that the Registrar specifies, a full list of the members of the co-operative and of each subsidiary of the co-operative, together with the particulars with regard to those members that the Registrar specifies in the request.

Penalty: a fine of $2 000.

237. Special return to be given at request of Registrar

(1) The Registrar may, by direction in writing, require a co-operative to give to the Registrar a special return in the form, within the time, and relating to the subject matter, specified by the Registrar.

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(2) The co-operative must comply with a direction under subsection (1).

Penalty: a fine of $2 000.

Division 8 — Name and registered office

238. Name to include certain matter

(1) The name of a co-operative may consist of words, numbers or a combination of both.

(2) The name of a co-operative must include the word "Co-operative" or "Cooperative" or the abbreviation "Co-op".

(3) Subject to subsection (4) the word "Limited" or the abbreviation "Ltd" must be the last word of the name.

(4) The Registrar may approve the registration of a co-operative without "Limited" or the abbreviation "Ltd" in its name, or alter the registration of a co-operative by omitting "Limited" or the abbreviation "Ltd" from its name, if its constitution —

(a) requires the co-operative to pursue charitable purposes only and to apply its income in promoting those purposes; and

(b) prohibits the co-operative making distributions to its members and paying fees to its directors; and

(c) requires the directors to approve all other payments the co-operative makes to directors.

(5) The co-operative must notify the Registrar as soon as practicable if any of those requirements or prohibitions in its constitution are not complied with or if its constitution is modified to remove any of those requirements or prohibitions.

Penalty: a fine of $2 000.

(6) The Registrar may at any time by notice in writing to the co-operative revoke an approval under subsection (4) but only

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after giving the co-operative an opportunity to make submissions to the Registrar on the matter.

(7) A corporation that is formed or incorporated under an Act other than this Act must not register under the other Act by a name that includes the word "Co-operative" or "Cooperative" or the abbreviation "Co-op".

Penalty: a fine of $2 000.

(8) The Registrar cannot register as the name of a co-operative a name that contains anything a regulation declares is an unsuitable name, unless the Minister is satisfied the name is suitable for registration in the circumstances of a particular case.

(9) Subsection (7) does not apply to a corporation that is allowed under another Act to use the word "Co-operative" or "Cooperative" or the abbreviation "Co-op" in its name.

239. Use of abbreviations

A description of a co-operative is not inadequate or incorrect merely because of one or more of the following —

(a) the use of the abbreviation "Co-op" instead of the word "Co-operative" or "Cooperative" in the co-operative's name;

(b) the use of the abbreviation "Ltd" instead of the word "Limited" in the co-operative's name;

(c) the use of the symbol "&" instead of the word "and" in the co-operative's name;

(d) the use of any of those words instead of the corresponding abbreviation or symbol in the co-operative's name;

(e) the use of any abbreviation or elaboration of the name of the co-operative that is approved in a particular case or for a particular purpose by the Registrar in writing.

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240. Name to appear on business documents etc.

(1) A co-operative must ensure its name appears in legible characters on its seal, and in any of the following documents issued, signed or endorsed by or on behalf of the co-operative —

(a) a bill of exchange, promissory note, cheque or other negotiable instrument;

(b) a receipt or letter of credit issued by the co-operative;

(c) a document of a class prescribed by the regulations.

Penalty: a fine of $2 000.

(2) An officer of a co-operative or a person on its behalf must not —

(a) use a seal of the co-operative; or

(b) sign or authorise to be signed on behalf of the co-operative any document referred to in subsection (1),

in or on which the co-operative's name does not appear in legible characters.

Penalty: a fine of $2 000.

(3) A director of a co-operative who knowingly authorises or permits a contravention of this section is guilty of an offence.

Penalty: a fine of $2 000.

241. Change of name of co-operative

(1) A co-operative may by special resolution change its name to a name approved by the Registrar.

(2) A change of name must be advertised as prescribed by the regulations.

(3) A change of name does not take effect until —

(a) the Registrar has noted the change on the certificate of registration of the co-operative; or

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(b) the certificate of registration is surrendered to the Registrar and a replacement certificate of registration is issued in the new name.

(4) A change of name by a co-operative does not affect —

(a) the identity of the co-operative; or

(b) the exercise of a right, or the enforcement of an obligation, by or against the co-operative or a person; or

(c) the continuation of legal proceedings by or against the co-operative.

(5) Legal proceedings that might have been continued or started by or against the co-operative in its former name may be continued or started by or against the co-operative in its new name.

(6) The Registrar may refuse to approve a change of name if the Registrar thinks the new name is unsuitable.

(7) The Registrar may direct a co-operative to change its name if the Registrar considers the name is likely to be confused with the name of a corporation or a registered business name.

242. Restriction on use of word "co-operative" or similar words

(1) A person other than a co-operative must not trade, or carry on business, under a name or title containing the word "Co-operative" or "Cooperative" or the abbreviation "Co-op" or words importing a similar meaning.

Penalty: a fine of $2 000.

(2) Subsection (1) does not apply to a corporation referred to in section 238(9).

243. Registered office of co-operative

(1) A co-operative must have a registered office.

Penalty: a fine of $2 000.

(2) A co-operative must, at the premises of its registered office, publicly and conspicuously display a notice stating the name of

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the co-operative and identifying the premises as its registered office.

Penalty: a fine of $2 000.

(3) Within 28 days after changing the address of its registered office, a co-operative must give the Registrar written notice of the new address.

Penalty: a fine of $2 000.

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Part 10 — Funds and property

Division 1 — Power to raise money

244. Meaning of obtaining financial accommodation

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

245. Fund raising to be in accordance with Act and regulations

The regulations may impose requirements and restrictions on the obtaining of financial accommodation, and the giving of security in order to obtain financial accommodation, by a co-operative.

246. Limits on deposit taking

A co-operative cannot accept money on deposit unless —

(a) the co-operative is authorised by its rules to accept money on deposit and was authorised by its rules immediately before the commencement of this section to accept money on deposit; or

(b) the co-operative was a deposit-taking corporation immediately before it became a co-operative and it is authorised by its rules to accept money on deposit; or

(c) in the case of a merged co-operative, one or more of the co-operatives involved in the merger was a deposit-taking co-operative immediately before the registration of the merged co-operative and the merged co-operative is authorised by its rules to accept money on deposit.

247. Members etc. not required to see to application of money

A member or other person from whom a co-operative obtains financial accommodation is not required to see to its application

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and is not affected or prejudiced by the fact that in obtaining that financial accommodation, the co-operative contravened a provision of this Act or the rules of the co-operative.

248. Registrar's directions about fundraising

(1) The Registrar may, if the Registrar considers it is in the interests of a co-operative's members, by written notice served on a co-operative, give a direction to the co-operative as to the way in which it is to exercise its functions in connection with the activities of the co-operative in obtaining financial accommodation.

(2) A direction under subsection (1) may make provision for any one or more of the following matters —

(a) requiring the co-operative to stop obtaining financial accommodation or to stop obtaining financial accommodation in a particular way;

(b) requiring the co-operative to repay in accordance with the direction all or part of financial accommodation obtained;

(c) requiring the co-operative to re-finance in a specified way financial accommodation repaid in accordance with the Registrar's direction;

(d) the way in which the co-operative is permitted to invest or use the proceeds of financial accommodation it obtains.

(3) Within 28 days of receiving a direction, a co-operative may apply to the Supreme Court for a review of that decision.

249. Subordinated debt

(1) In this section —

subordinated debt means debt incurred under an agreement under which, in the event of the winding-up of the co-operative,

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a claim of the creditor against the co-operative in relation to the debt is to rank in priority —

(a) equally with the claim of another creditor who is a party to a similar agreement; and

(b) except as provided by paragraph (a), after the claims of another creditor of the co-operative and before the claims of members to repayment of share capital in the co-operative.

(2) A co-operative may incur subordinated debt.

(3) An agreement under which subordinated debt is incurred has effect despite the provisions of the Corporations Act Part 5.6 Division 6, as applied under Part 12 Division 3 of this Act.

250. Application of Corporations Act to issues of debentures

(1) Subject to subsection (2), the debentures of a co-operative are declared to be applied Corporations legislation matters for the purposes of the *Corporations (Ancillary Provisions) Act 2001* Part 3 in relation to the provisions of Part 1.2A, Chapter 2L, Chapter 6CA, Chapter 6D and Part 7.10 of the Corporations Act, subject to the following modifications —

(a) the provisions apply as if a co-operative were a company;

(b) a reference in the provisions to a corporation includes a reference to a co-operative;

(c) a reference in the provisions to ASIC is to be read as a reference to the Registrar;

(d) any other changes, within the meaning of the *Corporations (Ancillary Provisions) Act 2001* Part 3, that are prescribed by the regulations.

(2) The provisions of the Corporations Act applying to the debentures of a co-operative by this section do not apply to the following —

(a) a loan to which section 255 applies;

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(b) an issue of debentures of a co-operative that is made —

(i) solely to members; or

(ii) solely to members and employees of the co-operative; or

(iii) to a person who on becoming an inactive member of the co-operative has had his or her share capital converted to debt.

(3) Words used in this section that are not defined in this Act have the same meanings as in the Corporations Act.

251. Application of Corporations Act to particular issues of debentures

An issue of debentures to which section 252 applies is declared to be an applied Corporations legislation matter for the *Corporations (Ancillary Provisions) Act 2001* Part 3 in relation to the Corporations Act, sections 722 and 734, subject to the following modifications —

(a) the provisions apply as if a co-operative were a company;

(b) a reference in the provisions to a disclosure document is to be read as a reference to a disclosure statement under section 252;

(c) a reference in the provisions to securities is to be read as a reference to debentures;

(d) a reference in the provisions to ASIC is to be read as a reference to the Registrar;

(e) any other modifications, within the meaning of the *Corporations (Ancillary Provisions) Act 2001* Part 3 that are prescribed under the regulations.

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252. Disclosure statement

(1) This section applies to the issue of debentures of a co-operative if the issue is made —

(a) solely to members; or

(b) solely to members and employees of the co-operative.

(2) This section does not apply to the issue of debentures under section 73(2) or 127(1).

(3) Before issuing to a person debentures to which this section applies, that person may request a disclosure statement, approved by the Registrar, and containing the information that is reasonably necessary to enable a person to make an informed assessment of the financial prospects of the co-operative, including —

(a) the purpose for which the money raised by the co-operative by the issue of debentures is to be used; and

(b) the rights and liabilities attaching to the debentures; and

(c) the financial position of the co-operative; and

(d) the interests of the directors of the co-operative in the issue of the debentures; and

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

(f) other matters that the Registrar directs.

(4) Sections 16 (except subsection (3)) and 29 apply to the approval of a disclosure statement under this section with any necessary changes and, in particular, as if a reference in section 16 to a formation meeting were a reference to the issue of debentures.

253. Approval of board for transfer of debentures

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

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254. Application of Corporations Act — reissue of redeemed debentures

Debentures issued by a co-operative to any of its members or employees are declared to be applied Corporations legislation matters for the purposes of the *Corporations (Ancillary Provisions) Act 2001* Part 3 in relation to the Corporations Act section 124(1)(b) or 563AAA as if a co-operative were a company.

255. Compulsory loan by member to co-operative

(1) A co-operative may require its members to lend money, with or without security, to the co-operative, in accordance with a proposal approved by special resolution of the co-operative.

(2) The proposal cannot require a loan to be for a term of more than 7 years or another term prescribed by the regulations.

(3) The proposal must —

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

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

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

(4) If the proposal allows, the board of the co-operative may, under the terms of the proposal, deduct the money required to be lent by a member to the co-operative from money payable from the co-operative to the member for his or her dealings with the co-operative.

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(5) A proposal to deduct money referred to in subsection (4) must, in addition to meeting the requirements of subsection (3), show —

(a) the basis on which the money is to be deducted; and

(b) the time and way of making the deductions.

(6) When approved the proposal is binding on —

(a) all members of the co-operative at the date of passing of the special resolution, other than a member who has given a notice of resignation in accordance with subsection (3)(c); and

(b) all persons who become members of the co-operative after that date and before the total amount of the loan to be raised under the proposal has been raised.

(7) Sections 16 (except subsection (3)) and 29 apply to the approval of a disclosure statement under this section with any necessary changes and in particular as if a reference in section 16 to a formation meeting were a reference to the special resolution.

256. Interest payable on compulsory loan

(1) The rate of interest payable by a co-operative on a loan under section 255 during a period is —

(a) in the case of a co-operative with share capital —

(i) the rate (or if there is more than one rate, the higher or highest rate) of dividend payable for the period on the share capital of the co-operative; or

(ii) if the rate of dividend payable for the period has not been determined, the rate (or the higher or highest rate) of dividend payable for the immediately preceding period for which a rate has been determined; or

(iii) if a rate of dividend has never been determined for the share capital of the co-operative, the rate

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that the board of the co-operative considers reasonable;

or

(b) in the case of a co-operative without share capital, the rate that the board of the co-operative considers reasonable; or

(c) if the rules provide for a rate to be payable that is higher than the rate applicable under paragraph (a) or (b), that higher rate.

(2) A member may agree to the rate of interest being less than the rate that would otherwise be payable under this section and may agree to no interest being paid.

Division 2 — Co-operative capital units

257. General nature of co-operative capital units

(1) A co-operative capital unit (***CCU***) is an interest issued by a co-operative conferring an interest in the capital, but not the share capital, of the co-operative.

(2) A CCU —

(a) is personal property; and

(b) is transferable or transmissible as provided by this Act and the rules of the co-operative, subject to the terms of issue of the CCU; and

(c) is, subject to the rules of the co-operative, capable of devolution by will or by operation of law.

(3) Subject to subsection (2) —

(a) the laws applicable to ownership of and dealing with personal property apply to a CCU as they apply to other property; and

(b) equitable interests in respect of a CCU may be created, dealt with and enforced as in the case of other personal property.

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(4) A transferor of a CCU remains the holder of the CCU until the transfer is registered and the name of the transferee, and the details of the transferee's CCU holding, are entered in the register of CCU holders referred to in section 230(1).

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

258. Priority of CCU's on winding-up

(1) On a winding-up of a co-operative, a debt owed to a person as the holder of a CCU issued by the co-operative is to rank for priority of payment in accordance with the terms of issue of the CCU.

(2) Such a debt may rank as a secured debt if it is secured but if it is unsecured may not rank in priority to other unsecured debts.

(3) It may rank equally with or behind unsecured debts and, if the debt ranks behind unsecured debts, may rank in priority to, equally with or behind debts due to contributories.

259. Financial accommodation provisions apply to issue of CCUs

(1) The issuing of CCUs is to be considered to be the obtaining of financial accommodation and accordingly Part 10 Division 1 applies to the issue of CCUs.

(2) For the purposes of that Division, a CCU is to be considered to be a debenture.

260. CCUs to be issued to non-members

CCUs may be issued to a person whether or not the person is a member of the co-operative.

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261. Minimum requirements for rules concerning CCUs

The rules of a co-operative that permit the co-operative to issue CCUs must contain provision to the effect of the following provisions and cannot contain provisions that are inconsistent with the following provisions —

(a) each holder of a CCU is entitled to one vote per CCU held at a meeting of the holders of CCUs;

(b) the rights of the holders of CCUs may be varied only in the way and to the extent provided by their terms of issue and only with the consent of at least 75% of those holders of CCUs who, being entitled to do so, cast a formal vote to accept the variation at a meeting;

(c) the holder of a CCU has, in the person's capacity as a holder of a CCU, none of the rights or entitlements of a member of the co-operative;

(d) the holder of a CCU is entitled to receive notice of all meetings of the co-operative and all other documents in the same manner as the holder of a debenture of the co-operative.

262. CCUs not to be issued unless terms of issue approved by Registrar

(1) A co-operative is not to issue CCUs unless —

(a) the terms of issue have been approved by a special resolution of the co-operative; and

(b) the issue is made pursuant to an offer accompanied by a copy of a statement approved by the Registrar under subsection (3); and

(c) the Registrar approves of the terms of the issue under subsection (4).

(2) The terms of issue must include, but is not limited to including, the following information —

(a) details of entitlement to repayment of capital;

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(b) details of entitlement to participate in surplus assets and profits;

(c) details of entitlement to interest on capital, including whether interest is cumulative or non-cumulative;

(d) details of how capital and interest on capital are to rank for priority of payment on a winding-up;

(e) whether there is a limit on the total holding of CCUs that may be acquired by persons who are not members of the co-operative and, if there is a limit, what the limit is.

(3) The statement approved by the Registrar for the purposes of the issue is to set out the terms of the issue, the rights of the holders of CCUs, the terms of redemption and the manner of transferability of CCUs.

(4) The Registrar is not to approve the terms of issue unless satisfied that they will not result in a failure to comply with co-operative principles and are not contrary to the rules of the co-operative or this Act.

263. Directors' duties concerning CCUs

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

264. Redemption of CCUs

(1) The redemption of CCUs is not to be considered to be a reduction in the share capital of the co-operative.

(2) A co-operative may redeem CCUs but only on the terms and in the way that is provided by the terms of their issue and only if they are fully paid up.

(3) CCUs may not be redeemed except out of —

(a) profits; or

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(b) the proceeds of a fresh issue of shares, or an approved issue of CCUs, made for the purpose of the redemption.

(4) An issue of CCUs is an approved issue for the purposes of subsection (3) if there is the same entitlement to priority of payment of capital and dividend in relation to shares in the co-operative as there was for the redeemed CCUs.

(5) Any premium payable on redemption is to be provided for out of profits or out of the share premium account or an account created for that purpose.

265. Capital redemption reserve

(1) This section applies if CCUs are redeemed out of profits.

(2) Subsections (4) and (5) do not apply to a non-distributing co-operative.

(3) Out of profits there is to be transferred to a reserve called the capital redemption reserve a sum equal to the nominal amount of the CCUs redeemed.

(4) The provisions of this Act relating to the reduction of share capital of a co-operative apply as if the capital redemption reserve were paid up share capital of the co-operative.

(5) The capital redemption reserve may be applied in paying up unissued shares of the co-operative to be issued to members of the co-operative as fully paid bonus shares.

266. Issue of shares in substitution for redemption

(1) If a co-operative has redeemed or is about to redeem CCUs held by an active member of the co-operative, it may —

(a) issue shares to the member up to the sum of the nominal value of the CCUs redeemed or to be redeemed, as if those CCUs had never been issued; or

(b) pay up amounts unpaid on shares held by the member up to the sum of the nominal value of the CCUs redeemed

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or to be redeemed, as if those CCUs had never been issued.

(2) This section applies only if the terms of issue of the CCUs provide for the conversion of CCUs held by an active member of the co-operative into shares of the co-operative.

Division 3 — Charges

267. Registration of charges

Schedule 3 has effect but does not apply to —

(a) a mortgage, charge or encumbrance that is over specific land and is registered under the *Transfer of Land Act 1893*; or

(b) a mortgage, charge or encumbrance registered under the *Mining Act 1978*.

[(c) deleted]

[Section 267 amended by No. 42 of 2011 s. 40.]

Division 4 — Receivers and other controllers of property of co-operatives

268. Receivers and other controllers of property of co-operatives

Schedule 4 has effect.

Division 5 — Disposal of surplus from activities

269. Retention of surplus for benefit of co-operative

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

270. Application for charitable purposes or members' purposes

(1) A co-operative may apply a part of the surplus arising in a year from the business of the co-operative for a charitable purpose.

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(2) A distributing co-operative may apply a part of the surplus arising in a year from the business of the co-operative towards supporting an activity approved by the co-operative.

(3) The rules must limit the amount that may be applied under subsection (1) or (2) to a specified proportion of the surplus.

(4) A co-operative may apply part of the surplus for a purpose and to the extent authorised by rules.

271. Distribution of surplus or reserves to members

(1) In this section —

limited dividend means a dividend that is not more than the amount prescribed by the regulations.

(2) A distributing co-operative may apply a part of the surplus arising in any year from the business of the co-operative or a part of the reserves of the co-operative by —

(a) distribution to members as a rebate in proportion to the value of business done by each member with the co-operative or to profits earned by the co-operative on business done by each member with the co-operative; or

(b) the issue of bonus shares to members in proportion to the value of business done by each member with the co-operative, to profits earned by the co-operative on business done by each member with the co-operative or to shares held by the member; or

(c) the issue to members of a limited dividend in proportion to shares held by the member.

(3) The amount of a rebate or dividend payable to a member under subsection (2)(a) or (c) may, with the consent of the member, be applied —

(a) in payment for the issue to the member of bonus shares; or

(b) as a loan to the co-operative.

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272. Application of surplus to other persons

(1) A part of the surplus arising in a year from the business of a distributing co-operative may be credited to a person who is not a member, but is qualified to be a member, by way of rebate in proportion to the value of business done by the person with the co-operative or to the profit earned by the co-operative on business done by the person with the co-operative, if —

(a) the person was a member when the business was done and the membership has lapsed; or

(b) the person has applied for membership since the business was done.

(2) Nothing in this section precludes the payment of a bonus to an employee in accordance with the terms of his or her employment.

Division 6 — Acquisition and disposal of assets

273. Acquisition and disposal of assets

(1) In this section —

undertaking, of a co-operative, means all the assets of the co-operative.

(2) Unless otherwise provided by the rules, a co-operative must not do any of the following things except as approved by special resolution by means of a special postal ballot —

(a) sell, or lease as a going concern —

(i) the undertaking of the co-operative; or

(ii) a part of that undertaking that relates to its primary activities and the value of which represents the percentage prescribed by the regulations or more of the total value of the undertaking;

(b) acquire from or dispose of to a director or employee of the co-operative, or a relative, within the meaning of the

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Corporations Act, of a director or employee of the co-operative or of the spouse (or de facto partner) of a director or employee of the co-operative, property the value of which represents the percentage prescribed by the regulations, or more, of the total value of all the assets of the co-operative that relate to its primary activities;

(c) acquire an asset the value of which represents the percentage prescribed by the regulations, or more, of the total value of the assets of the co-operative, if the acquisition would result in the co-operative starting to carry on an activity that is not one of its primary activities.

Penalty: a fine of $6 000.

(3) If a co-operative contravenes this section, each person who is a member of the board of the co-operative is taken to have committed an offence unless the person satisfies the court that he or she used all due diligence to prevent the contravention by the co-operative.

Penalty: a fine of $6 000.

(4) The Registrar may, by order published in the *Gazette*, exempt a co-operative from compliance with a provision of this section and section 186 in relation to any matter to which this section applies.

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Part 11 — Restrictions on the acquisition of interests in co-operatives

Division 1 — Restrictions on share and voting interests

274. Application of Part

This Part applies to —

(a) distributing co-operatives; and

(b) non-distributing co-operatives with a share capital.

275. Notice required to be given of voting interest

(1) A person, whether or not a member of the co-operative, must give notice to a co-operative within 5 business days after becoming aware that the person has a relevant interest in the right to vote of a member of the co-operative.

Penalty: a fine of $2 000.

(2) A person, whether or not a member of the co-operative, who has ceased to have a relevant interest in the right to vote of a member of a co-operative must give notice to the co-operative within 5 business days after becoming aware of the fact.

Penalty: a fine of $2 000.

(3) Section 171 provides for the effect of a person having a relevant interest in the right to vote of a member of a co-operative.

276. Notice required to be given of substantial share interest

(1) A person must give notice to a co-operative within 5 business days after becoming aware that the person has a substantial share interest in the co-operative.

Penalty: a fine of $2 000.

(2) A person who has a substantial share interest in a co-operative must give notice to the co-operative within 5 business days after

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becoming aware that a substantial change has occurred in the share interest.

Penalty: a fine of $2 000.

(3) A person who has ceased to have a substantial share interest in a co-operative must give notice to the co-operative within 5 business days after becoming aware that the person has ceased to have the interest.

Penalty: a fine of $2 000.

(4) A person has a ***substantial share interest*** in a co-operative if the nominal value of the shares in the co-operative in which the person has a relevant interest represents 5% or more of the nominal value of the issued share capital of the co-operative.

(5) A ***substantial change*** takes place in a person's share interest in a co-operative if there is an increase or decrease in the number of shares in the co-operative in which the person has a relevant interest and the increase or decrease represents at least 1% of the nominal value of the issued share capital of the co-operative.

277. Requirements for notices

A notice required under this Division must —

(a) be in the form approved by the Registrar; and

(b) state the particulars, prescribed by the regulations, of the interest or change being notified.

278. Maximum permissible level of share interest

(1) A person cannot have a relevant interest in shares of a co-operative the nominal value of which is more than 20% of the nominal value of the issued share capital of the co-operative.

(2) The Registrar, by order published in the *Gazette*, may specify a maximum greater than 20% as the maximum permissible level of share interest for the purposes of subsection (1) for a particular co-operative.

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(3) Unless an order under subsection (2) is in force, a co-operative, by its rules, may specify a maximum less than 20% as the maximum permissible level of share interest for the purposes of subsection (1) for that co-operative.

(4) The maximum permissible level of share interest applying under this section may be increased for a particular person by special resolution of the co-operative concerned passed by a special postal ballot.

(5) A resolution under subsection (4) does not have effect unless —

(a) it is approved by the Registrar; or

(b) the person concerned is another co-operative.

(6) The Registrar's approval of the resolution may be given on conditions.

279. Transitional provision

(1) This section applies to a member of a transferred co-operative whose relevant interest in the shares of that co-operative immediately before the transfer day was more than the maximum permissible level of share interest for the purposes of section 278(1).

(2) The maximum permissible level of share interest for the purposes of section 278(1) for the member is the level of the member's relevant interest in the shares immediately before the transfer day.

(3) In relation to a particular co-operative, this section ceases to operate 6 months after the transfer day.

280. Shares to be forfeited to remedy contravention

(1) If a person has a relevant interest in a share of a co-operative in contravention of this Division that is not remedied within 14 days of a notice of that contravention being issued by the board, the board of the co-operative must declare to be forfeited

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enough of the shares in which the person has a relevant interest to remedy the contravention.

(2) The shares to be forfeited are —

(a) the shares nominated by the person for the purpose; or

(b) in the absence of such a nomination, the shares in which the person has had a relevant interest for the shortest time.

(3) A declaration of the board that shares are forfeited operates to forfeit the shares concerned.

(4) On forfeiture of the shares, section 295(1)(b) ceases to apply in relation to the contravention.

(5) Sections 127 to 129 apply to shares forfeited under this section as if the shares had been forfeited under Part 6.

281. Powers of board in response to suspected contravention

(1) If the board of a co-operative is satisfied on reasonable grounds that a person has contravened section 278 in relation to the co-operative, the board may do either or both of the following —

(a) refuse to register a share transfer involving the person;

(b) suspend a stated right or entitlement that a person has as a member of the co-operative or attaching to any shares of the co-operative in which the person has a relevant interest.

(2) The board may request a person who it suspects has a relevant interest in shares of the co-operative to give specified information to the board about the interest.

(3) A failure by a person to comply with a request under subsection (2) is a reasonable ground for being satisfied that the person has contravened section 278.

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282. Powers of Supreme Court in relation to contravention

(1) If a person has contravened section 278 in relation to a co-operative, the Supreme Court may, on the application of the co-operative or the Registrar, make any order it considers appropriate.

(2) Without limiting subsection (1), an order may include —

(a) a remedial order; and

(b) for the purpose of securing compliance with any other order made under this section, an order directing the co-operative or any other person to do or refrain from doing a specified act.

(3) An order may be made whether or not the contravention continues.

(4) Proof to the satisfaction of the Supreme Court at the hearing of an application that —

(a) a person has a relevant interest in a share of a co-operative because an associate of the person has a relevant interest in a share; and

(b) the associate became entitled to the relevant interest within 6 months before the application was filed with the Supreme Court,

is evidence that the associate was an associate of the person from the time the person first had the relevant interest until the date of the hearing.

283. Co-operative to notify Registrar of interest over 20%

(1) A co-operative must notify the Registrar in writing within 14 days after the board becomes aware that —

(a) a particular person has a relevant interest in shares of the co-operative the nominal value of which is more than 20% of the nominal value of the issued share capital of the co-operative; or

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(b) there has been a change in the number of shares in which that person holds a relevant interest.

(2) The notification must give details of the relevant interest concerned or of the change concerned.

284. Co-operative to keep register

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

(2) The co-operative must enter in the register in alphabetical order the names of persons from whom the co-operative has received notice under this Division together with the information contained in the notice.

(3) The register must be open for inspection —

(a) by a member in accordance with section 232; and

(b) by any other person on payment of the fee (if any) that the co-operative may require, being not more than the maximum fee prescribed by the regulations.

285. Unlisted companies to provide list of shareholders etc.

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

(2) A company to which this section applies that is a member of a co-operative must give to the co-operative a list showing —

(a) the name of each member of the company as at the end of the financial year of the company and the number of shares in the company held by each member; and

(b) the name of each person who has a relevant interest, within the meaning of the Corporations Act, in a share of the company together with details of the interest; and

(c) the name of each person who is an associate, within the meaning of the Corporations Act, of the company.

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(3) A list under subsection (2) must be given within 28 days after a written request for the list is made to the company by the co-operative or the Registrar.

(4) The details to be shown on the list are the details as at the date specified in the request.

(5) The Registrar may make a request under subsection (3) if the Registrar is of the opinion that the company is or may be involved in a suspected contravention of a provision of this Division.

286. Excess share interest not to affect loan liability

(1) This section applies if a co-operative has made a loan to a member and the member had or has a relevant interest in shares of the co-operative in contravention of this Division.

(2) Until the amount lent to the member has been repaid to the co-operative, with any interest payable, the member is liable to make to the co-operative the payments that the member would be liable to make if all the shares concerned were lawfully held by the member.

(3) Security for the repayment of the loan is not affected by a contravention of this Division.

287. Extent of operation of Division

This Division —

(a) applies to all individuals, whether resident in this State or in Australia or not and whether Australian citizens or not, and to all bodies, whether incorporated or not, and whether carrying on business in this State or in Australia or not; and

(b) extends to acts done or omitted to be done outside this State, whether in Australia or not.

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288. Registrar may grant exemption from Division

The Registrar may, by order published in the *Gazette*, exempt a person from the operation of this Division.

Division 2 — Restrictions on certain share offers

289. Share offers to which Division applies

This Division applies to the following offers to purchase shares in a co-operative —

(a) an offer made as part of a proposal for, or that is conditional on, the sale of the undertaking or part of the undertaking, as a going concern, of the co-operative;

(b) an offer made as part of a proposal for, or that is conditional on, the registration of the co-operative as a company under the Corporations Act;

(c) an offer made as part of a proposal for, or that is conditional on, the winding-up of the co-operative;

(d) an offer that would result in a contravention of section 278 were the offeror to be registered, immediately after the offer is made, as the holder of the shares that are the subject of the offer.

290. Offer to be approved by special resolution using special postal ballot

Any offer to which this Division applies must be approved by special resolution by means of a special postal ballot.

291. Some offers totally prohibited if they discriminate

An offer referred to in section 289(a) to (d) cannot discriminate between members who are active members and members who are not active members.

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292. Offers to be submitted to board first

(1) Any proposal to make an offer to which this Division applies must in the first instance be submitted to the board of the co-operative.

(2) In order for the board to consider putting a proposed offer to a special postal ballot, arrangements satisfactory to the board must have been made for payment to the co-operative of the expenses involved in holding the ballot.

(3) The board may require payment in advance under subsection (2).

(4) A requisition for a special postal ballot for the purposes of this Division cannot be served unless and until the board has had a reasonable opportunity to consider the proposed offer concerned.

(5) For the purposes of subsection (4), a period of 28 days is a reasonable opportunity for considering a proposed offer but the Registrar may extend that period in a particular case, whether before or after the end of the 28 days, by written notice to the co-operative.

293. Announcements of proposed takeovers concerning proposed company

(1) This section applies to an offer to purchase shares in a co-operative made as part of a proposal for, or that is conditional on, the registration of the co-operative as a company (the ***proposed company***) under the Corporations Act.

(2) A person must not make a public announcement to the effect that the person proposes, or that the person and another person or other persons together propose, to make takeover offers, or to cause a takeover announcement to be made, in relation to the proposed company if —

(a) the person knows that the announcement is false or is recklessly indifferent as to whether it is true or false; or

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(b) the person has no reasonable grounds for believing that the person, or the person and the other person or persons, will be able to perform obligations arising under the scheme or announcement or under the Corporations Act in relation to the scheme or announcement if a substantial proportion of the offers or the offers made under the announcement are accepted.

Penalty: a fine of $20 000 or imprisonment for 5 years.

(3) If a person makes a public announcement to the effect that the person proposes, or that the person and another person or other persons together propose, to make a takeover bid in relation to the proposed company, the person must proceed to make a takeover bid in relation to shares in the company in accordance with the public announcement within 2 months after the day on which the company is incorporated.

Penalty: a fine of $10 000 or imprisonment for 2 years.

(4) A person is not liable to be convicted of more than one offence under subsection (3) for any one public announcement.

(5) A person who contravenes this section, whether or not the person is convicted of an offence for the contravention, is liable to pay compensation to a person who suffered loss as a result of entering into a share transaction in reliance on the public announcement concerned.

(6) The amount of that compensation is the difference between the price of the shares at which the transaction was entered into and the price of the shares at which the transaction would have been likely to have been entered into if the person had not made the public announcement.

(7) A person does not contravene subsection (3) and is not liable to pay compensation for the contravention if it is proved that the person could not reasonably have been expected to make the takeover bid concerned —

(a) as a result of circumstances that existed when the public announcement was made but of which the person had no

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knowledge and could not reasonably have been expected to have knowledge; or

(b) as a result of a change in circumstances after the announcement was made, other than a change in circumstances caused directly or indirectly by the person.

(8) Expressions used in this section have the same meanings as in the Corporations Law section 746 as applying on 12 March 2000.

294. Additional disclosure requirements for offers involving conversion to company

If an offer is part of a proposal for, or is conditional on, the registration of the co-operative as a company under the Corporations Act, the disclosure statement required to be sent to members for the purposes of the special postal ballot relating to the offer must contain the following additional information —

(a) full particulars of any proposal by which a director will acquire a relevant interest in a share of the company to be formed;

(b) other information that is material to the making of a decision by a member whether or not to agree to the making of the offer, being information that is within the knowledge of the directors and has not previously been disclosed to the members;

(c) other information that the Registrar directs.

295. Consequences of prohibited offer

(1) If a person makes an offer to purchase shares in a co-operative in contravention of this Division —

(a) the person cannot be registered as the holder of the shares concerned; and

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(b) if the transfer of the shares is registered, the person cannot vote at a meeting of, or in a postal ballot conducted by, the co-operative.

(2) A vote cast by or for a member when the member cannot vote because of this section must be disregarded.

296. Registrar may grant exemptions

The Registrar may, by order published in the *Gazette*, exempt a person or co-operative from compliance with a provision of this Division and section 186 in relation to a matter to which this Division applies.

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Part 12 — Merger, transfer of engagements, winding-up

Division 1 — Mergers and transfers of engagements

297. Application of Division

This Division does not apply to a merger or transfer of engagements to which Part 14 applies.

298. Mergers and transfers of engagements of local co-operatives

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

299. Requirements before application can be made

(1) Before co-operatives can apply for approval under this Division of a merger or transfer of engagements, the proposed merger or transfer must have been approved by each of the co-operatives by —

(a) a special resolution passed by means of a special postal ballot; or

(b) if permitted by subsection (2), a resolution of the board of the co-operative.

(2) The proposed merger or transfer of engagements may be approved by resolution of the board of a co-operative if the Registrar consents to that procedure applying in the particular case.

300. Disclosure statement required

(1) A special resolution by which members of a co-operative approve a merger or transfer of engagements is not effective for the purposes of this Division unless this section has been complied with.

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(2) Each co-operative must send to each of its members a disclosure statement approved by the Registrar stating —

(a) the financial position of each co-operative concerned in the proposed merger or transfer of engagements as shown in financial statements that have been prepared as at a date that is not more than 6 months before the date of the statement; and

(b) any interest that any officer of each co-operative has in the proposed merger or transfer of engagements; and

(c) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to any officer or member of each co-operative in relation to the proposed merger or transfer of engagements; and

(d) whether the proposal is a merger or transfer of engagements and the reason for the merger or transfer of engagements; and

(e) in the case of a transfer of engagements, whether it is a total or partial transfer of engagements; and

(f) other information that the Registrar directs.

(3) The disclosure statement must be sent to the members of each co-operative so that it will, in the ordinary course of post, reach each member who is entitled to vote on the special resolution not later than 21 days before the day on or before which the ballot papers must be returned by members voting in the special postal ballot.

(4) The Registrar may, by order published in the *Gazette*, exempt a co-operative from complying with this section.

(5) The Registrar may approve a disclosure statement on any conditions he or she considers appropriate.

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301. Making an application

(1) An application for approval of a merger or transfer of engagements under this Division must be made to the Registrar in the way and form required by the Registrar.

(2) An application for approval of a merger must be accompanied by 2 copies of the proposed rules of the merged co-operative and any other particulars required by the Registrar.

302. Approval of merger

(1) The Registrar must approve a merger pursuant to an application under this Division if satisfied that —

(a) this Division has been complied with in relation to the application; and

(b) the proposed rules of the merged co-operative are consistent with this Act and may reasonably be approved; and

(c) the certificates of registration of the co-operatives have been surrendered to the Registrar; and

(d) there is no good reason why the merged co-operative and its rules should not be registered.

(2) On approving an application for merger, the Registrar must —

(a) cancel the registration of the co-operatives involved in the merger; and

(b) register the merged co-operative and its rules; and

(c) issue to the merged co-operative a certificate of registration under this Act.

(3) A merger takes effect on the issue of the certificate of registration for the merged co-operative.

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303. Approval of transfer of engagements

(1) The Registrar must approve a transfer of engagements pursuant to an application under this Division if satisfied that —

(a) this Division has been complied with in relation to the application; and

(b) the rules or proposed rules of the transferee co-operative are adequate; and

(c) in the case of a total transfer of engagements from a co-operative, the certificate of registration of the co-operative has been surrendered to the Registrar; and

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

(2) A transfer of engagements takes effect on the day specified in the approval of the Registrar.

304. Transfer of engagements by direction of Registrar

(1) The Registrar may, with the approval of the Minister, direct a co-operative —

(a) to transfer its engagements to a co-operative approved by the Registrar; and

(b) within a period specified by the Registrar when giving the direction or a further period allowed by the Registrar, to enter into an agreement approved by the Registrar to give effect to the transfer of engagements directed.

(2) The Registrar cannot give such a direction to a co-operative unless the necessary grounds exist for the giving of the direction, as referred to in section 336(2).

(3) The transfer of engagements must make provision, in a way approved by the Registrar, for the members of the transferor co-operative who wish to do so to become members of the transferee co-operative.

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(4) If a co-operative fails to comply with a direction under this section, the Registrar may elect to treat the failure as the necessary grounds —

(a) for winding-up the co-operative on a certificate of the Registrar; or

(b) for appointing an administrator of the co-operative.

(5) The Registrar must notify the co-operative of the Registrar's decision under subsection (4).

(6) The Registrar may revoke a direction under this section at any time up until the co-operative has agreed pursuant to the direction to transfer its engagements.

(7) A transfer of engagements directed under this section takes effect on a day notified by the Registrar in the *Gazette*.

(8) An officer of a co-operative must not —

(a) fail to take all reasonable steps to secure compliance by the co-operative with a direction given under this section; or

(b) by a wilful act or omission be the cause of a failure by the co-operative to comply with a direction.

Penalty: a fine of $2 000.

Division 2 — Transfer of incorporation

305. Application for transfer

(1) A co-operative, if approved under this Division, may apply to become registered or incorporated as one of the following corporations —

(a) a company under the Corporations Act;

(b) an incorporated association under the *Associations Incorporation Act 1987*;

(c) a corporation that is incorporated, registered or otherwise established under a law that is a law of a place

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outside this State and that is prescribed by the regulations.

(2) For the purposes of subsection (1)(a), an application is to be made in accordance with the Corporations Act section 601BC for registration as a company under Part 5B of that Act.

(3) For the purposes of the Corporations Act section 601BC(8)(d), a co-operative is authorised by this Act to transfer its incorporation.

306. Requirements before application can be made

(1) Before an application is made under section 305, the co-operative must, by special resolution passed by means of a special postal ballot —

(a) approve the proposed application; and

(b) determine under what name the co-operative is to apply to be incorporated or registered; and

(c) adopt a constitution or replaceable rules or rules that may be necessary or considered desirable.

(2) The name applied for need not be the same as that of the co-operative and cannot include the word “co-operative” or “cooperative” or another word importing a similar meaning.

(3) The regulations may provide that a co-operative is exempt from compliance with a provision of this section and section 186 in relation to a matter to which this section applies.

307. Meaning of *new body* and *transfer*

The registration or incorporation of a co-operative as a corporation as a result of an application under this Division is referred to in this Division as its ***transfer*** and the corporation concerned is referred to in this Division as the ***new body***.

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308. New body ceases to be registered as co-operative

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

309. Transfer not to impose greater liability etc.

(1) The constitution or replaceable rules or rules adopted for the purposes of the transfer cannot be such as to —

(a) impose on the members of the new body who were members of the co-operative at the date of transfer any greater or different liability to contribute to the assets of the new body than the liability to which they were subject as members of the co-operative; or

(b) deprive a member of the new body of preferential rights to dividend or capital to which the member was entitled as a member of the co-operative at the date of transfer.

(2) In subsection (1), ***member*** includes former shareholder of a co-operative, whose shares have been forfeited within 2 years of the transfer.

(3) The transfer must result in all persons who were members of the co-operative at the date of transfer becoming members of the new body.

(4) In the case of a transfer of a co-operative that has a share capital to a new body that has a share capital, the transfer must result in every member of the co-operative at the date of transfer who held shares in the co-operative being the holder of shares in the capital of the new body equal in number and nominal value to the shares held by the member as a member of the co-operative.

310. Effect of new certificate of registration

A certificate of registration or incorporation as the new body issued by the appropriate officer under the law applicable to the new body is evidence that all the requirements of this Division about registration or incorporation have been complied with.

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311. New body must give copy of new certificate of registration or incorporation to Registrar

On the transfer of a co-operative under this Division, the new body must immediately give the Registrar a copy of its new certificate of registration or incorporation.

Penalty: a fine of $1 000.

312. New body is a continuation of the co-operative

(1) When a co-operative transfers to a new body, the corporation constituted by the new body is taken to be the same entity as the corporation constituted by the co-operative.

(2) Without limiting subsection (1), Division 6 applies to a transfer under this Division.

Division 3 — Winding-up and deregistration

313. Methods of winding-up

(1) A co-operative may be wound-up voluntarily or by the Supreme Court or on a certificate of the Registrar.

(2) In the case of a winding-up voluntarily or by the Supreme Court, the co-operative may be wound-up in the same way and in the same circumstances as a company under the Corporations Act may be wound-up.

314. Winding-up on Registrar's certificate

(1) A co-operative may be wound-up on a certificate of the Registrar only if the necessary grounds for taking the action exist, as referred to in section 336.

(2) A winding-up on a certificate of the Registrar starts when the Registrar gives the certificate to the co-operative.

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(3) On the giving of a certificate, the Registrar may appoint a person to be the liquidator of the co-operative.

(4) The liquidator need not be a registered liquidator under the Corporations Act.

(5) The liquidator must, within 10 days after appointment, give notice of his or her appointment in the *Gazette*.

(6) The liquidator must give the security prescribed by the regulations and is entitled to receive the fees fixed by the Registrar.

(7) Any vacancy occurring in the office of liquidator is to be filled by a person appointed by the Registrar.

315. Method of deregistration

A co-operative may be deregistered in the same way and in the same circumstances as a company under the Corporations Act may be deregistered.

316. Application of Corporations Act to winding-up and deregistration

The winding-up or deregistration of a co-operative, and a deregistered co-operative, are declared to be applied Corporations legislation matters for the purposes of the *Corporations (Ancillary Provisions) Act 2001* Part 3 in relation to the provisions of the Corporations Act Parts 5.4, 5.4A, 5.4B, 5.5, 5.6, 5.7 and 5A.1, subject to the following modifications —

(a) a reference in the provisions to a special resolution or an extraordinary resolution is to be read as a reference to a special resolution within the meaning of this Act;

(b) a reference in the provisions to ASIC is to be read as a reference to the Registrar;

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(c) section 513B is to be considered to be amended by inserting after paragraph (d) —

"

(da) if the winding-up is on the certificate of the Registrar — on the date that the certificate is given; or

";

(d) section 516 is to be considered to be amended by inserting after "past member" —

"

together with any charges payable by him or her to the co-operative in accordance with the rules

";

(e) a reference in the provisions to a registered liquidator is to be read as including a reference to a person approved or appointed by the Registrar as a liquidator of a co-operative;

(f) a reference in the provisions to the Corporations Act Part 2F.1 is to be read as a reference to Part 4 Division 5 of this Act;

(g) for the purposes of the application of the provisions to a winding-up on the certificate of the Registrar, the winding-up is taken to be a voluntary winding-up, but the Corporations Act section 490 does not apply;

(h) the provisions are to be read subject to sections 67 and 322 of this Act for the purposes of determining the liability of members and former members to contribute on a winding-up of a co-operative;

(i) any other modifications, within the meaning of the *Corporations (Ancillary Provisions) Act 2001* Part 3, that are prescribed by the regulations.

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317. Restrictions on voluntary winding-up

(1) A co-operative may be wound-up voluntarily only —

(a) by a creditors' voluntary winding-up; or

(b) if a special resolution is passed by means of a special postal ballot in favour of voluntary winding-up.

(2) A regulation may exempt a co-operative from compliance with a provision of this section or section 186.

(3) When a special postal ballot referred to in subsection (1)(b) is held, the members may, by means of the same ballot, by simple majority —

(a) appoint one or more liquidators to wind-up the affairs and distribute the assets of the co-operative; and

(b) fix the remuneration to be paid to the liquidator.

318. Start of members' voluntary winding-up

A members' voluntary winding-up of a co-operative starts when the result of the special postal ballot is noted in the minute book by the secretary of the co-operative.

319. Distribution of surplus — non-distributing co-operatives

(1) In this section —

surplus property means property of the co-operative that remains after satisfaction of the debts and liabilities of the co-operative and the costs, charges and expenses of the winding-up.

(2) On a winding-up of a non-distributing co-operative, the surplus property of the co-operative must be distributed as required by the rules of the co-operative.

(3) The rules of a non-distributing co-operative must make provision for the way in which the surplus property of the co-operative is to be distributed in a winding-up.

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320. Liquidator — vacancy may be filled by Registrar

If a co-operative is being wound-up voluntarily and a vacancy occurs in the office of liquidator that in the opinion of the Registrar is unlikely to be filled in the way provided by the Corporations Act, as applied by this Division, the Registrar may appoint a person to be liquidator.

321. Review of liquidator's remuneration

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

322. Liability of member to contribute in a winding-up where shares forfeited etc.

(1) If a person's membership of a co-operative is cancelled under Part 6 within 2 years before the start of the winding-up of the co-operative, the person is liable on the winding-up to contribute to the property of the co-operative the amount paid by the co-operative to the member or former member in respect of any shares forfeited in connection with that cancellation, together with any amount unpaid on the shares immediately before the cancellation.

(2) If under section 163 a co-operative —

(a) purchases a share of a member in the co-operative; or

(b) repays to a member the whole or any part of the amount paid up up to the stated nominal value on a share held by a member,

within 2 years before the start of the winding-up of the co-operative, the member or former member is liable on the winding-up to contribute to the property of the co-operative the amount paid by the co-operative to the member or former member in respect of the purchase or repayment together with

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any amount unpaid on the shares immediately before the purchase or repayment.

(3) If a person contributes to the property of a co-operative under a liability under this section, the amount contributed is, for the purposes of the winding-up, to be treated as having been paid up by the person on shares of the co-operative.

(4) The liability of a member or former member of a co-operative under this section is in addition to any other liability of the member or former member to contribute to the property of the co-operative on a winding-up of the co-operative.

Division 4 — Administration of co-operative — application of Corporations Act

323. Application of Corporations Act to administration of co-operative

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

(a) the provisions are to be read as if a co-operative were a company;

(b) a reference in the provisions to the Corporations Act sections 128 and 129 is to be read as a reference to sections 41 to 43, and section 45 of this Act;

(c) a reference in the provisions to ASIC is to be read as a reference to the Registrar;

(d) any other modifications, within the meaning of the *Corporations (Ancillary Provisions) Act 2001* Part 3, that are prescribed by the regulations.

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Division 5 — Appointment of administrator

324. Appointment of administrator

(1) The Registrar may, by written notice, appoint an administrator to conduct the affairs of a co-operative.

(2) A notice of appointment must state —

(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 cannot appoint an administrator unless the necessary grounds for taking the action exist, as referred to in section 336(2).

325. Effect of appointment of administrator

(1) On the appointment of an administrator of a co-operative —

(a) the directors of the co-operative cease to hold office; and

(b) all contracts of employment with the co-operative are terminated; and

(c) all contracts for the provision of secretarial or administrative services for the co-operative are terminated; and

(d) the administrator may terminate any contract for providing other services to the co-operative.

(2) An administrator of a co-operative has the functions of the board of the co-operative, including the board's powers of delegation.

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(3) A director of a co-operative cannot be appointed or elected while the administrator is in office except as provided by this Division.

326. Revocation of appointment

(1) An administrator holds office until the administrator's appointment is revoked.

(2) The Registrar may, by written notice, revoke the appointment of an administrator.

(3) When a liquidator of a co-operative is appointed, the appointment of any administrator of the co-operative is automatically revoked.

(4) Immediately on the revocation of an administrator's appointment, the administrator must prepare and submit a report to the Registrar showing how the administration was carried out, and for that purpose an administrator has access to the co-operative's records.

(5) On giving the report and accounting fully for the administration of the co-operative to the satisfaction of the Registrar, the administrator is released from any further duty to account for the administration of the co-operative other than on account of fraud, dishonesty, negligence or wilful failure to comply with this Act.

(6) Before revoking the appointment of an administrator of a co-operative, the Registrar must —

(a) appoint another administrator; or

(b) appoint a liquidator; or

(c) ensure that directors of the co-operative have been elected in accordance with the rules of the co-operative at a meeting called by the administrator in accordance with those rules; or

(d) appoint directors of the co-operative.

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(7) Directors elected or appointed under subsection (6) —

(a) take office on revocation of the administrator's appointment; and

(b) in the case of directors appointed under subsection (6), hold office until the next annual general meeting of the co-operative after the revocation of that appointment.

327. Expenses of administration

(1) The expenses of and incidental to the conduct of a co-operative's affairs by an administrator are payable from the co-operative's funds.

(2) The expenses of conducting a co-operative's affairs include —

(a) if the administrator is not an officer or employee of the public service, remuneration of the administrator at a rate approved by the Registrar; or

(b) if the administrator is an officer or employee of the public service, the amount that the Registrar certifies should be paid to the State as repayment of the administrator's remuneration.

(3) An amount certified under subsection (2)(b) may be recovered in a court of competent jurisdiction as a debt payable to the State.

(4) An administrator has, in relation to the expenses referred to in subsection (1), the same priority on the winding-up of a co-operative as the liquidator of the co-operative has, as set out in the Corporations Act Part 5.6.

328. Liabilities arising from administration

(1) If a co-operative incurs loss because of fraud, dishonesty, negligence or wilful failure to comply with this Act or the rules of the co-operative by an administrator, the administrator is liable for the loss.

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(2) An administrator is not liable for loss that is not a loss to which subsection (1) applies but must account for the loss in a report given under section 326.

329. Additional powers of Registrar

(1) If the Registrar appoints directors of a co-operative under section 326, the Registrar may, by written notice given to the co-operative, specify —

(a) a time during which this section is to apply in relation to the co-operative; and

(b) the terms on which all or any of the directors hold office; and

(c) the rules that are to be the co-operative's rules.

(2) While this section applies to a co-operative, the Registrar may —

(a) remove and appoint directors; and

(b) vary, revoke or state new terms in place of all or any of the terms specified under subsection (1); and

(c) amend all or any of the rules specified under subsection (1).

(3) The Registrar may, by written notice given to the co-operative, extend the time for which this section is to apply to a co-operative.

(4) A rule specified by the Registrar under this section to be a rule of a co-operative —

(a) cannot be altered except in the way set out in this section; and

(b) if it is inconsistent with another rule of the co-operative, prevails over the other rule, and the other rule is to the extent of the inconsistency inoperative; and

(c) has the same evidentiary value as is by this Act accorded to the co-operative's rules and to copies of them.

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330. Stay of proceedings

(1) If the Registrar appoints an administrator to conduct a co-operative's affairs, a person cannot begin or continue proceedings in a court against the co-operative until the administrator's appointment is revoked except with the leave of the Supreme Court and, if the Supreme Court grants leave, in accordance with any terms that the Supreme Court imposes.

(2) A person intending to apply for leave of the Supreme Court under subsection (1) must give the Registrar at least 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 application.

331. Administrator to report to Registrar

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

Division 6 — Effect of merger etc. on property, liabilities etc.

332. How this Division applies to a merger

(1) This Division applies to a merger of co-operatives under this Part.

(2) In the application of this Division to a merger —

new body means the co-operative that results from the merger;

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

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

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333. How this Division applies to a transfer of engagements

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

(2) In the application of this Division to a transfer of engagements —

new body means the co-operative to which the engagements are transferred;

original body means the co-operative that transfers its engagements;

relevant day means the day on which the transfer of engagements takes effect.

334. How this Division applies to a transfer of incorporation

(1) This Division applies to a transfer of incorporation under Division 2.

(2) In the application of this Division to such a transfer —

new body means the corporation that results from the transfer;

original body means the co-operative that transfers its incorporation;

relevant day means the day on which the transfer takes effect.

335. Effect of merger etc. on property, liabilities etc.

(1) In this section —

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents;

instrument means an instrument (other than this Act) which creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order and process of a court;

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liabilities means liabilities, debts and obligations (whether present or future and whether vested or contingent).

(2) On and from the relevant day for an event to which this Division applies —

(a) the assets of the original body vest in the new body without the need for a conveyance, transfer, assignment or assurance; and

(b) the rights and liabilities of the original body become the rights and liabilities of the new body; and

(c) all proceedings by or against the original body that are pending immediately before the relevant day are taken to be proceedings pending by or against the new body; and

(d) an act, matter or thing done or omitted to be done by, to or in relation to the original body before the relevant day is, to the extent to which that act, matter or thing has any force or effect, taken to have been done or omitted by, to or in relation to the new body; and

(e) a reference in an instrument or document of any kind to the original body is to be read as, or as including, a reference to the new body.

(3) The operation of this section cannot 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 a remedy by a party to an instrument, or as causing or permitting the termination of an instrument, because of a change in the beneficial or legal ownership of an asset, right or liability.

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Division 7 — Miscellaneous

336. Grounds for winding-up, transfer of engagements, appointment of administrator

(1) This section applies to the following actions —

(a) a direction by the Registrar to a co-operative to transfer its engagements under section 304;

(b) the appointment of an administrator of a co-operative under Division 5;

(c) the winding-up of a co-operative on a certificate of the Registrar under section 314.

(2) The necessary grounds for taking action to which this section applies exist if the Registrar certifies that —

(a) the number of members is reduced to less than the minimum number of persons allowed under section 65; or

(b) the co-operative has not commenced business within one year of registration or has suspended business for more than 6 months; or

(c) the registration of the co-operative has been obtained by mistake or fraud; or

(d) the co-operative exists for an illegal purpose; or

(e) the co-operative has wilfully, and after notice from the Registrar, violated the provisions of this Act or of the rules of the co-operative; or

(f) the board of the co-operative has, after notice from the Registrar, failed to ensure that the rules of the co-operative contain active membership provisions in accordance with Part 6; or

(g) there are, and have been, for one month immediately before the date of the Registrar's certificate, insufficient directors of the co-operative to form a quorum in accordance with the rules of the co-operative; or

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(h) after an inquiry under this Act into the affairs of a co-operative or the working and financial condition of a co-operative, that in the interests of members or creditors of the co-operative or the public the action concerned should be taken.

(3) Alternatively, the necessary grounds for winding-up a co-operative on a certificate of the Registrar exist if the Registrar certifies that —

(a) the period, if any, fixed for the duration of the co-operative by its rules has ended; or

(b) an event, to be specified in the certificate, has occurred on the occurrence of which the regulations or the rules provide that the co-operative is to be wound-up.

(4) The Registrar cannot certify under this section as to any matter unless the matter has been proved to the Registrar's satisfaction.

337. Application of Corporations Act for insolvent co-operatives

(1) Subject to subsection (2), a co-operative is declared to be an applied Corporations legislation matter for the purposes of the *Corporations (Ancillary Provisions) Act 2001* Part 3 in relation to the provisions of the Corporations Act Part 5.7B, subject to the following modifications —

(a) the provisions are to be read as if a co-operative were a company;

(b) a reference in the provisions to a provision of the Corporations Act sections 286 to 290, as applied under section 225 of this Act, is to be read with any modifications prescribed by the regulations;

(c) any other modifications, within the meaning of the *Corporations (Ancillary Provisions) Act 2001* Part 3, that are prescribed by the regulations.

(2) If the Registrar gives a certificate under section 314 for the winding-up of a co-operative, a co-operative is declared to be an applied Corporations legislation matter for the purposes of the

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Corporations (Ancillary Provisions) Act 2001 Part 3 in relation to the Corporations Act sections 588FL and 588FM, subject to the following modifications —

(a) those sections are to be read as if a co-operative were a company;

(b) any other modifications (within the meaning of the *Corporations (Ancillary Provisions) Act 2001* Part 3) that are prescribed by the regulations.

[Section 337 amended by No. 42 of 2011 s. 41.]

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Part 13 — Arrangements and reconstructions

Division 1 — General requirements

338. Requirements for binding compromise or arrangement

(1) A compromise or arrangement is binding only if it is approved by order of the Supreme Court after having been agreed to —

(a) if the compromise or arrangement is between the co-operative and any of its creditors, at a court ordered meeting by a majority in number of the creditors concerned who are present and voting (in person or by proxy), being a majority whose debts or claims against the co-operative amount to at least 75% of the total of the debts and claims of all those creditors who are present and voting (in person or by proxy); or

(b) if the compromise or arrangement is between the co-operative and any of its members, by the members concerned, by special resolution passed by means of a special postal ballot.

(2) The court ordered meeting referred to in subsection (1)(a) is a meeting called in accordance with an order of the Supreme Court under this Part.

(3) The Supreme Court may grant its approval to a compromise or arrangement subject to the alterations or conditions it considers appropriate.

(4) An order of the Supreme Court approving a compromise or arrangement does not have effect until an office copy of the order is lodged with the Registrar.

(5) On the copy being lodged, the order takes effect from the date of lodgment or an earlier date the Supreme Court specifies in the order.

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339. Supreme Court ordered meeting of creditors

(1) In this section —

appropriate person, in relation to an application for an order, means —

(a) the co-operative; or

(b) a member of the co-operative; or

(c) one of the creditors concerned; or

(d) in the case of a co-operative being wound-up, the liquidator.

(2) If a compromise or arrangement is proposed between a co-operative and any of its creditors, the Supreme Court may on application by an appropriate person order a meeting or meetings of the creditors concerned.

(3) The meeting must be convened in the way and be held in the place or places, in this State or elsewhere, that the Supreme Court directs.

(4) In considering whether to make an order for a meeting to be held in another jurisdiction, the Supreme Court may have regard to where creditors concerned reside.

340. Registrar to be given notice and opportunity to make submissions

The Supreme Court may, on the application of an appropriate person as defined in section 339(1), make an order under this Division approving a compromise or arrangement if the Court is satisfied that —

(a) at least 14 days notice of the hearing of the application for the order, or a shorter period of notice the Court or the Registrar permits, has been given to the Registrar; and

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(b) the Registrar has had a reasonable opportunity to examine —

(i) the terms of that compromise or arrangement; and

(ii) the explanatory statement to be sent to creditors or members under section 349,

and make submissions to the Court.

341. Results of 2 or more meetings

If the Supreme Court orders 2 or more meetings of creditors to be held in relation to a proposed compromise or arrangement —

(a) the meetings are taken to form a single meeting; and

(b) the votes in favour of the proposed compromise or arrangement cast at each of the meetings are to be added; and

(c) the votes against the proposed compromise or arrangement cast at each of the meetings are to be added.

342. Persons disqualified from administering compromise etc.

Except with the leave of the Supreme Court, a person cannot be appointed to administer, and cannot administer, a compromise or arrangement approved under this Act between a co-operative and any of its creditors or members, whether by the terms of the compromise or arrangement or under a power given by the terms of a compromise or arrangement, if the person —

(a) is a mortgagee of property of the co-operative; or

(b) is an auditor or an officer of the co-operative; or

(c) is an officer of a corporation that is a mortgagee of property of the co-operative; or

(d) is not a registered liquidator under the Corporations Act unless the person is a corporation authorised by or under

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a law of this State to administer the compromise or arrangement concerned; or

(e) is an officer of a corporation related to the co-operative; or

(f) unless the Registrar directs in writing that this paragraph does not apply in relation to the person in relation to the co-operative, has at any time within the last 12 months been an officer or promoter of the co-operative or of a related corporation of the co-operative.

343. Application of Schedule 4 to person appointed

Schedule 4 clauses 16, 18(2) and (4), 19, 23 and 25 apply to a person appointed to administer a compromise or arrangement as if the appointment were an appointment of the person as a receiver and manager of property of the co-operative and as if a reference to a receiver were a reference to that person.

344. Application of Corporations Act to person appointed

A person appointed to administer a compromise or arrangement is declared to be an applied Corporations legislation matter for the purposes of the *Corporations (Ancillary Provisions) Act 2001* Part 3 in relation to the Corporations Act section 536 as if —

(a) the appointment were an appointment as a liquidator of the co-operative; and

(b) a reference in the section to a liquidator were a reference to that person; and

(c) a reference in that section to ASIC were a reference to the Registrar.

345. Copy of order to be attached to rules

(1) A co-operative must ensure that a copy of an order of the Supreme Court approving a compromise or arrangement is attached to each copy of the rules of the co-operative issued after the order is made.

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Penalty: a fine of $2 000.

(2) The Supreme Court may, by order, exempt a co-operative from compliance with this section or determine the period during which the co-operative must comply.

346. Directors to arrange for reports

(1) When a compromise or arrangement (whether or not for the purposes of or in connection with a scheme for the reconstruction of a co-operative or the merger of any 2 or more co-operatives) has been proposed, the directors of the co-operative must —

(a) if a meeting of the members of the co-operative by resolution so directs, instruct the accountants or legal practitioners or both named in the resolution to report on the proposals and send their report or reports to the directors as soon as practicable; and

(b) make any report or reports so obtained available at the registered office of the co-operative for inspection by the members and creditors of the co-operative at least 7 days before the day of the meeting ordered by the Supreme Court or the holding of the special postal ballot, as appropriate.

(2) If subsection (1) is not complied with, each director of the co-operative commits an offence.

Penalty: a fine of $2 000.

347. Power of Supreme Court to restrain further proceedings

(1) If a proposed compromise or arrangement is between a co-operative and any of its creditors and no order has been made or resolution passed for the winding-up of the co-operative, the Supreme Court may restrain further proceedings in an action or other civil proceeding against the co-operative except by leave of the Supreme Court and subject to such terms as the Supreme Court imposes.

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(2) The Supreme Court's power under this section is in addition to any of its other powers and cannot be exercised except on application by the co-operative or of any creditor or member of the co-operative.

348. Supreme Court need not approve compromise or arrangement takeovers

(1) The Supreme Court need not approve a compromise or arrangement unless —

(a) it is satisfied that the compromise or arrangement has not been proposed for the purpose of enabling any person to avoid the operation of any of the provisions of Part 11 Division 2; and

(b) there is produced to the Supreme Court a statement in writing by the Registrar stating that the Registrar has no objection to the compromise or arrangement.

(2) The Supreme Court need not approve a compromise or arrangement merely because a statement by the Registrar stating that the Registrar has no objection to the compromise or arrangement has been produced to the Supreme Court.

Division 2 — Explanatory statements

349. Explanatory statement required to accompany notice of meeting etc.

(1) An explanatory statement must accompany every notice —

(a) that is sent to a creditor of a co-operative calling a court ordered meeting to obtain agreement to a compromise or arrangement; or

(b) that is sent to a member of a co-operative for the purpose of the conduct of the special postal ballot to obtain agreement to the compromise or arrangement.

(2) In every notice of a meeting referred to in subsection (1) that is given by advertisement there must be included either a copy of

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the explanatory statement or notification of the place at which and the way in which creditors entitled to attend the meeting may obtain copies of the explanatory statement.

(3) The explanatory statement must —

(a) explain the effect of the compromise or arrangement and, in particular, state —

(i) material interests of the directors, whether as directors, members or creditors of the co-operative or otherwise; and

(ii) the effect on those interests of the compromise or arrangement in so far as that effect is different from the effect on the like interests of other persons;

and

(b) set out —

(i) the information prescribed by the regulations; and

(ii) other information that is material to the making of a decision by a creditor or member whether or not to agree to the compromise or arrangement, is within the knowledge of the directors and has not previously been disclosed to the creditors or members.

(4) Subsection (1)(a) does not apply in the case of a creditor whose debt does not exceed $200 unless the Supreme Court orders otherwise.

(5) The notice calling the meeting that is sent to a creditor referred to in subsection (1)(a) must specify a place at which a copy of the explanatory statement can be obtained on request.

(6) The co-operative must comply with a request under subsection (5) as soon as practicable.

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350. Requirements for explanatory statement

(1) An explanatory statement must be as approved by the Registrar.

(2) If the compromise or arrangement affects the rights of debenture holders, the explanatory statement must specify —

(a) any material interests of the trustees for the debenture holders, whether as such trustees, as members or creditors of the co-operative or otherwise; and

(b) the effect on those interests of the compromise or arrangement to the extent that that effect is different from the effect on the like interests of other persons.

(3) If a notice given by advertisement includes a notification that copies of the explanatory statement can be obtained in a particular way, the co-operative must give a copy of the statement free of charge to each creditor or member entitled to attend the meeting or vote in the ballot who applies for it in that way.

(4) Each person who is a director or trustee for debenture holders must give notice to the co-operative of such matters relating to the person as are required to be included in the explanatory statement.

351. Contravention of Division — offence by co-operative

(1) If a provision of this Division is contravened, the co-operative concerned and any other person involved in the contravention commits an offence.

Penalty: a fine of $2 000.

(2) It is a defence to a prosecution for an offence under subsection (1) if it is proved that the contravention was due to the failure of a person, other than the defendant, who is a director of the co-operative or a trustee for debenture holders of the co-operative, to supply for the purposes of the explanatory statement particulars of the person's interests.

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Division 3 — Facilitating reconstructions and mergers

352. Provisions for facilitating reconstructions and mergers

(1) In this section —

co-operative includes a foreign co-operative;

liabilities includes duties of any description, including duties that are of a personal character or are incapable under the general law of being assigned or performed vicariously;

property includes rights and powers of any description, including rights and powers that are of a personal character and are incapable under the general law of being assigned or performed vicariously.

(2) This section applies if an application is made to the Supreme Court under this Part for the approval of a compromise or arrangement and it is shown to the Court that —

(a) the compromise or arrangement has been proposed for the purposes of a scheme for the reconstruction of a co-operative or the merger of a co-operative with another co-operative or with another corporation; and

(b) under the scheme all or part of the undertaking or of the property of a co-operative concerned in the scheme (the ***transferor***) is to be transferred to another corporation (the ***transferee***) and the transferee is not a company within the meaning of the Corporations Act.

(3) If this section applies, the Supreme Court may, either by the order approving the compromise or arrangement or by a later order provide for any one or more of the following —

(a) the transfer to the transferee of all or part of the undertaking and the property or liabilities of the transferor;

(b) the allotting or appropriation by the transferee of shares, debentures, co-operative capital units, policies or other interests in the transferee that, under the compromise or

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arrangement, are to be allotted or appropriated by the transferee to or for a person;

(c) the continuation by or against the transferee of legal proceedings pending by or against the transferor;

(d) the deregistration, without winding-up, of the transferor;

(e) the provision to be made for any persons who, within the time and in the way the Court directs, dissent from the compromise or arrangement;

(f) the transfer or allotment of any interest in property to a person concerned in the compromise or arrangement;

(g) the incidental, consequential and supplemental matters necessary to ensure that the reconstruction or merger is fully and effectively carried out.

(4) If an order made under this section provides for the transfer of property or liabilities, then, by virtue of the order —

(a) the property is transferred to and vests in the transferee free, in the case of a particular property if the order so directs, from a charge that is under the compromise or arrangement to cease to have effect; and

(b) the liabilities are transferred to and become the liabilities of the transferee.

(5) If an order is made under this section, each body to which the order relates must, within 14 days after the making of the order, lodge with the Registrar an office copy of the order.

(6) If the Registrar is required by the Court to appear and assist the Court in making an order under this section, the Court may make an award of costs to the Registrar for the appearance.

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Division 4 — Acquisition of shares of dissenting shareholders

353. Definitions

In this Division —

dissenting shareholder, in relation to a scheme or contract, means a shareholder who has not assented to the scheme or contract or who has failed to transfer the shareholder's shares under the scheme or contract;

excluded shares, in relation to a scheme or contract involving a transfer to a person of shares in a class of shares in a co-operative, means shares in the class that, when the offer relating to the scheme or contract is made, are held by —

(a) in any case, the person or a nominee of the person; or

(b) if the person is a corporation, a subsidiary of the body.

354. Schemes and contracts to which Division applies

(1) This Division applies to a scheme or contract involving a transfer of shares in a co-operative (the ***transferor***) to a person (the ***transferee***) that has, within 4 months after the making of the offer relating to the scheme or contract by the transferee, been approved by the holders of at least 90% in nominal value of all the shares (other than excluded shares) to which the offer relates.

(2) This Division does not apply to a scheme or contract arising out of the making of an offer to which Part 11 Division 2 applies.

355. Acquisition of shares pursuant to notice to dissenting shareholder

(1) The transferee under the scheme or contract may, within 2 months after the offer is approved, give notice as prescribed by the regulations (a ***compulsory acquisition notice***) to a dissenting shareholder that the transferee wishes to acquire the shares held by that shareholder.

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(2) If a compulsory acquisition notice is given, the dissenting shareholder may, by written notice given to the transferee within one month after the day on which the compulsory acquisition notice was given, ask for a statement in writing of the names and addresses of all other dissenting shareholders as shown in the register of members and the transferee must give that statement.

(3) Having given the compulsory acquisition notice, the transferee is, unless the Supreme Court orders to the contrary, entitled and bound to acquire the shares of the dissenting shareholder on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee.

(4) The Supreme Court may give an order to the contrary only on the application of the dissenting shareholder made within the later of 28 days after the compulsory acquisition notice was given or within 14 days after a statement asked for under subsection (2) was given.

(5) If alternative terms are offered to the approving shareholders —

(a) the dissenting shareholder is entitled to elect which of those terms are preferred but must make the election within the time allowed for making an application to the Supreme Court under subsection (4); and

(b) if the dissenting shareholder fails to make the election within the time, the transferee may, unless the Supreme Court orders otherwise, decide which of the terms is to apply to the acquisition of the shares of the dissenting shareholder.

356. Restrictions when excluded shares exceed 10%

If the nominal value of excluded shares is more than 10% of the total nominal value of all the shares, including excluded shares, to be transferred under the scheme or contract, section 355 does not apply unless —

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(a) the transferee offers the same terms to all holders of the shares, other than excluded shares, to be transferred under the scheme or contract; and

(b) the holders who approve the scheme or contract together hold at least 90% in nominal value of the shares (other than excluded shares) to be transferred under the scheme or contract and are also at least 75% in number of the holders of those shares, with joint owners of shares being counted as one person.

357. Remaining shareholders may require acquisition

(1) If, under a scheme or contract to which this Division applies, the transferee becomes beneficially entitled to shares in the transferor that, together with other shares in the transferor to which the transferee or a corporation related to the transferee is beneficially entitled, comprise or include 90% in nominal value of the shares to which the offer relates, then —

(a) the transferee must, within 28 days after becoming beneficially entitled to the shares, give notice of the fact as prescribed by the regulations to the holders of the remaining shares concerned who, when the notice was given, had not assented to the scheme or contract or been given a compulsory acquisition notice by the transferee under this Division; and

(b) a holder referred to in paragraph (a) may, within 3 months after being given that notice, by notice to the transferee require the transferee to acquire the holder's share and, if alternative terms were offered to the approving shareholders, elect which of those terms the holder will accept.

(2) If a shareholder gives notice under this section with respect to the shareholder's shares, the transferee is entitled and bound to acquire those shares —

(a) on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to

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the transferee and, if alternative terms were offered to those shareholders, on the terms for which the shareholder has elected, or, if no election is made, for whichever of the terms the transferee determines; or

(b) on such other terms as are agreed or as the Supreme Court, on the application of the transferee or of the shareholder, considers appropriate to order.

358. Transfer of shares pursuant to compulsory acquisition

(1) A transferee who has given a compulsory acquisition notice must —

(a) send a copy of the notice to the transferor together with an instrument of transfer for the shares that the transferee is entitled to acquire under this Division and that is executed, on the shareholder's behalf, by a person appointed by the transferee and, on the transferee's own behalf, by the transferee; and

(b) pay, allot or transfer to the transferor the consideration for the shares.

(2) The transferee must do so within 14 days after whichever of the following happens last —

(a) the period of 28 days after the day on which the compulsory acquisition notice was given expires;

(b) the period of 14 days after a statement of the names and addresses of dissenting shareholders is supplied under this Division expires;

(c) if an application has been made to the Supreme Court by a dissenting shareholder, the application is disposed of.

(3) When the transferee has complied with this section, the transferor must register the transferee as the holder of the shares.

(4) This section does not apply if the Supreme Court on the application of the dissenting shareholder orders to the contrary.

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359. Disposal of consideration for shares compulsorily acquired

(1) Amounts received by the transferor under this Division must be paid into a financial institution account established for the purpose of depositing those amounts, and the amounts, and any other consideration received, are to be held by the transferor in trust for the persons entitled to the shares in relation to which the amounts and other consideration were received.

(2) If an amount or other property received by the transferor under this Division has been held in trust by the transferor for a person for at least 2 years, the transferor must pay the amount or transfer the consideration, and any accretions to it and any property that may become substituted for it or for part of it, to the Registrar.

(3) Anything paid or transferred to the Registrar under subsection (2) is declared to be applied Corporations legislation matter for the purposes of the *Corporations (Ancillary Provisions) Act 2001* Part 3 in relation to the provisions of the Corporations Act Part 9.7, subject to the following modifications —

(a) a reference in the provisions to unclaimed property is to be read as a reference to the thing paid or transferred to the Registrar under subsection (2);

(b) a reference in the provisions to ASIC is to be read as a reference to the Registrar;

(c) a reference in the provisions to the Commonwealth is to be read as a reference to this State;

(d) any other modifications, within the meaning of the *Corporations (Ancillary Provisions) Act 2001* Part 3, that are prescribed by the regulations.

(4) The transferor must comply with subsection (2) before the end of 10 years after the day on which the amount was paid, or the consideration was allotted or transferred, to the transferor.

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Division 5 — Miscellaneous

360. Notification of appointment of scheme manager

Within 14 days after being appointed to administer a compromise or arrangement approved under this Part, a person must lodge with the Registrar a written notice of the appointment.

Penalty: a fine of $1 000.

361. Power of Supreme Court to require reports

When an application is made to the Supreme Court under this Part in relation to a proposed compromise or arrangement, the Supreme Court may —

(a) before making an order on the application, require the Registrar or another person to give to the Court a report as to —

(i) the terms of the compromise or arrangement or of the scheme for, or in relation to, which the compromise or arrangement has been proposed; and

(ii) the conduct of the officers of the body or bodies concerned; and

(iii) any other matters that, in the opinion of the Registrar or that person, ought to be brought to the attention of the Court;

and

(b) in deciding the application, have regard to anything contained in the report; and

(c) make any order as to the payment of the costs of preparing and giving the report as the Court considers appropriate.

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362. Effect of out-of-jurisdiction compromise or arrangement

(1) A compromise or arrangement that is binding on any creditors of a foreign co-operative because of a provision of the law of another State or a Territory that corresponds to this Part is also binding on the creditors of the foreign co-operative whose debts are recoverable by action in a court of this State.

(2) If a court of another State or a Territory makes an order under a provision of the law of that State or Territory that is prescribed by the regulations as corresponding to a provision of this Part, the order is taken to have been made by the Supreme Court of Western Australia under the corresponding provision of this Act and has effect and may be enforced accordingly.

363. Jurisdiction to be exercised in harmony with Corporations Act jurisdiction

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

364. Registrar may appear etc.

In any proceedings before the Supreme Court under this Part, the Registrar is entitled to appear and be heard, either in person or by the Registrar's properly appointed representative.

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Part 14 — Mutual recognition

Division 1 — Introductory

365. Definitions

In this Part —

authorisation notice means a written notice issued by the Registrar under this Part to a foreign co-operative stating that the co-operative is authorised to carry on business in this State;

co-operatives law means a law of another State that, under section 367(1), is certified to be a co-operatives law for the purposes of this Part;

non-participating co-operative means a foreign co-operative other than a participating co-operative;

participating co-operative means a foreign co-operative that is registered, incorporated or formed under, or subject to, a co-operatives law;

participating registrar means a person exercising the functions of a registrar under a co-operatives law;

participating State means any State in which a co-operatives law is in force;

State includes the Australian Capital Territory and the Northern Territory.

366. What constitutes carrying on business

(1) For the purposes of this Part, a foreign co-operative carries on business in this State if it —

(a) solicits for members in this State; or

(b) seeks share capital in this State, takes deposits in this State or offers other securities in the co-operative in this State; or

(c) provides any goods or services within this State.

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(2) A foreign co-operative is not to be regarded as carrying on business in this State merely because in this State it —

(a) is or becomes a party to an action or suit or arbitration proceeding; or

(b) effects settlement of an action, suit or proceeding or of a claim or dispute; or

(c) holds meetings of its directors or members or carries on other activities concerning its internal affairs; or

(d) maintains an account with an authorised deposit taking institution; or

(e) effects a sale through an independent contractor; or

(f) solicits or procures an offer that becomes a binding contract only if the offer is accepted outside this State; or

(g) creates evidence of a debt or creates a charge on real or personal property; or

(h) secures or collects any of its debts or enforces its rights in regard to any securities relating to the debts; or

(i) conducts an isolated transaction that is completed within a period of 31 days not being one of a number of similar transactions repeated from time to time.

367. Co-operatives law

(1) A law of another State is a co-operatives law for the purposes of this Part if the Minister certifies in writing that the law substantially corresponds to the provisions of this Act, including this Part.

(2) The Minister must notify the Minister administering a co-operatives law in another State when the law is certified to be a co-operatives law under this Division.

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368. Excluded matter

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

(2) Subsection (1) does not exclude the application of the following provisions of the Corporations legislation to foreign co-operatives to the extent that those provisions would otherwise be applicable to them —

(a) provisions relating to a matter that the regulations provide is not to be excluded from the operations of the Corporations Act;

(b) provisions relating to the role of a co-operative in the formation of a company;

(c) provisions relating to substantial holdings of shares, by or involving a co-operative, in a company;

(d) provisions conferring or imposing functions on a co-operative as a member, or former member, of a corporation;

(e) provisions relating to dealings by a co-operative in financial products of a corporation, other than financial products of the co-operative itself;

(f) provisions conferring or imposing functions on a co-operative in its dealings with a corporation, not being dealings in financial products of the co-operative;

(g) provisions relating to financial products of a co-operative, other than shares in, co-operative capital units in, debentures of or deposits with a co-operative;

(h) provisions relating to financial markets and participants in financial markets;

(i) provisions relating to financial services licensees whose licence covers dealing in, or providing advice about, financial products;

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(j) provisions relating to carrying on a financial services business;

(k) provisions relating to financial statements, and audits of financial statements, of financial services licensees whose licence covers dealing in, or providing advice about, financial products;

(l) provisions relating to clients of financial services licensees whose licence covers dealing in, or providing advice about, financial products;

(m) provisions relating to registers of interests in financial products;

(n) provisions relating to powers of a Court to cure procedural irregularities and to make other orders.

(3) To remove doubt it is declared that subsection (1) does not operate to exclude the operations of the following provisions of the Corporations Act except in relation to shares in, CCUs issued by, debentures of or deposits with a foreign co-operative —

(a) Part 1.2A;

(b) Chapter 2L;

(c) Chapter 6CA;

(d) Chapter 6D;

(e) Part 7.10.

Division 2 — Mutual recognition of foreign co-operatives

369. Operation of foreign co-operatives in this State

A foreign co-operative must not carry on business in this State as a co-operative unless it is authorised under this Part to carry on business in this State.

Penalty: a fine of $24 000.

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370. Authorisation to carry on business

(1) A participating co-operative is, by this Act, authorised to carry on business in this State after notifying the Registrar in accordance with section 372 that the participating co-operative intends to carry on business in this State.

(2) The authorisation of a participating co-operative is subject to the same conditions or restrictions that apply to the carrying on of its business under its registration in the participating State.

(3) A non-participating co-operative is, by this Act, authorised to carry on business in this State if the Registrar issues an authorisation notice to the co-operative.

371. Registration under *Companies (Co-operative) Act 1943*

A company, as defined in the *Companies (Co-operative) Act 1943* section 328(1), that is registered under Part XI of that Act immediately before the commencement of section 369 is taken to be a foreign co-operative authorised under this Part of this Act to carry on business in this State, and the *Companies (Co-operative) Act 1943* ceases to apply to that company.

372. Notification to Registrar

(1) A foreign co-operative that proposes to carry on business in this State must lodge with the Registrar a written notice in the form approved by the Registrar.

(2) The notice must be accompanied by the following —

(a) a statement signed by 2 directors, or a director and the secretary of the co-operative, as to the following matters —

(i) that the co-operative is able to pay its debts as and when they become due and payable;

(ii) that the co-operative complies and will continue to comply with the provisions of applicable laws of another State or other place under which the

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co-operative is registered, incorporated or formed;

(iii) that no legal proceedings have been commenced or are pending against the co-operative in respect of a failure to comply, in its capacity as a co-operative, with a law of another State or any other place in which the co-operative carries on business under which the co-operative is registered, incorporated, formed or authorised to carry on business;

(iv) the full name and address of each person who is to act as agent of the co-operative in this State;

(v) the address of the proposed principal office of the co-operative in this State, if any;

(vi) the name under which the co-operative proposes to carry on business in this State;

(b) a copy of the certificate of registration, incorporation or formation of the co-operative and particulars of any condition or restriction to which the registration, incorporation or formation is subject;

(c) any other documents or information that the Registrar may require or that are prescribed by the regulations;

(d) the fee prescribed by the regulations.

(3) In the case of a non-participating co-operative, the notice must also be accompanied by the following —

(a) a copy of the current rules of the co-operative;

(b) a copy of the latest financial report, directors' report and auditor's report for the co-operative;

(c) the full name, date of birth and address of each director of the co-operative;

(d) details of the proposed business activities to be carried on in this State;

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(e) details of any changes required to be registered under this Act.

373. Authorisation notices for participating co-operatives

(1) Subject to subsection (2), the Registrar must, on a notice and accompanying documents being lodged in accordance with section 372 by a participating co-operative, issue to the co-operative a written notice stating that the co-operative is authorised to carry on business in this State.

(2) The Registrar may refuse to issue to the co-operative a written notice under subsection (1) if the Registrar is satisfied that the name under which the co-operative proposes to carry on business in this State is likely to be confused with the name of a corporation or a registered business name.

(3) A failure to issue a notice to a participating co-operative under this section does not affect the authority of the co-operative to carry on business in this State.

374. Authorisation notices for non-participating co-operatives

The Registrar may issue to a non-participating co-operative a written notice stating that the co-operative is authorised to carry on business in this State if a notice and accompanying documents are lodged by the co-operative in accordance with section 372 and the Registrar is satisfied that the rules of the co-operative —

(a) comply with co-operative principles; and

(b) include acceptable active membership provisions; and

(c) provide procedures acceptable to the Registrar for disclosure of information; and

(d) provide that a member has one vote only; and

(e) make adequate provision for the duties of directors; and

(f) provide for acceptable accounting standards for the co-operative.

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375. Name of foreign co-operative

A foreign co-operative that is authorised to carry on business in this State must do so under a name that is not likely to be confused with the name of a corporation or a registered business name.

376. When foreign co-operative not authorised to carry on business

A foreign co-operative ceases to be authorised to carry on business in this State if —

(a) it is deregistered or otherwise ceases to exist as a co-operative under the laws of the place in which it is registered, incorporated or formed; or

(b) its authority to carry on business in this State is withdrawn under section 377; or

(c) the Registrar notifies it under section 383(3) that it is not authorised to carry on business in this State; or

(d) in the case of a non-participating co-operative, the Registrar decides not to issue an authorisation notice to the co-operative.

377. Withdrawal of authority to carry on business

(1) The Registrar may give written notice to a foreign co-operative requiring it to show cause (a ***show cause notice***), within the period specified in the notice, why its authority to carry on business in this State should not be withdrawn on any one or more of the following grounds —

(a) that the name under which the co-operative carries on business or proposes to carry on business in this State does not comply with this Division;

(b) that any of the statements, documents or information notified or lodged by the co-operative under this Division are materially false or misleading;

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(c) that the circumstances of the co-operative have materially changed since the date the notice under section 372 was lodged by the co-operative;

(d) that the co-operative has, after notice from the Registrar, failed to comply with provisions of this Act applicable to the co-operative or provisions of the rules of the co-operative.

(2) A show cause notice may be given if the Registrar considers that there are reasonable grounds to do so.

(3) The show cause notice must specify the period, being at least 14 days, within which it must be complied with.

(4) The foreign co-operative may, within the period specified in the show cause notice, make oral or written submissions to the Registrar and provide evidence with respect to any of the matters to which the notice relates.

(5) The Registrar must consider any submissions made, or evidence adduced, in compliance with subsection (4) and may, if the Registrar is satisfied that any of the grounds referred to in subsection (1) has been established in relation to the foreign co-operative, give the co-operative a written notice withdrawing its authority to carry on business in this State.

(6) The Registrar may withdraw a show cause notice or other notice given under this section.

378. Appeals

A foreign co-operative may appeal to the Supreme Court against the following decisions —

(a) a decision not to issue an authorisation notice to the co-operative;

(b) a decision of the Registrar to give written notice to the co-operative that it is not authorised to carry on business in this State.

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379. Application of Act and regulations to foreign co-operatives

The provisions of this Act specified in —

(a) Schedule 5; and

(b) the regulations,

apply, with all necessary modifications and any modifications prescribed by the regulations, to a foreign co-operative that is authorised to carry on business in this State under this Part.

Division 3 — General

380. Name and place of origin to appear on business and other documents

(1) The name and place of origin of a foreign co-operative must appear in legible characters on its seal, and on any of the following documents issued, signed or endorsed by or on behalf of the co-operative —

(a) a bill of exchange, promissory note, cheque or other negotiable instrument;

(b) a receipt or letter of credit issued by the co-operative;

(c) a document of a class prescribed by the regulations.

(2) If subsection (1) is contravened, the co-operative is guilty of an offence.

Penalty: a fine of $2 000.

(3) An officer of a foreign co-operative or a person on its behalf must not —

(a) use a seal of the co-operative; or

(b) sign or authorise to be signed on behalf of the co-operative any document referred to in subsection (1),

in or on which the co-operative's name does not appear in legible characters.

Penalty: a fine of $2 000.

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(4) A director of a foreign co-operative who knowingly authorises or permits a contravention of this section is guilty of an offence.

Penalty: a fine of $2 000.

381. Supply of information to participating Registrars

The Registrar must, if requested to do so by a participating Registrar, supply free of charge to the participating Registrar information, or copies of public documents, held by the Registrar relating to a co-operative, including a foreign co-operative.

382. Registrar to be notified of changes

A foreign co-operative must lodge with the Registrar particulars of any change in the information provided by the co-operative under section 372, other than section 372(3)(e), within 28 days of the change.

Penalty: a fine of $2 000.

383. Cessation of business

(1) A foreign co-operative authorised to carry on business under this Part must, within 7 days of ceasing to carry on business in this State as a co-operative, give the Registrar written notice of that fact.

Penalty: a fine of $6 000.

(2) On notifying the Registrar that it has ceased to carry on business as a co-operative in this State, a foreign co-operative is no longer required to comply with this Part, other than Division 4, and cannot carry on business in this State as a co-operative.

(3) Unless the Registrar has been given written notice that the foreign co-operative will resume carrying on business in this State as a co-operative, the Registrar must, 12 months after receiving the notice under subsection (1), notify the co-operative that it is not authorised to carry on business in this State.

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(4) If a foreign co-operative which has given notice under subsection (1) —

(a) gives written notice to the Registrar that it will resume carrying on business as a co-operative in this State; and

(b) has not received notice from the Registrar that it is not authorised to carry on business in this State,

the co-operative has authority to carry on business in this State and must comply with this Part.

384. Functions conferred on Registrar under co-operatives law

The Registrar may exercise any function conferred on the registrar by or under a co-operatives law.

Division 4 — Winding-up of foreign co-operatives in this State

385. Winding-up to relate to State activities

(1) This Division applies to the winding-up of the affairs of a foreign co-operative in or in relation to this State.

(2) A foreign co-operative may be wound-up under this Division even though it has been wound-up or deregistered or has otherwise ceased to exist as a co-operative under or because of the laws of the place in which it is registered, incorporated or formed.

(3) This Division has effect in addition to, and not in derogation of, any other provisions of this Act or any other law with respect to the winding-up of co-operatives.

386. Supreme Court may order winding-up

(1) The Supreme Court may order the winding-up of a foreign co-operative if —

(a) the Registrar has, as a result of an inquiry conducted under Part 15 Division 2 or 4, stated that it is in the

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interest of the public, of the members, or of the creditors, that the co-operative be wound-up; or

(b) the co-operative's authority to carry on business in this State has been withdrawn under this Act; or

(c) the co-operative has been deregistered or has ceased to exist as a co-operative in the place in which it was registered, incorporated or formed or has ceased to carry on business in that place.

(2) The Registrar may apply to the Supreme Court for the winding-up of a foreign co-operative on any of the grounds referred to in subsection (1).

(3) The Registrar must, as soon as possible after making an application under this section, give a copy of the application to the foreign co-operative the subject of the application.

387. Application of Corporations Act to winding-up of foreign co-operatives

(1) The winding-up or deregistration or withdrawal of an authority to carry on business in this State of a foreign co-operative is declared to be an applied Corporations legislation matter for the purposes of the *Corporations (Ancillary Provisions) Act 2001* Part 3 in relation to the Corporations Act Parts 5.4B and 5.6 and section 601AE.

(2) The Corporations Act Parts 5.4B and 5.6 are applied subject to the modifications set out in Schedule 6.

(3) The Corporations Act section 601AE applies to property that vests in the Registrar under section 388 as if the property were vested in the Registrar under section 601AD(2) of that Act.

(4) The fact that a foreign co-operative has been deregistered or has ceased to exist as a co-operative in the place in which it was registered, incorporated or formed does not affect the liability of a member or former member as a contributory on a winding-up under this Division.

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388. Outstanding property of foreign co-operative

(1) This section applies if, after the winding-up of a foreign co-operative in this State, outstanding property of the body remains in this State.

(2) The estate and interest in the property, at law or in equity, of the body or its liquidator at that time, together with all claims, rights and remedies that the co-operative or its liquidator then had in respect of the property, vests by force of this section in —

(a) if the co-operative was registered, formed or incorporated in Australia or an external Territory, the person entitled to the property under the law of the place in which the co-operative was registered, formed or incorporated; or

(b) in any other case, the Registrar.

(3) If any claim, right or remedy of a liquidator may under this Division be made, exercised or availed of only with the approval or concurrence of the Supreme Court or some other person, the Registrar may, for the purposes of this section, make, exercise or avail himself or herself of the claim, right or remedy without the approval or concurrence.

Division 5 — Mergers and transfers of engagements

389. Definitions

In this Division —

***appropriate Registrar*,** in relation to a proposed merger or transfer of engagements, means —

(a) the State Registrar, if the merger is to result in a State co-operative or the transfer is to a State co-operative; or

(b) the participating Registrar, if the merger is to result in a co-operative under the co-operatives law of the participating State concerned or the transfer is to such a co-operative;

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State co-operative means a co-operative registered in this State, other than a foreign co-operative;

State Registrar means the Registrar of this State.

390. Authority for merger or transfer of engagements

(1) A State co-operative and a participating co-operative may consolidate all or any of their assets, liabilities and undertakings by way of merger or transfer of engagements approved under this Division.

(2) A State co-operative and a non-participating co-operative may consolidate all or any of their assets, liabilities and undertakings by way of merger or transfer of engagements approved under this Division if —

(a) the merger is to result in a State co-operative; or

(b) the transfer is to a State co-operative.

391. Requirements before application can be made

(1) Before a State co-operative and a participating co-operative can apply for approval under this Division of a merger or transfer of engagements, the proposed merger or transfer must have been approved by each of the co-operatives by —

(a) a special resolution passed by special postal ballot; or

(b) if permitted by subsection (3), by a special resolution, or by a resolution of the board, of the co-operative.

(2) Before a State co-operative and a non-participating co-operative can apply for approval under this Division of a merger or transfer of engagements, the proposed merger or transfer of engagements —

(a) must have been approved —

(i) in the case of the non-participating co-operative, by a special resolution of the co-operative; and

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(ii) in the case of the State co-operative, by a special resolution passed by special postal ballot;

or

(b) if permitted by subsection (3), must have been approved —

(i) in the case of the non-participating co-operative, by a resolution of the board of the co-operative; and

(ii) in the case of the State co-operative, by a special resolution, or by a resolution of the board, of the co-operative.

(3) The proposed merger or transfer of engagements may be approved by special resolution, or by a resolution of the board, of the co-operative if —

(a) the State Registrar consents to that procedure applying in the particular case; and

(b) in the case of a merger or transfer affecting a participating co-operative, the participating Registrar also consents to that procedure applying in the particular case.

(4) A consent referred to in subsection (3) may be granted subject to conditions, including a condition that a disclosure statement be provided to members or directors.

(5) A co-operative that contravenes a condition of a consent is taken not to have been given consent.

392. Disclosure statement required

(1) A special resolution of a State co-operative or foreign co-operative is not effective for the purposes of this Division unless this section has been complied with.

(2) Section 186 does not apply where a special resolution by means of special postal ballot is required under this Division.

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(3) Each co-operative must send to each of its members a disclosure statement approved by the appropriate Registrar specifying —

(a) the financial position of the State co-operative and the foreign co-operative as shown in financial statements that have been prepared as at a date that is not more than 6 months before the date of the statement; and

(b) any interest that any officer of the State co-operative or the foreign co-operative has in the proposed merger or transfer of engagements; and

(c) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to any officer or member of the State co-operative or foreign co-operative in relation to the proposed merger or transfer of engagements; and

(d) whether the proposal is a merger or transfer of engagements and the reason for the merger or transfer of engagements; and

(e) in the case of a transfer of engagements — whether it is a total or partial transfer of engagements; and

(f) in the case of a merger, whether the merged co-operative will result in a State co-operative or a co-operative under the co-operatives law of the participating State concerned; and

(g) any other information that the Registrar directs.

(4) The disclosure statement must be sent to the members of the State co-operative or foreign co-operative so that it will in the ordinary course of post reach each member who is entitled to vote on the special resolution not later than —

(a) if the resolution is to be decided at a meeting, 21 days before the date of the meeting; or

(b) if the resolution is to be decided by a postal ballot, 21 days before the day on or before which the ballot papers must be returned by members voting in the ballot.

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(5) The appropriate Registrar may exempt the State co-operative or foreign co-operative from complying with this section.

(6) The appropriate Registrar may grant an exemption, or approve a disclosure statement, subject to any conditions the Registrar considers appropriate.

393. Making an application

(1) An application for approval of a merger or transfer of engagements under this Division must be made to the State Registrar and, if the merger or transfer affects a participating co-operative, to the Registrar for the participating State concerned in the way and form required by the Registrar concerned.

(2) An application for approval of a merger must be accompanied by —

(a) 2 copies of the proposed rules of the merged co-operative; and

(b) in the case of a non-participating co-operative, details of voting on the special resolution, if any, of the co-operative; and

(c) any other information required by the Registrar to whom the application is made.

394. Approval of merger

(1) If the State Registrar is the appropriate Registrar, he or she must approve a merger pursuant to an application under this Division if satisfied that —

(a) this Division has been complied with in relation to the application; and

(b) the proposed rules of the merged co-operative are adequate; and

(c) the certificate of registration of the State co-operative has been surrendered to the State Registrar; and

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(d) in the case of a merger with a participating co-operative, the certificate of registration of the participating co-operative has been surrendered to the Registrar for the participating State concerned; and

(e) in the case of a merger with a non-participating co-operative, the merged co-operative will comply with this Act; and

(f) there is no good reason why the merged co-operative and its rules should not be registered.

(2) If the State Registrar is not the appropriate Registrar, he or she must approve a merger pursuant to an application under this Division if satisfied that the merger has been approved under the provision of the co-operatives law of the participating State that corresponds with subsection (1).

(3) On approving an application for merger, the State Registrar must —

(a) cancel the registration of the State co-operative involved in the merger; and

(b) if the merger is to result in a State co-operative, register the merged co-operative and its rules and issue to it a certificate of registration under this Act.

(4) A merger takes effect on the issue of the certificate of registration for the merged co-operative, whether under this Act or under the co-operatives law of the participating State concerned.

395. Approval of transfer of engagements

(1) If the State Registrar is the appropriate Registrar, he or she must approve a transfer of engagements pursuant to an application under this Division if satisfied that —

(a) this Division has been complied with in relation to the application; and

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(b) the rules or proposed rules of the transferee co-operative are adequate; and

(c) in the case of a total transfer of engagements from a participating co-operative, the certificate of registration of the participating co-operative has been surrendered to the participating Registrar; and

(d) in the case of a total transfer of engagements from a non-participating co-operative, the certificate of registration of the non-participating co-operative has been surrendered to the State Registrar; and

(e) in the case of a transfer of engagements by a non-participating co-operative, the transferee co-operative will comply with this Act; and

(f) there is no good reason why the transfer of engagements should not take effect.

(2) If the State Registrar is not the appropriate Registrar, he or she must approve a transfer of engagements pursuant to an application under this Division if satisfied that the transfer has been approved under the provision of the co-operatives law of the participating State that corresponds with subsection (1).

(3) A transfer of engagements takes effect on the day specified in the approval of the State Registrar.

396. Effect of merger or transfer of engagements

(1) In this section —

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money) and includes securities, choses in action and documents;

instrument means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law) and includes any judgment, order and process of a court;

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liabilities means liabilities, debts and obligations (whether present or future and whether vested or contingent);

original co-operative means —

(a) in the case of a transfer of engagements, the transferor co-operative; or

(b) in the case of a merger, each of the co-operatives that are merging;

successor co-operative means —

(a) in the case of a transfer of engagements, the transferee co-operative; or

(b) in the case of a merger, the co-operative formed by the merger.

(2) When a merger or transfer of engagements takes effect under this Division (the ***transition day***), the following provisions apply to the extent necessary to give effect to the merger or transfer —

(a) persons who were members of the original co-operative immediately before the transition day are members of the successor co-operative in accordance with its rules;

(b) the assets of the original co-operative vest in the successor co-operative without the need for any conveyance, transfer, assignment or assurance;

(c) the rights and liabilities of the original co-operative become the rights and liabilities of the successor co-operative;

(d) all proceedings by or against the original co-operative that are pending immediately before the transition day are taken to be proceedings pending by or against the successor co-operative;

(e) any act, matter or thing done or omitted to be done by, to or in respect of the original co-operative before the transition day is (to the extent to which that act, matter or thing has any force or effect) to be taken to have been

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done or omitted by, to or in respect of the successor co-operative;

(f) a reference in an instrument or in any document of any kind to the original body is to be read as, or as including, a reference to the new body.

(3) The operation of this section is not to be regarded —

(a) as a breach of contract or confidence or otherwise as a civil wrong; or

(b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or

(c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.

397. Division applies instead of certain other provisions of this Act

(1) This Division applies instead of Part 12 Division 1, in relation to the merger of a State co-operative with a foreign co-operative.

(2) This Division applies instead of Part 12 Division 1, in relation to a transfer of engagements between a State co-operative and a foreign co-operative.

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Part 15 — Supervision and protection of co-operatives

Division 1 — Supervision and protection

398. Definitions

In this Part —

chief executive officer (DOCEP) means the chief executive officer of the department of the Public Service principally assisting the Minister in the administration of this Act;

co-operative venture means —

(a) any corporation or unit trust formed by a co-operative or in the formation of which a co-operative participated; or

(b) any partnership, joint venture or association of persons or bodies formed or entered into by a co-operative;

place includes all or part of a structure, building, aircraft, vehicle, vessel and place, whether built on or not;

relevant documents means records or other documents that relate to the promotion, formation, membership, control, transactions, dealings, business or property of a co-operative.

399. *Co-operative* includes subsidiaries, foreign co-operatives and co-operative ventures

A reference in this Part to a co-operative includes a reference to each of the following —

(a) a foreign co-operative;

(b) a subsidiary of a co-operative or foreign co-operative;

(c) a co-operative venture;

(d) a co-operative or foreign co-operative, or a subsidiary of either, or a co-operative venture, that is in the course of being wound-up or has been deregistered.

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400. Appointment of inspectors

The Registrar may appoint a person as an inspector under this Act if —

(a) the chief executive officer (DOCEP) considers the person has the necessary expertise or experience to be an inspector; or

(b) the person has satisfactorily finished training approved by the chief executive officer (DOCEP).

401. Registrar and investigators have functions of inspectors

The Registrar, and any investigator exercising functions under Division 2, have and may exercise all the functions of an inspector and for that purpose are to be considered to be inspectors.

402. Inspector's identity card

(1) The Registrar must give each inspector an identity card.

(2) The identity card must —

(a) contain a recent photo of the person; and

(b) be signed by the person; and

(c) identify the person as an inspector.

(3) A person who stops being an inspector must return the person's identity card to the Registrar as soon as possible, but within 21 days, after the person stops being an inspector, unless the person has a reasonable excuse.

Penalty: a fine of $2 000.

(4) This section does not prevent the giving of a single identity card to a person for this and other Acts or for other purposes.

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403. Production or display of inspector's identity card

(1) An inspector may exercise a power in relation to someone only if —

(a) the inspector first produces the inspector's identity card for the other person's inspection; or

(b) the inspector has the inspector's identity card displayed so it is clearly visible to the other person.

(2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the inspector must produce the identity card for inspection by the person at the first reasonable opportunity.

404. Powers of inspector

(1) An inspector must act in accordance with the directions of the Registrar.

(2) The powers of an inspector may be limited —

(a) under a regulation; or

(b) under a condition of appointment; or

(c) by written notice given by the Registrar to the inspector.

405. Inspector's appointment conditions

(1) An inspector holds office on the conditions stated in the instrument of appointment.

(2) An inspector —

(a) if the appointment provides for a term of appointment, stops holding office at the end of the term; and

(b) if the conditions of appointment provide, stops holding office when the inspector stops holding another office stated in the appointment conditions (the ***main office***); and

(c) may resign by signed notice of resignation given to the Registrar.

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(3) However, an inspector may not resign from the office under this Act (the ***secondary office***) if a term of employment to the main office requires the person to hold the secondary office.

406. Entry of place

(1) An inspector may enter a place if —

(a) its occupier consents to the entry; or

(b) the entry is authorised by a warrant; or

(c) it is a place on which the affairs or activities of a co-operative are managed or conducted.

(2) An inspector, without the occupier's consent or a warrant, may enter the land around the place to ask its occupier for consent to enter the place.

407. Consent to entry

(1) This section applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place.

(2) Before asking for the consent, the inspector must inform the occupier —

(a) of the purpose of the entry; and

(b) that the occupier is not required to consent.

(3) If the consent is given, the inspector may ask the occupier to sign an acknowledgment of the consent.

(4) The acknowledgment must state —

(a) that the occupier was informed —

(i) of the purpose of the entry; and

(ii) that the occupier is not required to consent;

and

(b) that the occupier gives an inspector consent to enter the place and exercise powers under this Act; and

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(c) the time and date the consent was given.

(5) If the occupier signs an acknowledgment of consent, the inspector must immediately give a copy to the occupier.

(6) Subsection (7) applies to a court if —

(a) a question arises, in a proceeding in or before the court, as to whether the occupier of a place consented to an inspector entering the place under this Act; and

(b) an acknowledgment under this section is not produced in evidence for the entry; and

(c) it is not proved the occupier consented to the entry.

(7) The court may presume the occupier did not consent.

408. Inspectors may require certain persons to appear, answer questions and produce documents

(1) An inspector may by notice in the form prescribed by the regulations —

(a) require a co-operative to produce to the inspector at a time and place specified in the notice specified relevant documents relating to the co-operative; or

(b) require a person who is involved in the activities of a co-operative to produce to the inspector at a time and place specified in the notice specified relevant documents relating to the co-operative; or

(c) require a person who is involved in the activities of a co-operative —

(i) to attend before the inspector at a time and place specified in the notice; and

(ii) to answer any questions put to the person by the inspector relating to the promotion, formation, membership, control, transactions, dealings, business or property of the co-operative.

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(2) A person is to be considered to be involved in the activities of a co-operative if the person —

(a) is or has been an officer or employee of, or an agent, financial institution, legal practitioner, auditor or other person acting in any capacity for the co-operative; or

(b) has relevant documents relating to the co-operative in the person's possession or control; or

(c) was a party to the creation of relevant documents relating to the co-operative.

(3) A person is not subject to any liability as a result of complying with a requirement made or purportedly made under this section.

409. Powers of inspectors on place entered

An inspector has the following powers on a place that the inspector is authorised to enter —

(a) power to search for evidence of a contravention of this Act;

(b) power to search for relevant documents and to require a person on the place to produce to the inspector relevant documents in the person's custody or under the person's control;

(c) power to require a person on the place who is apparently involved in the management or conduct of the affairs or activities of a co-operative to answer questions or provide information;

(d) power to exercise the functions of an inspector under section 410 in relation to relevant documents found on the place or produced to the inspector.

410. Functions of inspectors in relation to relevant documents

(1) An inspector has the following powers in relation to a relevant document found by an inspector on a place entered by the

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inspector or produced to the inspector pursuant to a requirement made under this Division —

(a) power to take possession of the document or secure it against interference;

(b) power to make copies, or take extracts from, the document;

(c) power to require a person who was party to the creation of the document to make a statement giving any explanation that the person is able to provide as to any matter relating to the creation of the document or the matters to which the document relates;

(d) power to retain possession of the document for the period necessary to enable the document to be inspected, and copies of, or extracts from, the document to be made or taken.

(2) While an inspector retains possession of a document, the inspector must permit a person who would be entitled to inspect the document were it not in the possession of the inspector to inspect the document at a reasonable time and make a copy of, or take extracts from, the document.

(3) If an inspector takes possession of or secures against interference a relevant document and a person has a lien on the document, the inspector's actions do not prejudice the lien.

411. Protection from incrimination

(1) A person is not excused from making a statement under a requirement under this Division on the ground that the statement might tend to incriminate the person.

(2) If the person claims before making a statement that the statement might tend to incriminate him or her, the statement is not admissible in evidence against him or her in criminal proceedings other than proceedings under this Division.

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(3) Except as provided by subsection (2), a statement made by a person in compliance with a requirement under this Division may be used in evidence in any criminal or civil proceedings against the person.

412. Warrants

(1) An inspector may apply to a magistrate for a warrant to enter a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

(4) The magistrate may issue the warrant only if satisfied there are reasonable grounds for suspecting —

(a) there is a particular thing or activity that may provide evidence of an offence against this Act; and

(b) that thing or activity is at the place, or may be at the place, within the next 7 days.

(5) The warrant must state —

(a) that the inspector may, with reasonable and necessary help and force, enter the place and exercise the inspector's powers under this Act; and

(b) the offence for which the warrant was issued; and

(c) any evidence that may be seized under the warrant; and

(d) the hours when the place may be entered; and

(e) the date, within 7 days after the warrant's issue, when the warrant ends.

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413. Warrants — applications made other than in person

(1) An inspector may apply for a warrant by phone, fax, radio or another form of communication if the inspector considers it necessary because of —

(a) urgent circumstances; or

(b) other special circumstances, including, for example, the inspector's remote location.

(2) Before applying for the warrant under subsection (1), the inspector must prepare an application stating the grounds on which the warrant is sought.

(3) The inspector may apply for the warrant before the application is sworn.

(4) After issuing the warrant, the magistrate must immediately fax a copy to the inspector if it is reasonably practicable to fax a copy.

(5) If it is not reasonably practicable to fax a copy to the inspector —

(a) the magistrate must —

(i) tell the inspector what the terms of a warrant applied for under subsection (1) are; and

(ii) tell the inspector the date and time the warrant was issued;

and

(b) the inspector must complete a form of warrant (the ***warrant form***) and write on it —

(i) the magistrate's name; and

(ii) the date and time the magistrate issued the warrant; and

(iii) the warrant's terms.

(6) The facsimile warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the other powers stated by the warrant issued by the magistrate.

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(7) The inspector must, at the first reasonable opportunity, send the magistrate —

(a) the sworn application; and

(b) if the inspector completed a warrant form, the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the warrant.

(9) Subsection (10) applies to a court if —

(a) a question arises, in a proceeding in or before the court, whether a power exercised by an inspector was authorised by a warrant issued under this section; and

(b) the warrant is not produced in evidence.

(10) The court may presume the exercise of the power was not authorised by a warrant issued under this section, unless the contrary is proved.

414. Entry with warrant

(1) Before executing a search warrant, the inspector named in the warrant or a person assisting the inspector must announce that the inspector is authorised by the warrant to enter the place and give any person at the place an opportunity to allow entry to the premises.

(2) The inspector or a person assisting the inspector need not comply with subsection (1) if the inspector believes on reasonable grounds that immediate entry to the premises is required to ensure the effective execution of the search warrant is not frustrated.

(3) If an occupier or another person who apparently represents the occupier is present at a place when a search warrant is being executed, the inspector must —

(a) identify himself or herself to the person by producing his or her identity card for inspection by the person; and

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(b) give to the person a copy of the execution copy of the warrant.

415. General powers after entering places

(1) This section applies to an inspector who enters a place under this Part.

(2) For monitoring or enforcing compliance with this Act, the inspector may —

(a) search any part of the place; and

(b) examine, inspect, photograph or film anything on the place; and

(c) copy a document on the place; and

(d) take into or onto the place any persons, equipment and materials the inspector reasonably requires for exercising a power under this Part; and

(e) require a person in the place to give the inspector reasonable help to exercise the powers mentioned in paragraphs (a) and (d).

(3) A person required to give reasonable help under subsection (2)(e) must comply with the requirement, unless the person has a reasonable excuse.

Penalty: a fine of $12 000 or imprisonment for one year.

(4) If the help is required to be given to an inspector by —

(a) answering a question; or

(b) producing a document, other than a document required to be kept under this Act,

it is a reasonable excuse for the person to fail to answer the question, or produce the document, if complying with the requirement might tend to incriminate the person.

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416. Power to seize evidence

(1) An inspector who enters a place under this Part other than under a warrant may seize a thing in the place if —

(a) the inspector reasonably believes the thing is evidence of an offence against this Act; and

(b) seizure of the thing is consistent with the purpose of entry as told to the occupier.

(2) An inspector who enters a place under this Part under a warrant may seize the evidence for which the warrant was issued.

(3) An inspector may also seize a thing in a place referred to in subsection (1) or (2) if the inspector believes —

(a) the thing is evidence of an offence against this Act; and

(b) the seizure is necessary to prevent the thing being hidden, lost or destroyed or used to continue or repeat the offence.

417. Receipt for seized things

(1) As soon as possible after an inspector seizes a thing, the inspector must give a receipt for it to the person from whom it was seized.

(2) However, if it is not practicable to comply with subsection (1), the inspector must leave the receipt at the place of seizure, in a reasonably secure way and in a conspicuous position.

(3) The receipt must describe generally each thing seized and its condition.

418. Return of seized things

(1) An inspector must return a seized thing to its owner at the end of —

(a) 6 months; or

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(b) if proceedings for an offence involving it are started within the 6 months, the proceedings and any appeal from the proceedings.

(2) Despite subsection (1), the inspector must return the seized thing to the person immediately the inspector stops being satisfied its retention as evidence is necessary.

419. Power to require name and address

(1) This section applies if —

(a) an inspector finds a person committing an offence against this Act; or

(b) an inspector finds a person in circumstances that lead, or has information that leads, the inspector to reasonably suspect the person has just committed an offence against this Act.

(2) The inspector may require the person to state the person's name and address.

(3) When making the requirement the inspector must warn the person it is an offence to fail to state the person's name or address, unless the person has a reasonable excuse.

(4) The inspector may require the person to give evidence of the correctness of the stated name or address if the inspector reasonably suspects the stated name or address is false.

(5) A person must comply with a requirement under subsection (2) or (4), unless the person has a reasonable excuse.

Penalty: a fine of $12 000 or imprisonment for one year.

(6) A person does not commit an offence against subsection (5) if —

(a) the person was required to state the person's name and address by an inspector who suspected the person had committed an offence against this Act; and

(b) the person is not proved to have committed the offence.

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420. False or misleading statements

(1) A person must not state anything to an inspector the person knows is false or misleading in a material particular.

Penalty: a fine of $12 000 or imprisonment for one year.

(2) It is enough for a prosecution notice lodged for an offence against subsection (1) to state the statement was false or misleading to the person's knowledge without stating which.

421. Power to require production of documents

(1) An inspector may require a person to produce to the inspector, for inspection, a document this Act requires the person to hold or keep.

(2) The person must produce the document, unless the person has a reasonable excuse for not producing it.

Penalty: a fine of $12 000 or imprisonment for one year.

(3) The inspector may keep a document that is produced —

(a) to take an extract from the document; or

(b) to make a copy of it.

(4) The inspector must return the document to the person as soon as practicable after taking the extract or making the copy.

422. False or misleading documents

(1) A person must not give to the Registrar or an inspector a document containing information the person knows is false or misleading in a material particular.

Penalty: a fine of $12 000 or imprisonment for one year.

(2) Subsection (1) does not apply to a person who, when giving the document —

(a) tells the Registrar or inspector, to the best of the person's ability, how it is false, misleading or incomplete; and

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(b) if the person has, or can reasonably get, the correct information, gives the correct information to the Registrar or inspector.

(3) It is enough for a prosecution notice lodged against a person for an offence against subsection (1) to state the document was false, misleading or incomplete to the person's knowledge without stating which.

423. Obstruction of inspectors

(1) In this section —

obstruct includes hinder and attempt to obstruct.

(2) A person must not obstruct an inspector, or a person helping an inspector, in the exercise of a power under this Act, unless the person has a reasonable excuse.

Penalty: a fine of $12 000 or imprisonment for one year.

(3) If a person obstructs an inspector in the exercise of a power under this Act and the inspector decides to exercise the power, the inspector must warn the person.

(4) In warning the person, the inspector must tell the person —

(a) it is an offence to obstruct the inspector, unless the person has a reasonable excuse; and

(b) the inspector considers the person's conduct is an obstruction.

424. Copies or extracts of records to be admitted in evidence

(1) Subject to this section, in any legal proceedings, whether under this Act or otherwise, a copy of or extract from a record relating to affairs of a co-operative is admissible in evidence as if it were the original record or the relevant part of the original record.

(2) A copy of or extract from a record is not admissible in evidence under subsection (1) unless it is proved that the copy or extract is a true copy of the record or of the relevant part of the record.

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(3) For the purposes of subsection (2), evidence that a copy of or extract from a record is a true copy of the record or of a part of the record may be given either orally or by an affidavit or statutory declaration by a person who has compared the copy or extract with the record or the relevant part of the record.

425. Privilege

(1) A legal practitioner is entitled to refuse to comply with a requirement under section 408 or 410 relating to a relevant document if —

(a) the document contains a privileged communication made by or on behalf of or to the legal practitioner in his or her capacity as a legal practitioner; or

(b) the legal practitioner is not able to comply with the requirement without disclosing a privileged communication made by or on behalf of or to the legal practitioner in his or her capacity as a legal practitioner.

(2) The legal practitioner is not entitled to refuse to comply with the requirement to the extent that he or she is able to comply with it without disclosing the privileged communication.

(3) The legal practitioner is also not entitled to refuse to comply with the requirement if the person by or on behalf of whom the communication was made or (if the person is under administration under the Corporations Act Part 5.3A as applying under this Act, or in the course of being wound-up) the administrator or the liquidator agrees to the legal practitioner complying with the requirement.

(4) If the legal practitioner refuses to comply with the requirement, he or she must immediately give in writing to the Registrar —

(a) the name and address of the person to whom or by or on behalf of whom the communication was made, if known to the legal practitioner; and

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(b) enough particulars to identify the document containing the communication, if the communication was made in writing.

Penalty: a fine of $6 000.

Division 2 — Inquiries

426. Definitions

In this Division —

affairs of a co-operative includes —

(a) the promotion, formation, membership, control, transactions, dealings, business and property of the co-operative; and

(b) loans made to the co-operative; and

(c) matters that are concerned with identifying people who are, or have been, financially interested in the success or failure, or apparent success or failure, of the co-operative or who are, or have been, able to control or influence materially the policies of the co-operative; and

(d) the circumstances in which a person placed, withdrew or disposed of funds with, or loans to, the co-operative;

costs of an inquiry under this Division include —

(a) the expenses of, and incidental to, the inquiry; and

(b) the expenses payable by the Registrar in proceedings instituted by the Registrar under this Division in the name of the co-operative the subject of the inquiry; and

(c) the part of the remuneration of an officer or employee of the State as the Minister decides is attributable to matters connected with the inquiry;

investigator means a person appointed under section 427;

involved person, in relation to an inquiry into the affairs of a co-operative, means —

(a) an officer of the co-operative; or

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(b) a person who acts, or has at any time acted, as financial institution, legal practitioner, auditor or actuary, or in another capacity, for the co-operative; or

(c) a person who has, or at any time had, in his or her possession any property of the co-operative; or

(d) a person who is indebted to the co-operative; or

(e) a person who is capable of giving information relating to the affairs of the co-operative; or

(f) a person whom an investigator believes on reasonable grounds to be a person referred to in paragraphs (a) to (e).

427. Appointment of investigators

(1) The chief executive officer (DOCEP) may appoint a person or persons to hold an inquiry into the affairs of a co-operative if the chief executive officer (DOCEP) considers that it is desirable to do so for the protection, or otherwise in the interests, of the public or of the members or creditors of the co-operative.

(2) The chief executive officer (DOCEP) may vary the terms and conditions of appointment of an investigator if the investigator agrees to the variation.

(3) In the course of an inquiry into the affairs of a co-operative, an investigator may inquire into the affairs of a subsidiary of the co-operative that, if the subsidiary were the co-operative, would be affairs of the co-operative.

(4) An inquiry into the affairs of a subsidiary of a co-operative may be conducted as if the subsidiary were the co-operative.

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428. Powers of investigators

(1) An investigator inquiring into the affairs of a co-operative may, by giving an involved person a notice in a form approved by the Registrar, require the person —

(a) to produce any document of which the person has custody or control and that relates to those affairs; or

(b) to give the investigator all reasonable help with the inquiry; or

(c) to appear before the investigator for examination on oath or affirmation.

(2) An investigator may administer an oath or affirmation to an involved person given a notice under subsection (1).

(3) An investigator may take possession of a document produced by an involved person under subsection (1) and may retain it for the period that the investigator decides is necessary for the inquiry.

(4) While an investigator retains possession of a document, the investigator must permit a person who would be entitled to inspect the document were it not in the possession of the investigator to inspect the document at any reasonable time and make a copy of, or take extracts from, the document.

429. Examination of involved person

(1) A legal practitioner acting for an involved person —

(a) may attend an examination of the involved person by an investigator; and

(b) may, to the extent that the investigator permits, address the investigator and examine the involved person.

(2) An involved person is not excused from answering a question asked by the investigator even if seeking to be excused on the ground of possible self incrimination.

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(3) If an involved person answers a question of an investigator after having claimed possible self incrimination by doing so, neither the question nor the answer is admissible in evidence in any criminal proceedings other than —

(a) proceedings under section 431 for giving a false or misleading answer to the question; or

(b) proceedings on a charge of perjury in respect of the answer.

(4) An involved person who attends for examination by an investigator is entitled to be paid the allowance and the expenses prescribed by the regulations.

430. Privilege

(1) An involved person who is a legal practitioner is entitled to refuse to produce a document to an investigator if the document contains a privileged communication made by or on behalf of or to the legal practitioner in his or her capacity as a legal practitioner.

(2) The legal practitioner is not entitled to refuse to produce the document if the person by or on behalf of whom the communication was made or, if the person is under administration under the Corporations Act Part 5.3A as applying under this Act, or in the course of being wound-up, the administrator or the liquidator agrees to the legal practitioner producing the document.

(3) If the legal practitioner refuses to comply with the requirement to produce a document, he or she must immediately give in writing to the investigator —

(a) the name and address of the person to whom or by or on behalf of whom the communication was made, if known to the legal practitioner; and

(b) enough particulars to identify the document.

Penalty: a fine of $6 000.

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431. Offences by involved person

(1) An involved person must not —

(a) fail to comply with a lawful requirement of an investigator without showing reasonable cause for the failure; or

(b) give an investigator information knowing the information to be false or misleading in a material particular; or

(c) when appearing before an investigator —

(i) make a statement knowing the statement to be false or misleading in a material particular; or

(ii) fail to be sworn or to make an affirmation.

Penalty: a fine of $24 000 and imprisonment for 2 years.

(2) If an investigator considers that a failure by a person to comply with a requirement of the investigator is an offence under subsection (1)(a), the investigator may certify the failure to the Supreme Court and the Court may then —

(a) order the involved person to comply with the requirement of the investigator within a stated period; or

(b) instead of, or in addition to, making that order, punish the involved person as for a contempt of the Court if satisfied that there was no lawful excuse for the failure to comply with the requirement of the investigator.

432. Offences relating to documents

If an inquiry into the affairs of a co-operative is being held under this Division, a person who —

(a) conceals, destroys, mutilates or alters a document relating to the co-operative; or

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(b) sends, or causes to be sent, out of the State a document or other property that belongs to, or is under the control of, the co-operative,

commits an offence unless it is established that the person charged did not intend to defeat, delay or obstruct the inquiry.

Penalty: a fine of $12 000 and imprisonment for one year.

433. Record of examination

(1) Except as provided by section 429, a record of an examination may be used in proceedings against the person examined, but this does not preclude the admission of other written or oral evidence.

(2) A person examined is, on written application made to the investigator, entitled to a free copy of the record of examination.

(3) The Registrar may provide a legal practitioner with a copy of a record of examination made by an investigator if the Registrar is satisfied that the legal practitioner is conducting, or is in good faith contemplating, legal proceedings in respect of affairs of the co-operative to which the record relates.

(4) A legal practitioner must not —

(a) use a copy of a record of examination otherwise than for the preparation for, institution of, or conduct of, legal proceedings; or

(b) publish or communicate the record or any part of it for any other purpose.

Penalty: a fine of $6 000.

434. Report of investigator

(1) An investigator may, and if directed by the Registrar to do so must, make interim reports to the Registrar on any inquiry being held by the investigator.

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(2) As soon as practicable after the end of an inquiry, the investigator must report to the Registrar —

(a) the opinion of the investigator in relation to the affairs of the co-operative the subject of the inquiry; and

(b) the findings on which the opinion is based.

(3) An investigator's report may include a recommendation as to whether —

(a) a direction should be made under section 437(3); or

(b) an application should be made under section 437(4) or (5); or

(c) a direction and an application should both be made.

(4) A report by an investigator may be accompanied by any document of which the investigator has taken possession after being produced under this Division, in which case the Registrar —

(a) may retain the document for the period that the Registrar considers necessary in order to decide whether legal proceedings should be instituted as a result of the inquiry; and

(b) may retain the document for the further period that the Registrar considers to be necessary to enable legal proceedings to be instituted and prosecuted; and

(c) may permit the use of the document for legal proceedings instituted as a result of the inquiry; and

(d) must permit inspection of the document by a person who would be entitled to inspect it if it were returned to its former custody; and

(e) may permit inspection of the document by another person while it is in the possession of the Registrar but only if the Registrar considers that the person has an interest in the inquiry and, because of that interest, refusal of the inspection would be unjust.

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435. Proceedings following inquiry

(1) If legal proceedings are to be, or have been, instituted by the Registrar as a result of an inquiry under this Division, the Registrar may, by written notice, require a person who, in relation to the inquiry, was an involved person to give all assistance in connection with the proceedings as the person is reasonably able to give.

(2) The Supreme Court may, on the application of the Registrar, order a person to comply with a requirement under subsection (1) if the person has failed to do so.

(3) If the Registrar considers that, as a result of an inquiry under this Division, legal proceedings should, in the public interest, be instituted by a co-operative for the recovery of —

(a) damages for fraud or other misconduct in connection with the affairs of the co-operative; or

(b) property of the co-operative,

the Registrar may institute and prosecute the proceedings in the name of the co-operative.

436. Admission of investigator's report as evidence

(1) A document certified by the Registrar as being a copy of a report of an inquiry under this Division is admissible as evidence of any findings made by the investigator.

(2) Subsection (1) does not authorise the admission of evidence that is inadmissible under section 429.

437. Costs of inquiry

(1) The costs of an inquiry under this Division are to be paid out of money appropriated by Parliament.

(2) At the direction of the Minister, the Registrar must act under one or more of subsections (3), (4) and (5).

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(3) The Registrar may, by written notice given to a co-operative, direct the co-operative to pay to the State all or part of the costs of an inquiry under this Division into the affairs of the co-operative.

(4) If proceedings are instituted by the Registrar under section 435 in the name of a co-operative, the Supreme Court may, in the course of the proceedings and on the application of the Registrar, order that all or part of the costs of the inquiry that led to the proceedings be paid to the State by a specified party to the proceedings.

(5) If a person is convicted of an offence in proceedings certified by the Registrar to be the result of an inquiry into the affairs of a co-operative, the Supreme Court may, on the application of the Registrar made at the time of the conviction or not more than 14 days later, order the convicted person to pay to the State all or part of the costs of the inquiry.

(6) A direction or an order under this section must state —

(a) the amount to be paid; and

(b) the time or times for payment; and

(c) the manner of payment.

(7) An amount that has not been paid by a person in accordance with a direction or an order under this section is recoverable from the person by the Registrar as a debt payable to the State.

Division 3 — Prevention of fraud etc.

438. Falsification of records

A person must not make, order or allow to be made an entry or erasure in, or any omission from —

(a) a record of a co-operative or a subsidiary of a co-operative; or

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(b) a record required to be sent, kept or delivered under this Act,

with intent to falsify them or it, or to evade any of the provisions of this Act.

Penalty: a fine of $6 000.

439. Fraud or misappropriation

(1) A person must not —

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

(b) having property of a co-operative in his or her possession, withhold or misapply it or wilfully apply part of it to purposes other than purposes authorised by the rules of the co-operative or this Act.

Penalty: a fine of $6 000.

(2) A person who is found guilty of an offence under subsection (1) must, if ordered to do so by the court, deliver up all the property and repay all money improperly applied.

Penalty: a fine of $6 000.

440. Offering or paying commission

A person must not offer or pay a commission, fee or reward, whether pecuniary or otherwise, to an officer of a co-operative in relation to a transaction or proposed transaction between the person and the co-operative.

Penalty: a fine of $6 000.

441. Accepting commission

(1) An officer of a co-operative must not accept a commission, fee or reward, whether pecuniary or otherwise, from a person in relation to a transaction or proposed transaction between the person and the co-operative.

Penalty: a fine of $6 000.

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(2) An officer of a co-operative who commits an offence under subsection (1) is liable to make good to the co-operative double the value or amount of the commission, fee or reward.

442. False statements in loan application etc.

(1) A person must not in or in relation to an application, request or demand for money made to or of a co-operative —

(a) give information or make a statement to the co-operative or an officer, employee or agent of the co-operative knowing it to be false or misleading in a material particular; or

(b) proffer to the co-operative or an officer, employee or agent of the co-operative any information or statement provided by another person knowing it to be false or misleading in a material particular.

Penalty: a fine of $6 000.

(2) If a person is found guilty of an offence under subsection (1), a co-operative from which money has been obtained by the person in relation to the commission of the offence may exercise all rights under a mortgage or other security given to it by the person to secure the repayment of money that it could exercise if there were a breach of a covenant or of a term of a contract by which the security was given.

(3) The co-operative may exercise the rights whether the mortgage or other security was executed by the person alone or by the person and another person or other persons.

Division 4 — Miscellaneous powers of the Registrar

443. Application for special meeting or inquiry

(1) The Registrar must, on the application of a majority of the members of the board or of not less than one third in number of the members of a co-operative —

(a) call a special meeting of the co-operative; or

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(b) hold, or appoint an inspector to hold, an inquiry into the affairs of the co-operative or of a subsidiary of the co-operative.

(2) An application must be supported by the evidence that the Registrar directs for the purpose of showing that the applicants have good reason for requiring the meeting or inquiry and that the application is made without malicious motive.

(3) Notice of the application must be given to the co-operative as the Registrar directs.

(4) The applicants must give security for the expenses of the meeting or inquiry as the Registrar directs.

444. Holding of special meeting

(1) The Registrar may direct the time and place at which a special meeting of a co-operative under this Division is to be held and the matters that are to be discussed and decided at the meeting.

(2) The Registrar must give such notice to members of the holding of the special meeting as the Registrar considers appropriate, despite any provision in the co-operative's rules as to the giving of notice.

(3) The special meeting has all the powers of a meeting called in accordance with the rules of the co-operative and has power to appoint its own chairman, despite a rule of the co-operative to the contrary.

(4) The Registrar or another person nominated by the Registrar may attend and address the meeting.

445. Expenses of special meeting or inquiry

The expenses of and incidental to a special meeting called or an inquiry held under this Division, including under section 446, must be defrayed in the proportions the Registrar directs —

(a) by the applicants, if any; or

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(b) out of the funds of the co-operative to which the meeting or inquiry related or whose subsidiary was the subject of the inquiry; or

(c) by any officer, member, former officer or former member of the co-operative.

446. Power to hold special inquiry into co-operative

The Registrar may without an application hold, or appoint an inspector to hold, an inquiry into the working and financial condition of a co-operative or a subsidiary of a co-operative.

447. Special meeting following inquiry

(1) On completion of any inquiry under this Division, the Registrar may call a special meeting of the co-operative.

(2) Sections 444 and 445 apply to such a meeting.

448. Information and evidence

(1) On an application for registration of a co-operative or registration or approval of a rule or document under this Act, the Registrar may require from the applicant information and evidence as may be reasonable in order to show that the application should be granted.

(2) The Registrar may require from any co-operative such information and evidence as may be reasonable in order to show that the co-operative is genuinely carrying on business in accordance with the provisions of this Act.

(3) The Registrar may require from a co-operative evidence as the Registrar considers appropriate of all matters required to be done and of the entries in any document required to be given to the Registrar under this Act.

449. Extension or abridgment of time

(1) The Registrar may grant an extension of, or may abridge, a time for doing anything required to be done by a co-operative by this

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Act, or the rules of a co-operative on the terms, if any, as the Registrar decides.

(2) The Registrar may grant an extension of time even if the time for doing the thing has expired.

450. Power of Registrar to intervene in proceedings

(1) The Registrar may intervene in proceedings relating to a matter arising under this Act.

(2) When the Registrar intervenes in proceedings, the Registrar is taken to be a party to the proceedings and, subject to this Act, has all the rights, duties and liabilities of a party to the proceedings.

(3) The Registrar may appear and be represented in any proceedings in which the Registrar wishes to intervene under this section —

(a) by a person to whom the Registrar has delegated the Registrar's functions under this Act or the functions relating to a matter to which the proceedings relate; or

(b) by an employee of the public service who is engaged in the administration of this Act; or

(c) by a legal practitioner.

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Part 16 — Administration of this Act

Division 1 — The Registrar

451. Registrar of Co-operatives

The Commissioner as defined in the *Fair Trading Act 2010* section 6 is the Registrar of Co-operatives for the purposes of this Act.

[Section 451 amended by No. 58 of 2010 s. 180.]

452. Deputy Registrar and other staff

(1) In this section —

department means the department of the Public Service principally assisting the Minister in the administration of this Act;

departmental officer means a public service officer employed in the department;

designation means a designation under subsection (2);

employed in the department includes seconded to perform functions or services for, or duties in the service of, the department;

public service officer has the meaning given in the *Public Sector Management Act 1994* section 3(1).

(2) The Registrar is to designate a departmental officer to be a deputy registrar and other departmental officers to be assistant registrars.

(3) There are to be as many assistant registrars as are necessary to perform the functions conferred on assistant registrars by this Act or any other written law.

(4) A person ceases to be a deputy registrar or an assistant registrar if the designation of the person is revoked or ceases to have effect.

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(5) The power to make a designation includes —

(a) the power to revoke a designation previously made; and

(b) the power to designate a person to perform functions of another person who has that designation when it is impractical for that other person to perform the functions.

(6) A designation ceases to have effect if the person designated ceases to be a departmental officer.

(7) The Registrar cannot delegate the power to make a designation to another person.

(8) These are to be in writing —

(a) a designation; and

(b) a revocation of a designation.

453. Delegation by Registrar

(1) Subject to section 452, the Registrar may delegate to a person any power or duty of the Registrar under another provision of this Act.

(2) The delegation must be in writing signed by the Registrar.

(3) The delegation may expressly authorise the delegate to further delegate the power or duty.

(4) A person exercising or performing a power or duty that has been delegated to the person under or as authorised under this section, is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

(5) Nothing in this section limits the ability of the Registrar to perform a function through an officer or agent.

454. Registers to be kept by Registrar

(1) The Registrar is to keep —

(a) a register of co-operatives; and

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(b) a register of foreign co-operatives,

in addition to the Register of Co-operative Charges established under Schedule 3 clause 18, and the register of undertakings referred to in section 472.

(2) The Registrar must record in a register documents, relating to an entity or thing or proposed entity mentioned in subsection (1), that are specified by the Registrar by order published in the *Gazette* and anything else required by this Act to be recorded in the Register.

(3) The obligation to keep the Register of Co-operative Charges established under Schedule 3 clause 18 ceases on the day after the end of the period of 7 years beginning at the registration commencement time as defined in Schedule 3 clause 4A.

[Section 454 amended by No. 42 of 2011 s. 42.]

455. Keeping of registers

(1) The Registrar must keep, in addition to the registers referred to in section 454, any other registers that the Registrar considers necessary or desirable for the purposes of this Act.

(2) Subject to section 454(2), a register must be kept in the form and contain the particulars that the Registrar thinks fit.

(3) Subject to section 456, any document lodged with, furnished to or registered by the Registrar under this Act must be kept in the office of the Registrar.

456. Disposal of records by Registrar

Subject to the *State Records Act 2000*, the Registrar may, if the Registrar considers that it is no longer necessary or desirable to retain them, destroy or dispose of any of the following —

(a) an annual return or balance sheet lodged more than 7 years ago;

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(b) a document creating or evidencing a charge, or the complete or partial satisfaction of a charge, if a memorandum of satisfaction of the charge was registered more than 7 years ago;

(c) a document, other than the rules or a document affecting the rules of a co-operative, that was lodged, given or registered more than 15 years ago;

(d) a document lodged, given or registered in relation to a co-operative that was dissolved or ceased to be registered more than 15 years ago;

(e) a document of which a transparency or electronic image is incorporated in the register kept by the Registrar or is otherwise kept in the office of the Registrar.

457. Inspection of registers

(1) Subject to subsection (2) a person may —

(a) inspect the registers kept by the Registrar, on payment of the fee, if any, prescribed by the regulations; and

(b) inspect documents kept by the Registrar relating to a co-operative and prescribed by the regulations, on payment of the fee, if any, prescribed by the regulations; and

(c) obtain an extract from a register inspected under paragraph (a), on payment of the fee prescribed by the regulations; and

(d) obtain a certified copy of a document that the person may inspect under paragraph (b), on payment of the fee prescribed by the regulations; and

(e) obtain a copy of a document that the person may inspect under paragraph (b), on payment of the fee prescribed by the regulations.

(2) A person who is not a member cannot inspect a membership list kept by the Registrar.

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(3) If a copy of a document or an extract of information contained in a document and recorded in a register is produced for inspection, a person is not entitled under subsection (1) to require the production of the original of that document.

(4) On and after the day after the end of the period of 7 years beginning at the registration commencement time as defined in Schedule 3 clause 4A, this section has no effect in relation to the Register of Co-operative Charges referred to in clause 18 of that Schedule.

[Section 457 amended by No. 42 of 2011 s. 43.]

458. Approvals by Registrar

(1) This section applies to a provision of this Act that imposes a requirement for the Registrar's approval of any action or thing.

(2) The Registrar may indicate in writing to an applicant for such an approval that the approval is taken to have been granted at the end of a specified period unless the Registrar informs the applicant in writing within that period that the approval has not been granted or is still being considered.

459. Lodgment of documents

A document is not lodged under this Act unless —

(a) all information required to be provided in or with the document is provided; and

(b) the fee, if any, prescribed by the regulations has been paid.

460. Way of lodging

(1) Subject to section 459, it is sufficient compliance with a requirement under this Act that a document be lodged with the Registrar if the Registrar receives a copy of the document by facsimile or electronic transmission.

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(2) If the Registrar receives from a person a copy of a document under subsection (1), the Registrar may require that person to produce and lodge the original within the time specified by the Registrar.

(3) If the person does not comply with a requirement of the Registrar within the specified time, the person is to be taken not to have lodged the document.

461. Power of Registrar to refuse to register or reject documents

(1) The Registrar may refuse to register or may reject a document submitted to the Registrar if the Registrar considers that the document —

(a) contains matter contrary to law; or

(b) contains matter, that in a material particular, is false or misleading in the form or context in which it is included; or

(c) by reason of an omission or misdescription, has not been duly completed; or

(d) does not comply with the requirements of this Act; or

(e) contains any error, alteration or erasure; or

(f) if submitted in electronic form, is not readily accessible by the Registrar so as to be useable by the Registrar.

(2) If the Registrar refuses to register or rejects a document under subsection (1), the Registrar may request —

(a) that the document be appropriately amended; or

(b) that a fresh document be submitted in its place; or

(c) if the document has not been duly completed, that a supplementary document in the form approved by the Registrar be submitted.

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Division 2 — Protection from liability

462. Particular persons protected from liability

(1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.

(2) The Registrar and the State are also relieved of any liability that either of them might otherwise have had for a person having done anything as described in subsection (1).

(3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.

(4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

Division 3 — Evidence

463. Certificate of registration

(1) A certificate of registration of a co-operative issued under this Act is evidence that the co-operative is incorporated under this Act and that all the requirements of this Act in relation to registration have been complied with.

(2) This section does not affect a provision of this Act for the winding-up or deregistration of the co-operative or the cancellation of its registration.

464. Certificate evidence

(1) If a function under this Act is conferred or imposed on the Registrar as a consequence of something being done or omitted to be done within a specified period, the Registrar may certify —

(a) that the thing had or had not been done within that period; or

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(b) that the thing had or had not been done by a specified date.

(2) The Registrar may issue a certificate stating that a requirement of this Act specified in the certificate —

(a) had, or had not, been complied with at a date or within a period specified in the certificate; or

(b) had been complied with at a date specified in the certificate but not before that date.

(3) The Registrar may issue a certificate stating that on a date specified in the certificate a body specified in the certificate was not or had ceased to be registered as a co-operative under this Act.

(4) A certificate given by the Registrar under this section is evidence of the matters stated in the certificate.

465. Records kept by co-operatives

(1) A record kept by a co-operative under a requirement of this Act is admissible in evidence in any proceedings and is evidence of any matter stated or recorded in the record.

(2) A document purporting to be a record kept by a co-operative is, unless the contrary is proved, taken to be a record kept by the co-operative under a requirement of this Act.

(3) A copy of an entry in a record regularly kept by a co-operative in the course of its business is, if verified by statutory declaration of the secretary to be a true copy of the entry, to be received in evidence in any case where and to the same extent as the original entry itself is admissible.

466. Minutes

(1) Every entry in the minutes purporting to be a minute of the business transacted at a meeting of a co-operative or of the board, and purporting to have been signed by the chairman at a subsequent meeting, is evidence that the business recorded in

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the minute was transacted at the meeting and that the meeting was properly convened and held.

(2) An entry in the minutes of a meeting of a co-operative to the effect that a resolution was carried or carried unanimously, or was lost, is evidence of the fact without proof of the number or proportion of votes recorded for or against the resolution.

467. Official certificates

(1) A certificate of registration given by the Registrar must be received in evidence as if it were the original certificate.

(2) A certificate of registration or other official document relating to a co-operative signed by or bearing the seal of the Registrar is to be received in evidence without further proof.

(3) A copy of rules certified by the Registrar to be a true copy of the rules of a co-operative is evidence of the registered rules of the co-operative.

468. The Registrar and proceedings

(1) Judicial notice must be taken of the signature or the facsimile of the signature, by whatever process it is produced, and seal of any person who holds or has held the office of Registrar, if the signature or facsimile signature or seal purports to be attached to a certificate or other official document.

(2) This section extends to a copy of the rules of a co-operative certified by the Registrar to be a true copy of its registered rules.

(3) In any proceedings, no proof is required, until evidence is given to the contrary, of the appointment of the Registrar or a former Registrar.

469. Rules

A printed copy of the rules of a co-operative verified by statutory declaration of the secretary of the co-operative to be a

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true copy of its registered rules is, in any proceedings, evidence of the rules.

470. Registers

The register of directors, members and shares kept by a co-operative as required by section 230(1)(a) is evidence of the particulars directed or authorised by or under this Act to be inserted in the register.

Division 4 — Enforceable undertakings

471. Undertakings following contravention of, or failure to comply with, this Act

(1) Where it appears to the Registrar that a person has engaged in conduct that constitutes a contravention of or a failure to comply with a provision of this Act, the Registrar may request the person to execute, within the period of time specified by the Registrar, a written undertaking in terms approved by the Registrar under which the person gives undertakings as to —

(a) discontinuing the conduct; or

(b) complying with the Act in the future; or

(c) taking action to rectify the consequences of the contravention or failure to comply.

(2) With the consent of the Registrar, the person may withdraw or vary the undertaking at any time.

(3) The Registrar cannot start, and must discontinue, legal proceedings against a person for conduct that is the subject of an undertaking that has been given by the person, that has been approved by the Registrar and that the person is complying with.

472. Register of undertakings

(1) The Registrar must keep a register of undertakings in accordance with this Act.

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(2) If a person gives an undertaking under section 471, the Registrar must register that document in the register of undertakings.

473. Enforcement orders

(1) The Registrar cannot make an application under this section if the Registrar has started legal proceedings against the person for conduct that is the subject of the undertaking to which the application relates.

(2) Where a person fails to comply with a request to give an undertaking under section 471, the Supreme Court may, on the application of the Registrar and on being satisfied that there were grounds for the request, order the person —

(a) to act in a manner that would have been required; or

(b) to refrain from acting in a manner that would have been prohibited,

by the undertaking if it had been given, and the person must comply with the order.

Penalty: a fine of $10 000.

(3) Where, on the application of the Registrar, the Supreme Court is satisfied that a person has failed to observe a term of an undertaking given by the person under section 471, the Court may make an order under subsection (4) against the person.

(4) The Supreme Court may order the person —

(a) to comply with the term of the undertaking within a time specified in the order; or

(b) to pay to the State an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the failure to observe the term of the undertaking; or

(c) to compensate any other person who has suffered loss, injury or damage as a result of the failure to observe the term of the undertaking; or

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(d) to take any other action the Court considers appropriate.

(5) If —

(a) a failure on which an application under subsection (1) or (2) is based is a failure by a corporation; and

(b) the Supreme Court is satisfied that a person, who at the time of the failure was a director of the corporation or a person concerned in its management, knowingly authorised or permitted the failure by the corporation,

the Court may order the person to take the action required to cause the corporation to observe the undertaking, and the person must comply with the order.

Penalty: a fine of $10 000.

(6) An order under this section may be made subject to such conditions as the Supreme Court sees fit.

(7) The Supreme Court may, on the application of the Registrar, vary or discharge that order.

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Part 17 — Offences and proceedings

474. Offences by officers of co-operatives

(1) If a co-operative contravenes a provision of this Act —

(a) any person who is a director of the co-operative or concerned in its management is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention; and

(b) any other officer of the co-operative who by a wilful act or omission is the cause of the contravention is taken to have contravened the same provision.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the co-operative has been proceeded against or convicted under that provision.

(3) This section does not affect any liability imposed on a co-operative for an offence committed by the co-operative against this Act.

475. Notice to be given of conviction for offence

If a co-operative or an officer of a co-operative is convicted of an offence against a provision of this Act, the co-operative must, within 28 days after the conviction is recorded, give to each member of the co-operative notice of —

(a) the conviction; and

(b) any penalty imposed; and

(c) the nature of the offence.

476. Secrecy

(1) In this section —

divulge, in relation to information, means —

(a) to communicate the information orally; or

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(b) to make available a document containing the information; or

(c) to make available anything from which, by electronic process or otherwise, the information may be obtained; or

(d) to communicate the information in any other manner;

repealed Act means the *Companies (Co-operative) Act 1943* or the *Co-operative and Provident Societies Act 1903*.

(2) A person who is, or at any time was, engaged in the administration of this Act or a repealed Act must not, except as provided by this section, record, make use of or divulge information obtained in the course of the administration.

Penalty: a fine of $6 000.

(3) Subsection (2) does not apply to —

(a) the recording, making use of or divulging of information in the course of the administration of this Act; or

(b) the recording or making use of information for the purpose of divulging it as permitted by subsection (4) or (5); or

(c) the divulging of information as permitted by subsection (4).

(4) Information may be divulged —

(a) for the purposes of criminal proceedings; or

(b) for the purposes of any proceedings under this Act or of an inquiry authorised by an Act; or

(c) with the consent of the person to whom the information relates; or

(d) under section 381; or

(e) under a reciprocal arrangement under section 485.

(5) Information may be divulged to —

(a) the Minister; or

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(b) the Treasurer; or

(c) the Commissioner of State Revenue; or

(d) the Auditor General; or

(e) the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation holding office under a law of the Commonwealth; or

(f) the Australian Securities and Investments Commission; or

(g) the person who, under a law of another State, or of a Territory, administers a law of the State or Territory that relates to taxation or the imposition of a duty; or

(h) the Corruption and Crime Commission if the Registrar has received a written request, under the *Corruption and Crime Commission Act 2003* for the information; or

(i) a person seeking information under an arrangement under section 381 or 485; or

(j) a police officer exercising functions as a police officer; or

(k) a person nominated by a person referred to in paragraphs (a) to (g); or

(l) any person, to whom, in the opinion of the Registrar, it is in the public interest that the information be divulged.

(6) For the purposes of this section, a person is, or was, engaged in the administration of this Act or a repealed Act if the person exercises, or at any time exercised, a function as —

(a) the Registrar holding office under this Act or a repealed Act; or

(b) an inspector appointed under this Act or a repealed Act; or

(c) an investigator appointed under this Act; or

(d) a person appointed or employed for the purposes of this Act or a repealed Act.

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477. False or misleading statements

(1) A person must not, in a document required for the purposes of this Act or lodged with the Registrar make, or authorise the making of, a statement knowing it to be false or misleading in a material particular.

Penalty: a fine of $12 000.

(2) A person must not, from a document required for the purposes of this Act or lodged with the Registrar omit, or authorise the omission of, anything knowing that the omission makes the document false or misleading in a material particular.

Penalty: a fine of $12 000.

(3) A person who, in a document required for the purposes of this Act or lodged with the Registrar makes, or authorises the making of, a statement that is false or misleading in a material particular commits an offence unless it is proved that the person had taken reasonable precautions aimed at avoiding the making or authorising of false or misleading statements in such a document.

Penalty: a fine of $6 000.

(4) If an omission makes a document required for the purposes of this Act or lodged with the Registrar misleading in a material respect, a person who made or authorised the omission commits an offence unless it is proved that the person had taken reasonable precautions aimed at avoiding the making or authorising of omissions that would make such a document false or misleading.

Penalty: a fine of $6 000.

478. Further offence for continuing failure to do required act

(1) If a provision of this Act requires an act to be done, the obligation to do the act continues until the act is done —

(a) even if a person has been convicted of an offence in relation to the failure to do the act; and

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(b) even if the provision required the act to be done within a particular period or before a particular time and that period has ended or that time has passed.

(2) If a person is convicted of an offence (a ***primary conviction***) for a failure to do the act, whether it is the first or a second or subsequent offence in relation to the failure, and the failure to do the act continues after the time of the conviction, the person commits a further offence for that continuing failure.

(3) That further offence is constituted by the failure to do the act during the period (the ***further offence period***) that begins with the primary conviction and ends when proceedings for the further offence are commenced or the act concerned is done, whichever happens first.

(4) Proceedings for the further offence are taken to have been commenced on the day on which the information for the further offence is laid or on an earlier day specified in the information for that purpose.

(5) The penalty for the further offence is determined using the following formula —

A x B = C

where —

A is 50 per centum (50%) of the amount specified in this Act to be the monetary penalty for the initial offence; and

B is the number of days in the further offence period; and

C is the maximum penalty for the further offence.

479. Civil remedies

(1) If a co-operative, in making, guaranteeing or raising any loan or receiving any deposit, contravenes this Act or a rule of the co-operative, the civil rights and liabilities of the co-operative or any other person in respect of the recovery of the loan or deposit

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are not affected or prejudiced by the contravention, but the money becomes immediately payable.

(2) The same remedies may be had for the recovery of the loan or deposit and for the enforcement of any security for it as if there had not been a contravention of this Act or of the rules of the co-operative.

480. Injunctions

(1) This section applies to 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.

(2) On the application of —

(a) the Registrar; or

(b) a person whose interests are affected by conduct engaged in by another person,

the Supreme Court, if satisfied that conduct is conduct to which this section applies, may grant an injunction, on the terms the Court considers appropriate, restraining a person from engaging in the conduct and, if the Court considers it appropriate, requiring that other person to do any act or thing.

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(3) If the Supreme Court considers it appropriate, the Court may grant an interim injunction pending a decision on the application.

(4) The Supreme Court may discharge or vary an injunction granted under this section.

(5) The power of the Supreme 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 the conduct; and

(c) whether or not there is an imminent danger of substantial damage to another person if the first-mentioned person engages in the conduct.

(6) The power of the Supreme Court to grant an injunction requiring a person to do an act or thing may be exercised —

(a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and

(b) whether or not the person has previously refused or failed to do that act or thing; and

(c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

(7) If the Supreme Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.

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481. Proceedings for offences etc.

(1) Proceedings for an offence under this Act may be instituted within 3 years after the alleged commission of the offence.

(2) Proceedings for an offence may be instituted by the Registrar or any aggrieved person.

(3) Proceedings for the recovery of any fine or penalty imposed by the rules of a co-operative may be instituted only by the co-operative.

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Part 18 — General

482. Co-operative ceasing to exist

(1) As soon as practicable after a co-operative ceases to exist, other than on the deregistration of the co-operative under section 315, the Registrar must deregister the co-operative by registering the cessation and cancelling the registration of the co-operative.

(2) The Registrar may remove from the register the name of a co-operative that has been deregistered or otherwise ceased to exist.

(3) A co-operative that has transferred its engagements to another co-operative is taken to have ceased to exist.

483. Service of documents on co-operative

(1) A document may be served on a co-operative by post or by leaving it at the registered office of the co-operative with a person who appears to be 16 years of age or more.

(2) A document may be served on a foreign co-operative —

(a) by post; or

(b) by leaving it with a person who appears to be 16 years of age or more and is at a place where the foreign co-operative carries on business in this State; or

(c) by leaving it at the registered office in this State of the foreign co-operative registered under Part 14.

(3) For the purpose of serving a document under this section by post, the document is properly addressed if —

(a) in the case of a co-operative, it is addressed to the registered office of the co-operative; or

(b) in the case of a foreign co-operative, it is addressed to a place in this State where the foreign co-operative carries on business or to the registered office of the foreign

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co-operative in its place of registration, incorporation or formation.

(4) This section does not affect the operation of any provision of a law or of the rules of a court authorising a document to be served on a co-operative or a foreign co-operative in another way.

484. Service on member of co-operative

(1) A notice required under this Act to be given to a member of a co-operative must be in writing.

(2) A notice or other document required under this Act to be given to a member of a co-operative may be given —

(a) personally; or

(b) by leaving it with a person who appears to be 16 years of age or more at the member's address; or

(c) by post; or

(d) by faxing it or emailing it to a fax number or email address provided by the person; or

(e) by sending it to the member by other electronic means (if any) nominated by the member; or

(f) by publishing the notice in a newspaper circulating generally in this State or in the area served by the co-operative, if —

(i) the co-operative is a non-distributing co-operative; or

(ii) the member's whereabouts are unknown to the co-operative; or

(iii) the Registrar permits notice to be given to members of the co-operative in that way.

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485. Reciprocal arrangements

(1) If a reciprocal arrangement with another State or a Territory is in force, the Registrar —

(a) may, at the request of the appropriate official of the State or Territory, give the official information or documents relating to a co-operative; and

(b) may ask the appropriate official of the State or Territory to give the Registrar documents or information relating to an organisation that, under the arrangement, is an organisation corresponding to a co-operative.

(2) A reciprocal arrangement with another State or a Territory is an arrangement made between the Minister and a representative of the government of the other State or the Territory under which it is agreed —

(a) that the Registrar will comply with a request referred to in subsection (1)(a); and

(b) that a request made by the Registrar to an official designated in the arrangement as the appropriate official for the purposes of subsection (1)(b) will be complied with.

486. Translations of documents

A requirement imposed under this Act to give or lodge a document or make a document available for inspection is, in the case of a document that is not in the English language, taken to include a requirement that a translation of the document be given, lodged or made available for inspection at the same time.

487. Exemptions may be on conditions

An exemption under section 139(1), 226, 273(4), 288, 296 or 300(4) may be given on conditions.

488. Approval of forms

The Registrar may approve forms for use under this Act.

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489. Regulation making power

(1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

(2) Without limiting subsection (1), regulations may be made for or in relation to the following —

(a) the making of applications for the exercise of a function by the Registrar;

(b) the way documents are lodged with the Registrar, including electronic lodgment and lodgment by facsimile;

(c) fees to be paid in relation to the administration of this Act including —

(i) fees for lodgment of any documents under this Act; and

(ii) additional fees for late lodgment of any documents under this Act.

(3) A regulation may create an offence punishable by a penalty of a fine not exceeding $2 000.

[490, 491 have not come into operation[2]*.]*

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Part 19 — Transitional and savings provisions

Division 1 — Preliminary

492. Terms used in this Part

In this Part —

co-operative company means a co-operative company registered under the *Companies (Co-operative) Act 1943* Part VI;

former Act means —

(a) in relation to a co-operative company, the *Companies (Co-operative) Act 1943*; and

(b) in relation to a registered society, the *Co-operative and Provident Societies Act 1903*;

registered society means a society registered or deemed to be registered under the *Co-operative and Provident Societies Act 1903*;

transition period means the period beginning on the day on which this section comes into operation and ending on the day before sections 490 and 491 come into operation.

493. *Interpretation Act 1984* not affected

The transitional and savings provisions of this Act do not prejudice or affect the application of the *Interpretation Act 1984* to and in relation to the repeals effected by sections 490 and 491.

494. Transitional regulations

(1) If there is no sufficient provision in this Act for dealing with a transitional matter, regulations under this Act may prescribe all matters that are required or necessary or convenient to be prescribed for dealing with the matter.

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(2) Regulations made under subsection (1) may provide that specified provisions of this Act —

(a) do not apply; or

(b) apply with specified modifications,

to or in relation to any matter.

(3) If regulations under subsection (1) provide that a specified state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the day this Act comes into operation, the regulations have effect according to their terms.

(4) In subsections (2) and (3) —

specified means specified or described in the regulations.

(5) If regulations contain a provision referred to in subsection (3), the provision does not operate so as —

(a) to affect in a manner prejudicial to any person (other than the State), the right of that person existing before the day of publication of those regulations; 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 day of publication of those regulations.

Division 2 — Prohibition on registration under former Act

495. Prohibition on registration under *Companies (Co-operative) Act 1943* or *Co-operative and Provident Societies Act 1903*

During the transition period, a corporation cannot —

(a) register as a co-operative company under the *Companies (Co-operative) Act 1943* Part VI; or

(b) register under the *Companies (Co-operative) Act 1943* Part XI; or

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(c) register as a co-operative and provident society under the *Co-operative and Provident Societies Act 1903*.

Division 3 — Transfer to incorporation under this Act

496. Co-operative companies and registered societies to register under this Act

(1) Unless subsection (2) applies, a co-operative company or a registered society must apply for registration under Part 2 Division 5 not later than 3 months before the end of the transition period.

(2) A co-operative company or a registered society is not required to register as a co-operative under this Act if it has —

(a) applied for incorporation under another written law, and not had that application refused; or

(b) in the case of a co-operative company, applied to the Court for an order under the *Companies (Co-operative) Act 1943* Part IV Division 12 sanctioning a scheme for reconstruction or amalgamation that will, when implemented, result in the dissolution of the company, and not had that application refused; or

(c) in the case of a registered society, passed a special resolution under the *Co-operative and Provident Societies Act 1903* section 41 or 42 to amalgamate or transfer its engagements and is proceeding to give effect to that resolution; or

(d) in the case of a registered society, voted under the *Co-operative and Provident Societies Act 1903* section 46 to dissolve the society and is proceeding towards dissolution; or

(e) commenced to be wound-up.

(3) The *Companies (Co-operative) Act 1943* section 176A does not prevent a co-operative company from becoming registered as a co-operative under this Act.

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(4) The *Co-operative and Provident Societies Act 1903* section 42 does not prevent a registered society from becoming registered as a co-operative under this Act.

497. Decision of Registrar to register co-operative company or registered society

(1) If a co-operative company or a registered society fails to comply with section 496(1) the Registrar may decide to register —

(a) the company or society as a co-operative bearing the corporate name determined by the Registrar; and

(b) rules for the co-operative, the content of which is determined by the Registrar under subsection (2).

(2) The rules for the co-operative are the model rules amended —

(a) as the Registrar considers necessary having regard to the circumstances of the co-operative; and

(b) in the case of a co-operative company, to comply with the *Companies (Co-operative) Act 1943* section 176C.

(3) If the Registrar decides under this section to register a co-operative company or registered society as a co-operative the Registrar must —

(a) ensure registration under the former Act is cancelled; and

(b) issue to the co-operative a certificate of registration, and a copy of its rules; and

(c) publish notice of the issue of the certificate in the *Gazette*.

(4) On issue of the certificate of registration —

(a) registration and incorporation take effect; and

(b) section 35 applies as if a co-operative company or registered society registered under this section was a corporation registered under Part 2 Division 5.

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Division 4 — General transitional provisions

498. Special resolutions, applications to the Court and court orders

(1) A special resolution or court order is not to be given effect under this section if to do so would cause a transferred co-operative to be in contravention of this Act.

(2) If immediately before the transfer day a transferred co-operative, as previously incorporated, has passed a special resolution and the resolution has not been given effect, the resolution is to be given effect under the former Act whether or not that Act has been repealed.

(3) If immediately before the transfer day for a transferred co-operative a person, or the co-operative as previously incorporated, has applied to a court for an order in relation to the co-operative as previously incorporated and the court has not made an order on that application, the application is to be considered, and any resulting order given effect, under the former Act whether or not that Act has been repealed.

(4) If immediately before the transfer day for a transferred co-operative the court has, in relation to that co-operative as previously incorporated, made an order that has not been given effect, the order is to be given effect under the former Act whether or not that Act has been repealed.

499. Inspections or inquiry

(1) If immediately before the transfer day for a transferred co-operative an inspection or inquiry into the affairs of the co-operative as previously incorporated has started under the *Companies (Co-operative) Act 1943* and not been completed, the inspection or inquiry is to be completed under that Act whether or not it has been repealed.

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(2) For the purposes of this section, an inspection or inquiry is completed when the findings of that inspection or inquiry are reported.

(3) The reported findings of an inspection or inquiry completed under subsection (1) in relation to a transferred co-operative may, in relation to that co-operative, be used for any purpose that the reported findings of an inquiry or inspection under this Act may be used for.

500. Acquisition of shares of shareholders dissenting from scheme or contract approved by majority

(1) This section applies to an offer by a company (the ***transferee***) to acquire shares in a co-operative company (the ***transferor***) under a scheme or contract.

(2) If immediately before the transfer day for a transferred co-operative, an offer to acquire shares in the co-operative as previously incorporated has been made but not completed, and subsection (3) does not apply, the offer is to be completed under the *Companies (Co-operative) Act 1943* whether or not that Act has been repealed.

(3) Part 13 Division 3 of this Act applies to an offer made during the 4 month period ending on the transfer day.

(4) For the purposes of subsection (2), an offer is completed if —

(a) 6 months has expired since the making of the offer and the transferee has not given a notice under the *Companies (Co-operative) Act 1943* section 160 to dissenting shareholders; or

(b) the transferee has —

(i) acquired the shares of dissenting shareholders to which the transferee gave notice; and

(ii) complied with any court order given on the application of a dissenting shareholder under the *Companies (Co-operative) Act 1943* section 160.

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501. Transitional provisions about active members

The Registrar may, for a particular transferred co-operative, specify a period within which active membership provisions under section 127 do not apply if it is a newly transferred co-operative.

Division 5 — Pending incorporation, reconstruction or winding-up

502. Pending incorporation

If immediately before the day the former Acts are repealed a co-operative company or registered society has passed a special resolution to transfer to registration or incorporation under another written law and the application for registration or incorporation has been neither granted nor refused —

(a) the special resolution is to be given effect under the former Act; and

(b) the company or society continues to be incorporated and be regulated by the former Act until the application for registration or incorporation is either granted or refused.

503. Pending reconstruction

(1) Subsection (2) applies if immediately before the day the former Acts are repealed a co-operative company or registered society is engaged in any of the following processes —

(a) in the case of a co-operative company, the company has applied to the Court for an order under the *Companies (Co-operative) Act 1943* Part IV Division 12 sanctioning a scheme for reconstruction or amalgamation that will, when implemented, result in the dissolution of the company, and not had that application refused;

(b) in the case of a registered society, the society has passed a special resolution under the *Co-operative and Provident Societies Act 1903* section 41 or 42 to

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amalgamate or transfer its engagements and is proceeding to give effect to that resolution;

(c) in the case of a registered society, the society has voted under the *Co-operative and Provident Societies Act 1903* section 46 to dissolve the society and is proceeding towards dissolution.

(2) If a co-operative company or registered society is engaged in a process referred to in subsection (1) —

(a) the process is to be completed under the former Act; and

(b) the company or society continues to be incorporated and be regulated by the former Act until either the process is completed or an event occurs that prevents the process from being completed.

504. Pending wind-up

(1) If immediately before the day the former Acts are repealed a co-operative company or registered society has started to be wound-up but the winding-up has not been completed —

(a) the process of winding-up is to be completed under the former Act; and

(b) the company or society continues to be incorporated under and be regulated by the former Act until it is dissolved.

(2) For the purposes of this section —

(a) the winding-up of a co-operative company or registered society starts when a court has ordered the winding-up or the company or society has passed a resolution for winding-up; and

(b) the winding-up of a co-operative company or registered society has been completed when the company or society is dissolved.

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Part 20 — Consequential amendments

[Division 1 has not come into operation[2]*.]*

Division 2 — Consequential amendments commencing on commencement of this Act

507. *Civil Judgments Enforcement Act 2004* amended

(1) This section amends the *Civil Judgments Enforcement Act 2004*.

(2) In section 45 in paragraph (c) of the definition of ***financial institution*** after "*1903*" insert:

, or a co-operative registered under the *Co-operatives Act 2009* that is permitted under that Act to accept money on deposit

508. *Criminal Property Confiscation Act 2000* amended

(1) This section amends the *Criminal Property Confiscation Act 2000*.

(2) In the Glossary in paragraph (e) of the definition of ***financial institution*** after "*1903*" insert:

, or a co-operative registered under the *Co-operatives Act 2009* that is permitted under that Act to accept money on deposit

509. *Equal Opportunity Act 1984* amended

(1) This section amends the *Equal Opportunity Act 1984*.

(2) In section 35N(1)(a) after "*1903*" insert:

or of a co-operative registered under the *Co-operatives Act 2009*

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(3) In section 66ZS(1)(a)(i) after "*1903*" insert:

or of a co-operative registered under the *Co-operatives Act 2009*

(4) In section 69(1)(b)(i) after "*1903*" insert:

or of a co-operative registered under the *Co-operatives Act 2009*

510. *Taxi Act 1994* amended

(1) This section amends the *Taxi Act 1994*.

(2) In section 3(3)(b) after "*1943*" insert:

and a co-operative incorporated under the *Co-operatives Act 2009*

511. *Western Australian Treasury Corporation Act 1986* amended

(1) This section amends the *Western Australian Treasury Corporation Act 1986*.

(2) After Schedule 1 item 6 insert:

7A. Co-operatives registered under the *Co-operatives Act 2009*.

[Division 3 has not come into operation[2]*.]*

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Schedule 1 — Matters for which rules must make provision

[s. 98]

1. Requirements for all co-operatives

The rules of all co-operatives must set out or make provision for each of the following —

(a) the name of the co-operative;

(b) active membership provisions (within the meaning of Part 6);

(c) the mode and conditions of admission to membership, and the payment to be made or the share or interest to be acquired before rights of membership are exercised;

(d) the rights and liabilities of members, of the estates of deceased members, and of representatives of members under bankruptcy or mental incapacity;

(e) the circumstances in which members may be expelled or suspended, and the rights and liabilities of expelled and suspended members;

(f) the circumstances in which membership ceases;

(g) the charges or subscriptions that are payable by a member to the co-operative;

(h) the circumstances in which fines and forfeitures may be imposed on members of the co-operative, and the amount of the fines (being not more than the maximum amount prescribed by the regulations);

(i) the grievance procedures for settling disputes under the rules between the co-operative and any of its members as defined in section 79(4), or between a member and another member;

(j) the restrictions, if any, on the powers of the co-operative and the board;

(k) the number of directors, the qualification of directors, the way of electing, remunerating and removing directors and filling a vacancy, the period for which directors are to hold office, whether directors are to retire by rotation or otherwise, and the holding of elections;

(l) the quorum for, and the procedure at, meetings of the board;

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(m) the design, custody and use of the seal of the co-operative;

(n) the manner in which the funds of the co-operative are to be managed, and in particular the mode of drawing and signing cheques, drafts, bills of exchange, promissory notes, and other negotiable instruments for and on behalf of the co-operative;

(o) the custody of securities belonging to the co-operative;

(p) the way in which debentures are to be transferred;

(q) the date on which the financial year of the co-operative ends;

(r) the auditing of the financial reports of the co-operative, and the appointing of the auditor;

(s) the way in which a loss that results from the transactions of the co-operative is to be dealt with;

(t) the procedure for calling general and special meetings, the requisite notices of meetings, and the quorum for meetings, of the co-operative;

(u) the procedure at meetings of the co-operative, including the rights of members in voting at meetings, the manner of voting, and the majority necessary for carrying resolutions;

(v) the method of conducting postal ballots, including special postal ballots, and the sending and lodgment of information and votes by facsimile or electronic means;

(w) the way of altering the rules;

(x) the way in which the co-operative may be wound-up;

(y) a matter prescribed by the regulations for the purposes of this clause;

(z) a matter that the co-operative considers needs to be provided for in the rules.

2. Additional matters — co-operatives with share capital

In addition to the matters specified in clause 1, the rules of a co-operative with a share capital must set out or make provision for each of the following —

(a) the nominal value of each share in the co-operative;

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(b) the amount of the contingent liability, if any, attaching to shares;

(c) the terms on which shares, not including bonus shares but including shares, if any, with a contingent liability attached to them, are to be issued;

(d) the periodic subscriptions by which or the way in which shares are to be paid for;

(e) in the case of a distributing co-operative, the manner in which a surplus may be distributed;

(f) the allocation of a deficiency on the winding-up of a co-operative;

(g) the forfeiture of shares on expulsion or on failure to pay a subscription or call, the extent to which members whose shares have been forfeited are to remain liable for an amount still unpaid for them, and the sale or cancellation of forfeited shares;

(h) the way in which shares are to be transferred;

(i) a matter prescribed by the regulations.

3. Additional matters — non-distributing co-operatives

(1) In addition to the matters specified in clauses 1 and 2, the rules of a non-distributing co-operative must provide —

(a) that there must be no return or distribution on surplus or share capital to members other than the nominal value of shares, if any, at winding-up; and

(b) for the way of distribution of the surplus property at winding-up.

(2) In addition to the matters specified in clauses 1 and 2, the rules of a non-distributing co-operative that has operated as a mutual may provide that —

(a) surplus funds are payable only to members who have paid contributions to the co-operative and have a credit balance in their member's ledger; and

(b) the payment of surplus funds is limited to the return of the contributions paid by the member to the co-operative and the nominal paid up value of the shares, if any.

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Schedule 2 — Relevant interests, associates, related bodies

[s. 4(1)]

Division 1 — Relevant interests

1. Terminology used in this Schedule

(1) This clause applies for the purposes of this Division.

(2) Power to vote in relation to a right to vote is power to exercise, or to control the exercise of, the right to vote.

(3) A reference to power to dispose of a share includes a reference to power to exercise control over the disposal of the share.

(4) A reference to power or control includes a reference to power or control that is direct or indirect or is, or can be, exercised as a result of, by means of, in breach of, or by revocation of, trusts, agreements and practices, or any of them, whether or not they are enforceable.

(5) Power to vote in relation to a right to vote, or power to dispose of a share, that is exercisable by 2 or more persons jointly is taken to be exercisable by either or any of those persons.

(6) A reference to a controlling interest includes a reference to an interest that gives control.

2. Basic rules — relevant interests

(1) A person who has power to vote in relation to a right to vote has a relevant interest in the right to vote.

(2) A person who has power to dispose of a share has a relevant interest in the share.

3. Control of corporation having power in relation to a share

If a corporation has, or is by this Division taken to have —

(a) power to vote in relation to a right to vote; or

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(b) power to dispose of a share,

a person is taken for the purposes of this Division to have in relation to the right to vote or the share the same power as the corporation has, or is taken to have, if —

(c) the corporation is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person in relation to the exercise of the power referred to in paragraph (a) or (b); or

(d) the person has a controlling interest in the corporation.

4. Control of 20% of voting power in corporation having power in relation to a share

If a corporation or an associate of a corporation has, or is by this Division (other than this clause) taken to have —

(a) power to vote in respect of a right to vote; or

(b) power to dispose of a share,

a person is taken for the purposes of this Division to have in relation to the right to vote or the share the same power as the corporation or associate has, or is taken to have, if —

(c) the person has; or

(d) an associate of the person has; or

(e) associates of the person together have; or

(f) the person and an associate or associates of the person together have,

power to vote in relation to the right to vote attached to not less than 20% of the voting shares in the corporation.

5. Deemed relevant interest in advance of performance of agreement that will give rise to a relevant interest

If a person —

(a) has entered into an agreement with another person in relation to an issued share or right to vote in which the other person has a relevant interest; or

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(b) has a right enforceable against another person in relation to an issued share or right to vote in which the other person has a relevant interest, whether the right is enforceable presently or in the future and whether or not on the fulfilment of a condition; or

(c) has an option granted by another person, or has granted to another person an option, with respect to an issued share or right to vote in which the other person has a relevant interest,

and, on performance of the agreement, enforcement of the right, or exercise of the option, the first-mentioned person would have a relevant interest in the share or right to vote, the first-mentioned person is taken for the purposes of this Division to have that relevant interest in the share or right to vote.

6. Control of corporation having a relevant interest by virtue of clause 5

If a corporation is by clause 5 taken to have a relevant interest in a share in, or right to vote at meetings of, a co-operative, a person is taken for the purposes of this Division to have a relevant interest in the share or right to vote if —

(a) the corporation is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person in relation to the exercise of power to vote in relation to that right to vote or power to dispose of those shares; or

(b) the person has a controlling interest in the corporation; or

(c) the person has power to vote in relation to the right to vote attached to not less than 20% of the voting shares in the corporation.

7. Matters not affecting application of Division

(1) It is immaterial for the purposes of this Division whether or not power to vote in relation to a right to vote, or power to dispose of a share —

(a) is express or implied or formal or informal; or

(b) is exercisable by a person alone or jointly with any other person or persons; or

(c) cannot be related to a particular share; or

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(d) is, or can be made, subject to restraint or restriction.

(2) A relevant interest in a share or right to vote is not to be disregarded merely because of —

(a) its remoteness; or

(b) how it arose.

8. Corporation may have a relevant interest in its own shares

A corporation may, by virtue of this Division, be considered to have a relevant interest in a share in, or right to vote arising from membership of, the corporation itself.

9. Exclusions — money lenders

A relevant interest of a person in a share or right to vote is to be disregarded if the person's ordinary business includes lending money and the person has authority to exercise powers as the holder of the relevant interest only because of a security given for the purposes of a transaction entered into in the ordinary course of business in connection with lending money, other than a transaction entered into with an associate of the person.

10. Exclusions — certain trustees

A relevant interest of a person in a share or right to vote is to be disregarded if —

(a) the share or right is subject to a trust; and

(b) the person has the relevant interest as a trustee of the trust; and

(c) either —

(i) a beneficiary under the trust is by clause 5 taken to have a relevant interest in the share or right because the beneficiary has a presently enforceable and unconditional right referred to in clause 5(b); or

(ii) the person is a bare trustee.

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11. Exclusions — instructions to securities dealer to dispose of share

A relevant interest of a person in a share or right to vote is to be disregarded if —

(a) the person's ordinary business includes dealing in securities; and

(b) the person has authority to exercise powers as the holder of the relevant interest only because of instructions given to the person, by or on behalf of another person, to dispose of the share on the other person's behalf in the ordinary course of that business.

12. Exclusions — honorary proxies

A relevant interest of a person in a share or right to vote is to be disregarded if the person has it only because of having been appointed, otherwise than for valuable consideration given by the person or an associate of the person, to vote as a proxy or representative at a meeting of members, or of a class of members, of a corporation.

13. Exclusions — holders of prescribed offices

A relevant interest of a person in a share or right to vote is to be disregarded if the person has it because of holding an office prescribed by the regulations.

14. Prescribed exclusions

The regulations may provide that a relevant interest in a share is, in specified circumstances and subject to specified conditions, if any, to be disregarded for the purposes of a provision of this Act.

15. Effect of Schedule

(1) Nothing in this Schedule limits the generality of anything else in it.

(2) A person does not have a relevant interest in a share of a co-operative or right to vote in respect of a co-operative except as provided in this Schedule.

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16. Relevant interest — corporation other than co-operative

A reference in this Act to a relevant interest in a share of a corporation other than a co-operative or a right to vote in relation to a corporation other than a co-operative is to be construed in accordance with the Corporations Act.

Division 2 — Associates

17. Effect of Part

A person is not an associate of another person except as provided by this Division.

18. Associates of a corporation

The associates of a corporation include the following —

(a) a director or secretary of the body;

(b) a related corporation;

(c) a director or secretary of a related corporation.

19. Matters relating to voting rights

(1) If a reference to an associate of a person relates to —

(a) the extent of power to exercise, or to control the exercise of, the voting power attached to voting shares in or arising from membership of a corporation; or

(b) the person's entitlement to shares in a corporation; or

(c) an offer to purchase shares to which Part 11 Division 2 applies,

the reference includes a reference to another person with whom the person has, or proposes to enter into, an agreement referred to in subclause (2).

(2) Subclause (1) applies to an agreement —

(a) because of which one of the persons referred to in subclause (1) has or will have power, even if it is in any way qualified —

(i) to exercise; or

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(ii) to control, directly or indirectly, the exercise of; or

(iii) to influence substantially the exercise of,

any voting power attached to shares in the corporation; or

(b) for the purpose of controlling or influencing —

(i) the composition of the corporation's board; or

(ii) the conduct of affairs of the corporation;

or

(c) under which one of those persons —

(i) will or may acquire; or

(ii) may be required by the other to acquire,

shares in the corporation in which the other has a relevant interest; or

(d) under which one of those persons may be required to dispose of shares in the corporation in accordance with the other's directions.

(3) Subclause (1) applies despite any other effect the agreement may have.

(4) In relation to a matter relating to shares in a corporation, a person may be an associate of the corporation and the corporation may be an associate of a person.

20. General

(1) A reference to an associate of a person includes a reference to —

(a) another person in concert with whom the person is acting or proposes to act; or

(b) another person who, under the regulations, is, for the purposes of the provision in which the reference occurs, an associate of the person; or

(c) another person with whom the person is or proposes to become associated, whether formally or informally, in any other way,

in relation to the matter to which the reference relates.

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(2) If a person has entered, or proposes to enter, into a transaction, or has done, or proposes to do, any act or thing, in order to become associated with another person as mentioned in an applicable provision of this Division, a reference to an associate of the person includes a reference to that other person.

21. Exclusions

A person is not an associate of another person by virtue of clause 19 or 20(1), or by virtue of clause 20(2) as it applies in relation to clause 19 or 20(1), merely because —

(a) one gives advice to the other, or acts on the other's behalf, in the proper performance of the functions attaching to a professional capacity or a business relationship; or

(b) one, a client, gives specific instructions to the other, whose ordinary business includes dealing in securities, to acquire shares on the client's behalf in the ordinary course of that business; or

(c) one has made, or proposes to make, to the other an offer to which Part 11 Division 2 applies, in relation to shares held by the other; or

(d) one has appointed the other, otherwise than for valuable consideration given by the other or by an associate of the other, to vote as a proxy or representative at a meeting of members, or of a class of members, of a corporation.

Division 3 — Related corporations

22. Related corporations

For the purposes of this Act, a corporation is to be taken to be related to —

(a) another corporation that is its subsidiary; and

(b) another corporation of which it is a subsidiary; and

(c) another corporation if both it and that other corporation are subsidiaries of the same corporation.

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Schedule 3 — Registration etc. of charges

[s. 267]

Division 1 — Preliminary

1. Interpretation

In this Division —

co-operative includes a foreign co-operative registered under Part 14;

document of title means a document —

(a) used in the ordinary course of business as proof of possession or control, or of the right to possession or control, of property other than land; or

(b) authorising or purporting to authorise, whether by endorsement or delivery, the possessor of the document to transfer or receive property other than land,

and includes —

(c) a bill of lading; and

(d) a warrant or order for the delivery of goods; and

(e) a document that is, or evidences title to, a marketable security;

marketable security has the meaning given to that term in the Corporations Act;

present liability, in relation to a charge, means a liability that has arisen, being a liability the extent or amount of which is fixed or capable of being ascertained, whether or not the liability is immediately due to be met;

property, in relation to a co-operative, means property within this State held by the co-operative, whether or not as trustee;

prospective liability, in relation to a charge, means any liability that may arise in the future, or any other liability, but does not include a present liability;

Register of Co-operative Charges means the register referred to in clause 18;

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registrable charge means a charge in relation to which, by virtue of clause 4, the provisions of this Schedule mentioned in clause 4(1) apply.

2. Application to charges referred to in clause 17

(1) A charge referred to in clause 17 is, until the charge is registered, to be treated for the purposes of this Schedule as if it were not a registrable charge but, when the charge is registered, it has the priority accorded to a registered charge as from the time of registration.

(2) The registration of a charge referred to in clause 17 does not prejudice any priority that would have been accorded to the charge under any other law, whether or not a law of a place in Australia, if the charge had not been registered.

3. Lodgment of documents

For the purposes of this Schedule, a notice or other document is taken to be lodged when it is received at the office of the Registrar by an officer authorised to receive it.

Division 2A — Schedule ceases to have effect except as otherwise provided

[Heading inserted by No. 42 of 2011 s. 44.]

4A. Terms used

In this Division —

migration time has the meaning given in the *Personal Property Securities Act 2009* (Commonwealth) section 306(1);

pre-PPS transition period means the period —

(a) commencing at the migration time or such earlier time as may be prescribed by the regulations; and

(b) ending at the registration commencement time;

registrable charge means a charge created before the registration commencement time that was a registrable charge as defined in clause 1 when it was created;

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registration commencement time has the meaning given in the *Personal Property Securities Act 2009* (Commonwealth) section 306(2);

registration function means any function conferred or imposed on the Registrar under this Schedule.

[Clause 4A inserted by No. 42 of 2011 s. 44.]

4B. Effect of Schedule at and after registration commencement time

(1) Subject to subclause (2) and clause 4D, this Schedule has no effect at and after the registration commencement time.

(2) If a registrable charge is void immediately before the registration commencement time or becomes void at or after that time, the Supreme Court may declare the charge not to be, and never to have been void if —

(a) an application has been made to the Supreme Court under clause 29 before the registration commencement time or is made at or after that time in accordance with clause 29; and

(b) the Supreme Court is satisfied as to the matters referred to in clause 29(a) or (b).

[Clause 4B inserted by No. 42 of 2011 s. 44.]

4C. Refusal to exercise registration functions

(1) The Registrar may refuse to exercise a registration function during the pre-PPS transitional period.

(2) Without limiting subclause (1), the Registrar may refuse to exercise a registration function during the pre-PPS transitional period in relation to a matter that was not finally determined or concluded immediately before the commencement of that period.

(3) After the end of the pre-PPS transitional period the Commissioner is not to exercise a registration function.

[Clause 4C inserted by No. 42 of 2011 s. 44.]

4D. Priority between registrable charges

Subject to the *Personal Property Securities Act 2009* (Commonwealth) Chapter 9, at and after the registration

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commencement time, registrable charges have the priority between themselves that they would have had under this Act as in effect immediately before the registration commencement time.

[Clause 4D inserted by No. 42 of 2011 s. 44.]

Division 2 — Registration

Subdivision 1 — Charges

4. Charges to which the Schedule applies

(1) Subject to this Division, the provisions of this Schedule relating to the giving of notice in relation to the registration of, and the priorities of, charges —

(a) apply in relation to the charges referred to in subclause (2) (whether legal or equitable) on property of a co-operative; and

(b) do not apply in relation to other charges.

(2) Subclause (1) applies to the following charges —

(a) a floating charge on the whole or a part of the property, business or undertaking of the co-operative;

(b) a charge on uncalled share capital or uncalled share premiums;

(c) a charge on a call, whether in respect of share capital or share premiums, made but not paid;

(d) a charge on a personal chattel, including a personal chattel that is unascertained or is to be acquired in the future, but not including a ship registered in an official register kept under a law of a place in Australia relating to title to ships;

(e) a charge on goodwill, on a patent or licence under a patent, on a trade mark or service mark or a licence to use a trade mark or service mark, on a copyright or a licence under a copyright or on a registered design or a licence to use a registered design;

(f) a charge on a book debt;

(g) a charge on a marketable security, not being —

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(i) a charge created in whole or in part by the deposit of a document of title to the marketable security; or

(ii) a mortgage under which the marketable security is registered in the name of the chargee or a person nominated by the chargee;

(h) a lien or charge on a crop, a lien or charge on wool or a stock mortgage;

(i) a charge on a negotiable instrument other than a marketable security.

5. Excluded charges

The provisions of this Schedule mentioned in clause 4(1) do not apply in relation to —

(a) a charge, or a lien over property, arising by operation of law; or

(b) a pledge of a personal chattel or of a marketable security; or

(c) a charge created in relation to a negotiable instrument or a document of title to goods, being a charge by way of pledge, deposit, letter of hypothecation or trust receipt; or

(d) a transfer of goods in the ordinary course of the practice of any profession or the carrying on of any trade or business; or

(e) a dealing, in the ordinary course of the practice of any profession or the carrying on of any trade or business, in relation to goods outside Australia.

6. Personal chattels

The reference in clause 4(2)(d) to a charge on a personal chattel is a reference to a charge on any article capable of complete transfer by delivery, whether at the time of the creation of the charge or at some later time, and includes a reference to a charge on a fixture or a growing crop that is charged separately from the land to which it is affixed or on which it is growing, but does not include a reference to a charge on —

(a) a document evidencing title to land; or

(b) a chattel interest in land; or

(c) a marketable security; or

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(d) a document evidencing a thing in action; or

(e) stock or produce on a farm or land that because of a covenant or agreement ought not to be removed from the farm or land where the stock or produce is at the time of the creation of the charge.

7. Book debts

The reference in clause 4(2)(f) to a charge on a book debt —

(a) is a reference to a charge on a debt payable or to become payable to the co-operative at some future time on account of or in connection with a profession, trade or business carried on by the co-operative, whether entered in a book or not; and

(b) includes a reference to a charge on a future debt of the same nature although not incurred or owing at the time of the creation of the charge,

but does not include a reference to a charge on a marketable security, on a negotiable instrument or on a debt owing in relation to a mortgage, charge or lease of land.

8. Crops or stock

The reference in clause 4(2)(h) to a lien or charge on a crop, a lien or charge on wool or a stock mortgage includes a reference to a security, however described, that is registrable under a law, prescribed by the regulations, of a State or Territory.

9. Deposit of documents of title

For the purposes of this Division, a co-operative is taken to have deposited a document of title to property with another person (the ***chargee***) in a case where the document of title is not in the possession of the co-operative if —

(a) the person who holds the document of title acknowledges in writing that the person holds the document of title on behalf of the chargee; or

(b) a government, an authority or a corporation that proposes to issue a document of title in relation to the property agrees, in writing, to deliver the document of title, when issued, to the chargee.

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10. Charges on land or fixtures on land

(1) The provisions of this Schedule mentioned in clause 4(1) do not apply in relation to a charge on land.

(2) The provisions of this Schedule mentioned in clause 4(1) do not apply in relation to a charge on fixtures given by a charge on the land to which they are affixed.

11. Where other property is also charged

For the purposes of this Division, a charge is taken to be a charge on property of a kind to which a particular paragraph of clause 4(2) applies even though the instrument of charge also charges other property of the co-operative, including other property that is of a kind to which none of the paragraphs of that subclause applies.

12. Effect of failure to lodge or give notice or document

A charge on property of a co-operative is not invalid merely because of the failure to lodge with the Registrar, or give to the co-operative or another person, a notice or other document that is required by this Division to be so lodged or given.

Subdivision 2 — Notice of charge

13. Lodgment of notice of charge and copy of instrument, and transitional provision

(1) If a co-operative creates a charge, the co-operative must ensure that there is lodged with the Registrar within 45 days after the creation of the charge, a notice in the form approved by the Registrar setting out the following particulars —

(a) the name of the co-operative and the date of the creation of the charge;

(b) whether the charge is a fixed charge, a floating charge or both a fixed and floating charge;

(c) if the charge is a floating charge, whether there is any provision in the resolution or instrument creating or evidencing the charge that prohibits or restricts the creation of subsequent charges;

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(d) a short description of the liability, whether present or prospective secured by the charge;

(e) a short description of the property charged;

(f) whether the charge is created or evidenced by a resolution, by an instrument or by a deposit or other conduct;

(g) if the charge is constituted by the issue of a debenture or debentures, the name of the trustee, if any, for debenture holders;

(h) if the charge is not constituted by the issue of a debenture or debentures or there is no trustee for debenture holders, the name of the chargee;

(i) any other information that is prescribed by the regulations.

(2) On becoming registered under this Act, a transferred co-operative that owns property over which a registrable charge exists must, in relation to each such charge, immediately, and at the same time for each charge, lodge with the Registrar a notice under subclause (1).

(3) If, under a resolution or resolutions passed by the co-operative, the co-operative issues a series of debentures constituting a charge to the benefit of which all the holders of debentures in the series are entitled in equal priority, and the charge is evidenced only by the resolution or resolutions and the debentures, the notice under subclause (1) must be accompanied by —

(a) a copy of the resolution or of each of the resolutions verified by a statement in writing to be a true copy; and

(b) a copy of the first debenture issued in the series and a statement in writing verifying the execution of that first debenture.

(4) If, in a case to which subclause (3) does not apply, the charge created by the co-operative was created or evidenced by an instrument or instruments, the notice under subclause (1) must be accompanied by —

(a) the instrument or each of the instruments; or

(b) a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy, and a statement in writing verifying the execution of the instrument or of each of the instruments.

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14. Series of debentures

In a case to which clause 13(3) applies —

(a) the charge is, for the purposes of clause 13, taken to be created when the first debenture in the series of debentures is issued; and

(b) if, after the issue of the first debenture in the series, the co-operative passes a further resolution authorising the issue of debentures in the series, the co-operative must ensure that a copy of that resolution, verified by a statement in writing to be a true copy of that resolution, is lodged within 45 days after the passing of that resolution.

15. Operation of priority provisions in respect of issue of debentures

If a notice relating to an instrument creating a charge has been lodged under clause 13(1), being a charge in relation to an issue of several debentures the holders of which are entitled under the instrument in equal priority to the benefit of the charge, clauses 46 to 49 have effect as if any charges constituted by the debentures were registered at the time when the charge to which the notice relates was registered.

16. Discounts

(1) If a payment or discount has been made or allowed, either directly or indirectly, by a co-operative to a person in consideration of the person —

(a) subscribing or agreeing to subscribe, whether absolutely or conditionally, for debentures; or

(b) procuring or agreeing to procure subscriptions, whether absolute or conditional, for debentures,

the notice required to be lodged under clause 13(1) must include particulars as to the amount or rate per cent of the payment or discount.

(2) If a co-operative issues debentures as security for a debt of the co-operative, the co-operative is not taken, for the purposes of subclause (1), to have allowed a discount in respect of the debentures.

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17. Acquisition of property subject to charge

(1) If a co-operative acquires property that is subject to a charge, being a charge that would have been registrable when it was created if it had been created by a co-operative, the co-operative must, within 45 days after the acquisition of the property —

(a) ensure that there is lodged with the Registrar a notice in the form approved by the Registrar in relation to the charge, setting out —

(i) the name of the co-operative; and

(ii) the date on which the property was so acquired; and

(iii) any other particulars required by clause 13(1);

and

(b) give to the chargee notice that it has acquired the property and the date on which it was so acquired.

(2) If the charge referred to in subclause (1) was created or evidenced as referred to in clause 13(3), the notice under subclause (1)(a) must be accompanied by —

(a) a copy of the resolution or of each of the resolutions referred to in clause 13(3) verified by a statement in writing to be a true copy; and

(b) a copy of the first debenture issued in the series referred to in clause 13(3) verified by a statement in writing to be a true copy.

(3) If the charge referred to in subclause (1) was created or evidenced by an instrument or instruments (otherwise than as mentioned in clause 13(3)), the notice under subclause (1)(a) must be accompanied by —

(a) the instrument or each of the instruments; or

(b) a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy.

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Subdivision 3 — Registration

18. Register of Co-operative Charges

The Registrar must keep a register to be known as the Register of Co-operative Charges.

19. Registration of documents relating to charge

(1) If a notice is lodged with the Registrar in accordance with Division 2, the Registrar must as soon as practicable cause to be entered in the Register of Co-operative Charges the time and date when the notice was lodged and the following particulars in relation to the charge —

(a) if the charge is a charge created by the co-operative, the date of its creation;

(b) if the charge was a charge existing on property acquired by the co-operative, the date on which the property was so acquired;

(c) a short description of the liability, whether present or future, secured by the charge;

(d) a short description of the property charged;

(e) the name of the trustee for debenture holders or, if there is no such trustee, the name of the chargee.

(2) Subclause (1) only applies if the notice contains the required particulars and is accompanied by the required documents.

(3) Subclause (1) applies whether the notice is lodged during or after the period within which the notice is required to be lodged.

(4) Subject to this Division, if particulars in respect of a charge are entered in the Register of Co-operative Charges in accordance with subclause (1), the charge is taken to be registered, and to have been registered from and including the time and date entered in the register under that subclause.

(5) The Registrar may enter in the Register of Co-operative Charges, in addition to the particulars expressly required by this Division to be entered, other particulars in relation to a charge that the Registrar considers appropriate.

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20. Provisional registration if stamp duty not paid

(1) If —

(a) a notice in relation to a charge on property of a co-operative is lodged under Subdivision 2; and

(b) the notice is not accompanied by a certificate to the effect that all documents accompanying the notice have been properly stamped under the *Stamp Act 1921*,

the Registrar must cause to be entered in the Register of Co-operative Charges the time and date when the notice was lodged and the particulars referred to in clause 19(1)(a) to (e), but must cause the word "provisional" to be entered in the register next to the entry specifying that time and date.

(2) Subclause (1) applies whether the notice was lodged during or after the period within which the notice was required to be lodged.

(3) The Registrar must delete the word "provisional" entered in the register under subclause (1) from an entry relating to a charge if a certificate to the effect set out in subclause (1)(b) has been produced to the Registrar —

(a) within a period of 28 days; or

(b) within such longer period as is prescribed by the regulations after the notice was lodged; or

(c) within such further period as the Registrar, if the Registrar considers it to be appropriate in a particular case, allows.

(4) The Registrar must delete from the Register of Co-operative Charges all the particulars that were entered in relation to a charge if —

(a) the word "provisional" is entered in the register under subclause (1) in relation to an entry relating to the charge; and

(b) a certificate to the effect set out in subclause (1)(b) is not produced within the period, or the further period, referred to in subclause (3).

21. Provisional registration if required particulars not supplied

(1) In this clause —

defective notice means a document that —

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(a) purports to be a notice in respect of a charge on property of a co-operative for the purposes of Subdivision 2; and

(b) contains the name of the co-operative concerned and the particulars referred to in clause 13(1)(g) or (h), as the case requires,

but does not contain some or all of the other particulars that are required to be included in the notice or is otherwise defective.

(2) If a defective notice in respect of a charge on property is lodged with the Registrar under clause 19, the Minister must cause to be entered in the Register of Co-operative Charges —

(a) the time and date when the document was lodged; and

(b) the particulars referred to in clause 19(1)(a) to (e) that are ascertainable; and

(c) the word "provisional" next to the entry specifying the time and date.

(3) If a defective notice in relation to a charge is lodged under clause 19, the Registrar must, by written notice to the person who lodged the defective notice, direct the person to lodge, on or before the day specified in the notice, a notice in relation to the charge that complies with the requirements of Subdivision 2.

(4) Subclauses (2) and (3) apply whether the defective notice was lodged during or after the period within which the notice was required to be lodged.

(5) The giving by the Registrar of a direction to the person under subclause (3) does not affect any liability that the co-operative may have incurred or may incur by reason of a contravention of Subdivision 2.

(6) If the Registrar gives a direction to a person under subclause (3) in relation to a charge and the direction is complied with on or before the day specified in the notice containing the direction, the Registrar must —

(a) delete from the Register of Co-operative Charges the word "provisional" that was inserted pursuant to subclause (2); and

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(b) cause to be entered in the register in relation to the charge any particulars referred to in clause 19(1) that have not previously been entered.

(7) If the Registrar gives a direction to a person under subclause (3) in relation to a charge and the direction is not complied with on or before the day specified in the notice, the Registrar must delete from the Register of Co-operative Charges all the particulars that were entered in relation to the charge.

(8) If the Registrar gives a direction to a person under subclause (3) in relation to a charge and the direction is complied with after the day specified in the notice, the Registrar must cause to be entered in the Register of Co-operative Charges in relation to the charge —

(a) the time at which and day on which the direction was complied with; and

(b) the particulars referred to in clause 19(1)(a) to (e).

22. Effect of provisional registration

(1) Subject to this clause, if the word "provisional" is entered in the Register of Co-operative Charges next to an entry specifying a time and day in relation to a charge, the charge is taken not to have been registered.

(2) If the word "provisional" is deleted from the Register of Co-operative Charges pursuant to clause 20 or 21(6), the charge is taken to be registered and to have been registered from and including the time and day specified in the register under clause 20 or 21(2).

(3) If the particulars in relation to the charge are deleted from the Register of Co-operative Charges pursuant to clause 21(7) and those particulars and a time and day are subsequently entered in the register in relation to the charge under clause 21(8) the charge is taken to be registered from and including that last-mentioned time and day.

23. If 2 or more charges relate to the same property

(1) If, under clause 17, a co-operative lodges notices relating to 2 or more charges on the same property acquired by the co-operative, being charges that are not already registered under this Subdivision, the time and day that is to be entered in the Register of Co-operative Charges

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in relation to each of those charges are the time and day when the first notice was lodged.

(2) If, under subclause (1), the time and day that are entered in the Register of Co-operative Charges are the same in relation to 2 or more charges on property acquired by a co-operative, those charges are to have, as between themselves, the respective priorities that they would have had if they had not been registered under this Subdivision.

24. Registration of assignment or variation of charge

(1) If a notice is lodged under clause 36, the Registrar must as soon as practicable cause to be entered in the Register of Co-operative Charges the time and day when the notice was lodged and the particulars set out in the notice.

(2) Subclause (1) applies whether the notice was lodged during or after the period within which the notice was required to be lodged.

25. Standard time for the purposes of this Subdivision

(1) The Registrar may, by order published in the *Gazette*, declare a specified standard time to be the standard time for the purposes of this Subdivision.

(2) If an order is in force under subclause (1), a reference in this Subdivision to entering the time when a particular event happened is a reference to entering that time as expressed in terms of the standard time specified in the order.

Subdivision 4 — Certain charges void against liquidator or administrator

26. Definitions

In this Division —

critical day, in relation to a co-operative, means —

(a) if the co-operative is being wound-up, the day when the winding-up began; or

(b) if the co-operative is under administration, the relevant day in relation to the administration; or

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(c) if the co-operative has executed a deed of arrangement, the relevant day in relation to the administration that ended when the deed was executed;

relevant day, in relation to the administration of a co-operative, means —

(a) if, when the administration began, a winding-up of the co-operative was in progress, the day on which the winding-up is taken because of the Corporations Act Part 5.6 Division 1A as applying under this Act to have begun; or

(b) otherwise, the day on which the administration began.

27. Certain charges void against liquidator or administrator

(1) Subject to this Subdivision, if —

(a) an order is made, or a resolution is passed, for the winding-up of a co-operative; or

(b) the Registrar gives a certificate under section 314 for the winding-up of the co-operative; or

(c) an administrator of a co-operative is appointed under the Corporations Act Part 5.3A as applying under this Act; or

(d) a co-operative executes a deed of arrangement,

a registrable charge on property of the co-operative is void as a security on that property as against the liquidator, the administrator of the co-operative, or the deed's administrator, as the case may be.

(2) A charge is not void under subclause (1) if —

(a) a notice about the charge was lodged under clause 13 or 17, as the case requires —

(i) within the relevant period; or

(ii) at least 6 months before the critical day;

or

(b) the period within which a notice about the charge, other than a notice under clause 36, is required to be lodged, being the period specified in the relevant clause or that period as extended by the Supreme Court under clause 29, has not ended at the start of the critical day and the notice is lodged before the end of that period; or

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(c) in the case of a charge to which clause 17 applies, the period of 45 days after the chargee becomes aware that the property charged has been acquired by a co-operative has not ended at the start of the critical day and the notice is lodged before the end of that period.

(3) The reference in subclause (2)(a) to the relevant period is to be read as a reference to —

(a) in the case of a charge to which clause 13 applies, the period of 45 days specified in that clause, or that period as extended by the Supreme Court under clause 29; or

(b) in the case of a charge to which clause 17 applies, the period of 45 days after the chargee becomes aware that the property has been acquired by a co-operative.

28. Certain varied charges void against liquidator or administrator

(1) Subject to this Subdivision, if, after there has been a variation in the terms of a registrable charge on property of a co-operative having the effect of increasing the amount of the debt or increasing the liabilities, whether present or prospective, secured by the charge —

(a) an order is made, or a resolution is passed, for the winding-up of the co-operative; or

(b) an administrator of a co-operative is appointed under the Corporations Act Part 5.3A as applying under this Act; or

(c) a co-operative executes a deed of arrangement,

the registrable charge is void as a security on the property to the extent that it secures the amount of the increase in the debt or liability.

(2) A charge is not void under subclause (1) if —

(a) a notice about the variation was lodged under clause 36 —

(i) within the period of 45 days specified in clause 36(2) or that period as extended by the Supreme Court under clause 29; or

(ii) within 6 months before the critical day;

or

(b) the period of 45 days specified in clause 36(2), or that period as extended by the Supreme Court under clause 29, has not

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ended at the start of the critical day and the notice is lodged before the end of the period.

29. Supreme Court may extend required period

If the Supreme Court is satisfied that —

(a) the failure to lodge a notice of a charge, or of a variation in the terms of a charge, as required by a provision of this Schedule —

(i) was accidental or due to inadvertence or some other sufficient cause; or

(ii) is not of a nature to prejudice the position of creditors or shareholders;

or

(b) on other grounds it is just and equitable to grant relief,

the Court may, on the application of the co-operative or a person interested and on such terms and conditions the Court considers just and expedient, by order, extend the period for the further period specified in the order.

30. Certain later charges void

(1) Subject to subclause (3), if —

(a) a registrable charge (the ***later charge***) is created before the end of 45 days after the creation of an unregistered registrable charge (the ***earlier charge***); and

(b) the later charge relates to all or any of the property to which the earlier charge related; and

(c) the later charge is given as a security for the same liability as is secured by the earlier charge or any part of that liability,

the later charge, to the extent to which it is a security for the same liability or part thereof, and so far as it relates to the property comprised in the earlier charge, is void as a security on that property as against a liquidator or administrator of the co-operative, or an administrator of a deed of arrangement executed by the co-operative.

(2) Subclause (1) applies even if a notice of the later charge was lodged under clause 13 within the period mentioned in clause 27(2)(a).

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(3) Subclause (1) does not apply if it is proved to the satisfaction of the Supreme Court that the later charge was given in good faith for the purpose of correcting some material error in the earlier charge or under other proper circumstances and not for the purposes of avoiding or evading the provisions of this Subdivision.

31. Effect of provisions on purchaser in good faith

(1) Nothing in clause 27(1) or (2) or 28 operates to affect the title of a person to property purchased for value from a chargee or from a receiver appointed by a chargee in the exercise of powers conferred by the charge or implied by law if the person purchased the property in good faith and without notice of —

(a) the filing of an application for an order for the winding-up of the co-operative; or

(b) the passing of the necessary resolution for the voluntary winding-up of the co-operative; or

(c) an administrator of the co-operative being appointed under the Corporations Act Part 5.3A as applying under this Act; or

(d) the co-operative executing a deed of arrangement.

(2) The onus of proving that a person purchased property in good faith and without notice of any of the matters referred to in subclause (1)(a), (b), (c) and (d) is on the person asserting that the property was so purchased.

Subdivision 5 — Certain charges in favour of persons void

32. Definitions

In this Division —

chargee, in relation to a charge, means —

(a) in any case, the holder, or all or any of the holders, of the charge; or

(b) in the case of a charge that is an agreement to give or execute a charge in favour of a person or persons, whether on demand or otherwise, the person, or all or any of those persons;

officer, of a foreign co-operative, includes a local agent of the foreign co-operative;

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receiver includes a receiver and manager;

relevant person, in relation to a charge created by a co-operative, means —

(a) a person who is at the time when the charge is created, or who has been at any time during the period of 6 months ending at that time, an officer of the co-operative; or

(b) a person associated, in relation to the creation of the charge, with a person of a kind referred to in paragraph (a).

33. Charges in favour of certain persons void in certain cases

(1) If —

(a) a co-operative creates a charge on property of the co-operative in favour of a person who is, or in favour of persons at least one of whom is, a relevant person in relation to the charge; and

(b) within 6 months after the creation of the charge, the chargee purports to take a step in the enforcement of the charge without the Supreme Court having, under clause 34, given leave for the charge to be enforced,

the charge, and any powers purported to be conferred by an instrument creating or evidencing the charge, are, and are taken always to have been, void.

(2) Without limiting the generality of subclause (1), a person who —

(a) appoints a receiver of property of a co-operative under powers conferred by an instrument creating or evidencing a charge created by the co-operative; or

(b) whether directly or by an agent, enters into possession or assumes control of property of a co-operative for the purposes of enforcing a charge created by the co-operative,

is to be taken, for the purposes of subclause (1), to take a step in the enforcement of the charge.

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34. Supreme Court may give leave for enforcement of charge

On application by the chargee under a charge, the Supreme Court may give leave for the charge to be enforced, if the Court is satisfied that —

(a) immediately after the creation of the charge, the co-operative that created the charge was solvent; and

(b) in all the circumstances of the case, it is just and equitable for the Court to do so.

35. Certain transactions excluded

(1) Nothing in clause 33 affects a debt, liability or obligation of a co-operative that would, if that clause had not been enacted, have been secured by a charge created by the co-operative.

(2) Nothing in clause 33 operates to affect the title of a person to property, other than the charge concerned or an interest in the charge concerned, purchased for value from a chargee under a charge, from an agent of a chargee under a charge, or from a receiver appointed by a chargee under a charge in the exercise of powers conferred by the charge or implied by law, if that person purchased the property in good faith and without notice that the charge was created in favour of a person who is, or in favour of persons at least one of whom is, as the case may be, a relevant person in relation to the charge.

(3) The onus of proving that a person purchased property in good faith and without notice that a charge was created as referred to in subclause (2) is on the person asserting that the property was so purchased.

Subdivision 6 — Assignment, variation or satisfaction of charges

36. Assignment and variation of charges

(1) If, after a registrable charge on property of a co-operative has been created, a person other than the original chargee becomes the holder of the charge, the person who becomes the holder of the charge must, within 45 days after becoming the holder of the charge —

(a) lodge a notice with the Registrar stating that the person has become the holder of the charge; and

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(b) give the co-operative a copy of the notice.

(2) If, after a registrable charge on property of a co-operative has been created, there is a variation in the terms of the charge having the effect of —

(a) increasing the amount of the debt or increasing the liabilities, whether present or prospective, secured by the charge; or

(b) prohibiting or restricting the creation of subsequent charges on the property,

the co-operative must, within 45 days after the variation occurs, ensure that there is lodged with the Registrar a notice setting out particulars of the variation and accompanied by the instrument, if any, effecting the variation or a certified copy of that instrument.

(3) If a charge created by a co-operative secures a debt of an unspecified amount or secures a debt of a specified amount and further advances, a payment or advance made by the chargee to the co-operative in accordance with the terms of the charge is not to be taken, for the purposes of subclause (2), to be a variation in the terms of the charge having the effect of increasing the amount of the charge or the liabilities, whether present or prospective, secured by the charge.

(4) A reference in this clause to the chargee in relation to a charge is, if the charge is constituted by a debenture or debentures and there is a trustee for debenture holders, to be construed as a reference to the trustee for debenture holders.

(5) Nothing in clause 13 requires the lodgment of a notice under that clause in relation to a charge merely because of the fact that the terms of the charge are varied only in a manner mentioned in this clause.

37. Satisfaction of, and release of property from, charges

(1) If, in relation to a charge registered under this Division —

(a) the debt or other liability, the payment or discharge of which was secured by the charge, has been paid or discharged in whole or in part; or

(b) the property charged or part of the property is released from the charge,

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the person who was the holder of the charge at the time when the debt or other liability was so paid or discharged or the property or part of the property was released must, within 14 days after receipt of a request in writing made by the co-operative on whose property the charge exists, give to the co-operative a memorandum in the form approved by the Registrar acknowledging that the debt or other liability has been paid or discharged in whole or in part or that the property or part of it is no longer subject to the charge, as the case may be.

(2) The co-operative may lodge the memorandum with the Registrar and, on the memorandum being lodged, the Registrar must enter in the Register of Co-operative Charges particulars of the matters stated in the memorandum.

(3) The reference in subclause (1) to the person who was the holder of a charge at the time when the debt or other liability was so paid or discharged or the property or part of the property was released is, if the charge was constituted by a debenture or debentures and there was a trustee for debenture holders, to be construed as a reference to the person who was, at that time, the trustee of debenture holders.

Subdivision 7 — General

38. Lodgment of notices

(1) If a notice about a charge on property of a co-operative is required to be lodged under clause 13, 17 or 36(2), the notice may be lodged by the co-operative or by an interested person.

(2) If a document required by this Division other than clause 36(1) to be lodged with the Registrar is lodged by a person other than the co-operative concerned, that person —

(a) must, within 7 days after the lodgment of the document, give to the co-operative a copy of the document; and

(b) is entitled to recover from the co-operative the amount of any fees properly paid by the person on lodgment of the document.

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39. Lodgment offences

(1) If clause 13, 17 or 36(2) is contravened in relation to a registrable charge on property of a co-operative, the co-operative and an officer of the co-operative who is knowingly concerned in or a party to the contravention commits an offence.

Penalty: a fine of $1 000.

(2) If a person who becomes the holder of a registrable charge fails to comply with clause 36(1), the person and, if the person is a corporation, an officer of the corporation who is in default, each contravene this subclause.

Penalty: a fine of $1 000.

40. Co-operative to keep documents relating to charges

A co-operative must, at the place where the co-operative register of charges referred to in clause 41 is kept, keep a copy of —

(a) every document relating to a charge on property of the co-operative that is lodged with the Registrar under this Division; and

(b) every document given to the co-operative under this Division.

Penalty: a fine of $1 000.

41. Co-operative to keep register, and transitional provision

(1) A co-operative must keep a co-operative register of charges.

(2) On the creation of a charge, whether registrable or not, on property of the co-operative, or on the acquisition of property subject to a charge, whether registrable or not, the co-operative must as soon as practicable enter in the co-operative register of charges particulars of the charge, giving in relation to each charge —

(a) if the charge is a charge created by the co-operative, the date of its creation or, if the charge was a charge existing on property acquired by the co-operative, the date on which the property was so acquired; and

(b) a short description of the liability, whether present or prospective, secured by the charge; and

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(c) a short description of the property charged; and

(d) the name of the trustee for debenture holders or, if there is no such trustee, the name of the chargee; and

(e) the name of the person whom the co-operative believes to be the holder of the charge.

(3) In the case of a transferred co-operative previously registered under the *Companies (Co-operative) Act 1943*, the register kept by the co-operative under section 96 of that Act is to be considered to be part of the register kept by the co-operative under subclause (2).

(4) A co-operative register of charges kept by a co-operative pursuant to subclause (1) must be open for inspection —

(a) by a creditor or member of the co-operative, without payment; and

(b) by another person, on payment for each inspection of the amount, not exceeding the amount prescribed by the regulations, the co-operative requires or, if the co-operative does not require the payment of an amount, without charge.

(5) A person may request a co-operative to furnish the person with a copy of the co-operative register of charges or any part of the register.

(6) If a person makes a request under subclause (5), the co-operative must send the copy to that person —

(a) if the co-operative requires payment of an amount not more than the amount prescribed by the regulations, within 21 days after payment of the amount is received by the co-operative or within a longer period approved by the Registrar; or

(b) in a case to which paragraph (a) does not apply, within 21 days after the request is made or within such longer period as the Registrar approves.

(7) If default is made in complying with any provision of this clause, the co-operative commits an offence.

Penalty: a fine of $1 000.

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42. Certificates

(1) If particulars of a charge are entered in the Register of Co-operative Charges in accordance with this Division, the Registrar must, on request by any person, issue to that person a certificate —

(a) setting out those particulars; and

(b) stating the time and day when a notice in respect of the charge containing those particulars was lodged with the Registrar; and

(c) if the word "provisional" appears in the Register of Co-operative Charges next to the reference to the time and day, stating that fact.

(2) A certificate issued under subclause (1) is evidence of the matters stated in the certificate.

(3) If particulars of a charge are entered in the register of charges in accordance with this Division, and the word "provisional" does not appear in the register next to the reference to the time and day when a notice about the charge was lodged, the Registrar must, on request by any person, issue to that person a certificate stating that particulars of the charge are entered in the register in accordance with this Division.

(4) A certificate issued under subclause (3) is evidence that the requirements of this Division as to registration, other than the requirements relating to the period after the creation of the charge within which notice in respect of the charge is required to be lodged, have been complied with.

43. Power of Supreme Court to rectify register of charges

If the Supreme Court is satisfied —

(a) that a particular with respect to a registrable charge on property of a co-operative has been omitted from, or misstated in, the register of charges or a memorandum referred to in clause 37; and

(b) that the omission or misstatement —

(i) was accidental or due to inadvertence or to some other sufficient cause; or

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(ii) is not of a nature to prejudice the position of creditors or shareholders; or

(iii) on other grounds it is just and equitable to grant relief,

the Court may, on the application of the co-operative or a person interested and on terms and conditions that the Court considers just and expedient, order that the omission or misstatement be rectified.

44. Registrar may exempt from compliance with certain requirements of Division

(1) The Registrar may, by order published in the *Gazette*, exempt a person from compliance with the requirements of clause 13, 17 or 36 relating to —

(a) the particulars to be contained in a notice under the relevant clause; or

(b) the documents, other than the notice, to be lodged under the relevant clause; or

(c) the verification of a document required to be lodged under the relevant clause.

(2) A person who is exempted under this clause from compliance with a requirement of clause 13, 17 or 36 must not contravene the condition.

(3) If a person has contravened a condition to which an exemption under this clause is subject, the Supreme Court may, on the application of the Registrar, order the person to comply with the condition.

Division 3 — Order of priority

Subdivision 1 — General

45. Definitions

(1) In this Division —

prior registered charge, in relation to another registered charge, means a charge the priority time of which is earlier than the priority time of the other charge;

priority time, in relation to a registered charge, means —

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(a) except as provided by paragraph (b) or (c), the time and date appearing in the Register of Co-operative Charges in relation to the charge, being a time and day entered in the register pursuant to Division 2 Subdivision 3; or

(b) if a notice has been lodged under clause 17 in relation to a charge on property, being a charge that, at the time when the notice was lodged, was already registered under Division 2, the earlier or earliest time and day appearing in the Register of Co-operative Charges in relation to the charge, being a time and day entered in the register pursuant to clause 17; or

(c) to the extent that the charge has effect as varied by a variation, notice of which was required to be lodged under clause 36(2), the time and day entered in the Register of Co-operative Charges in relation to the charge pursuant to clause 24;

registered charge means a charge that is registered under Division 2;

subsequent registered charge, in relation to another registered charge, means a charge the priority time of which is later than the priority time of the other registered charge;

unregistered charge means a charge that is not registered under Division 2 but does not include a charge that is not a registrable charge.

(2) A reference in this Division to a person having notice of a charge includes a reference to a person having constructive notice of the charge.

(3) If, by virtue of the definition of ***priority time*** in subclause (1), a registered charge has 2 or more priority times each of which relates to a particular liability secured by the charge, each of the liabilities is, for the purposes of this Division, taken to be secured by a separate registered charge, the priority time of which is the priority time of the first-mentioned registered charge that relates to the liability concerned.

46. Priorities of charges

(1) Subject to this clause, Subdivision 2 has effect on the priorities, in relation to each other, of registrable charges on the property of a co-operative.

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(2) The application, in relation to particular registrable charges, of the order of priorities of charges set out in Subdivision 2, is subject to —

(a) any consent (express or implied) that varies the priorities in relation to each other of the charges, being a consent given by the holder of one of those charges and being a charge that would otherwise be entitled to priority over the other charge; and

(b) any agreement between the chargees that affects the priorities in relation to each other of the charges in relation to which those persons are the chargees.

(3) The holder of a registered charge, being a floating charge, on property of a co-operative is taken, for the purposes of subclause (2), to have consented to the charge being postponed to a subsequent registered charge, being a fixed charge that is created before the floating charge becomes fixed, on any of the property unless —

(a) the creation of the subsequent registered charge contravened a provision of the instrument or resolution creating or evidencing the floating charge; and

(b) a notice about the floating charge indicating the existence of the provision referred to in paragraph (a) was lodged with the Registrar under clause 13, 17 or 36 before the creation of the subsequent registered charge.

(4) If a charge relates to property of a kind to which a particular paragraph of clause 4(1) applies and also relates to other property, Subdivision 2 applies so as to affect the priority of the charge only in so far as it relates to the first-mentioned property and does not affect the priority of the charge in so far as it relates to the other property.

Subdivision 2 — Priority rules

47. General priority rules in relation to registered charges

(1) A registered charge on property of a co-operative has priority over —

(a) a subsequent registered charge on the property, unless the subsequent registered charge was created before the creation of the prior registered charge and the chargee in relation to the subsequent registered charge proves that the chargee in relation to the prior registered charge had notice of the

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subsequent registered charge at the time when the prior registered charge was created; and

(b) an unregistered charge on the property created before the creation of the registered charge, unless the chargee in relation to the unregistered charge proves that the chargee in relation to the registered charge had notice of the unregistered charge at the time when the registered charge was created; and

(c) an unregistered charge on the property created after the creation of the registered charge.

(2) A registered charge on property of a co-operative is postponed to —

(a) a subsequent registered charge on the property, if the subsequent registered charge was created before the creation of the prior registered charge and the chargee in relation to the subsequent registered charge proves that the chargee in relation to the prior registered charge had notice of the subsequent registered charge at the time when the prior registered charge was created; and

(b) an unregistered charge on the property created before the creation of the registered charge, where the chargee in relation to the unregistered charge proves that the chargee in relation to the registered charge had notice of the unregistered charge at the time when the registered charge was created.

48. General priority rule in relation to unregistered charges

An unregistered charge on property of a co-operative has priority over —

(a) a registered charge on the property that was created after the creation of the unregistered charge and does not have priority over the unregistered charge under clause 47(1); and

(b) another unregistered charge on the property created after the first-mentioned unregistered charge.

49. Special priority rules

(1) Except as provided by this clause, priority given by this Division to a charge over another charge does not extend to a liability that, at the

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priority time in relation to the first-mentioned charge, is not a present liability.

(2) If a registered charge on property of a co-operative secures —

(a) a present liability and a prospective liability of an unspecified amount; or

(b) a prospective liability of an unspecified amount,

priority given by this Division to the charge over another charge of which the chargee in relation to the first-mentioned charge does not have actual knowledge extends to the prospective liability, whether the prospective liability became a present liability before or after the registration of the first-mentioned charge.

(3) If a registered charge on property of a co-operative secures —

(a) a present liability and a prospective liability up to a specified maximum amount; or

(b) a prospective liability up to a specified maximum amount,

and the notice lodged under clause 13 or 17 about the charge sets out the nature of the prospective liability and the amount specified, then priority given by this Division to the charge over another charge extends to a prospective liability secured by the first-mentioned charge to the extent of the maximum amount specified.

(4) Subclause (3) applies whether the prospective liability became a present liability before or after the registration of the first-mentioned charge and despite the fact that the chargee in relation to the first-mentioned charge had actual knowledge of the other charge at the time when the prospective liability became a present liability.

(5) Subclause (6) applies if —

(a) a registered charge on property of a co-operative secures —

(i) a present liability and a prospective liability up to a specified maximum amount; or

(ii) a prospective liability up to a specified maximum amount,

but the notice lodged under clause 13 or 17 about the charge does not set out the nature of the prospective liability or the maximum amount specified; or

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(b) a registered charge on property of a co-operative secures a prospective liability of an unspecified amount.

(6) In relation to a charge referred to in subclause (5) —

(a) priority given by this Division to the charge over another charge of which the chargee in relation to the first-mentioned charge has actual knowledge extends to a prospective liability secured by the first-mentioned charge that had become a present liability at the time when the chargee in relation to the first-mentioned charge first obtained actual knowledge of the other charge; and

(b) priority given by this Division to the charge over another charge of which the chargee in relation to the first-mentioned charge has actual knowledge extends to a prospective liability secured by the first-mentioned charge that became a present liability, as the result of the making of an advance, after the time when the chargee in relation to the first-mentioned charge first obtained actual knowledge of the other charge if, at that time, the terms of the first-mentioned charge required the chargee in relation to the charge to make the advance after that time.

(7) Subclause (6)(b) extends to the prospective liability whether the advance was made before or after the registration of the first-mentioned charge and despite the fact that the chargee in relation to the first-mentioned charge had actual knowledge of the other charge at the time when the advance was made.

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Schedule 4 — Receivers, and other controllers, of property of co-operatives

[s. 268]

1. Interpretation

In this Schedule —

administrator, in relation to a deed of arrangement, means an administrator of the deed appointed under the Corporations Act Part 5.3A, as applying under this Act;

control day, in relation to a controller of property of a co-operative, means —

(a) unless paragraph (b) applies —

(i) in the case of a receiver, or receiver and manager, of the property, the day when the receiver, or receiver and manager, was appointed; or

(ii) in the case of another person who is in possession, or has control, of the property for the purpose of enforcing a charge, the day when the person entered into possession, or took control, of property of the co-operative for the purpose of enforcing the charge;

or

(b) if the controller became a controller of property of the co-operative —

(i) to act with an existing controller of the property; or

(ii) in place of a controller of the property who has died or ceased to be a controller of the property,

the day that is, because of any other application or applications of this definition, the control day in relation to the controller referred to in subparagraph (i) or (ii);

controller, of property of a co-operative, means —

(a) a receiver, or receiver and manager, of the property; or

(b) anyone else who, whether or not as agent for the co-operative, is in possession, or has control, of the property for the purpose of enforcing a charge;

co-operative includes a foreign co-operative registered under Part 14;

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daily newspaper means a newspaper that is ordinarily published on each day that is a business day in the place where the newspaper is published, whether or not the newspaper is ordinarily published on other days;

managing controller, of property of a co-operative, means —

(a) a receiver and manager of the property; or

(b) another controller of the property who has functions or powers in relation to managing the co-operative;

national newspaper means a daily newspaper that circulates generally in each State and Territory;

officer, of a foreign co-operative, includes a local agent of the foreign co-operative;

property, of a co-operative, means property —

(a) in the case of a co-operative that is not a foreign co-operative, within or outside Australia; or

(b) in the case of a co-operative that is a foreign co-operative, within Australia or an external Territory;

receiver, of property of a co-operative, includes a receiver and manager.

2. Application of Schedule

Except in so far as the contrary intention appears, this Schedule applies in relation to a receiver of property of a co-operative who is appointed after the commencement of this Schedule, even if the appointment arose out of a transaction entered into, or an act or thing done, before that commencement.

3. Persons not to act as receivers

(1) A person is not qualified to be appointed, and cannot act, as receiver of property of a co-operative if the person —

(a) is a mortgagee of property of the co-operative; or

(b) is an auditor or an officer of the co-operative; or

(c) is an officer of a corporation that is a mortgagee of property of the co-operative; or

(d) is not a registered liquidator under the Corporations Act; or

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(e) is an officer of a corporation related to the co-operative; or

(f) has at any time within the last 12 months been an officer or promoter of the co-operative or of a related corporation, unless the Registrar directs in writing that this paragraph does not apply in relation to the person in relation to the co-operative.

(2) In subclause (1) —

officer, in relation to a corporation, does not include a receiver, appointed under an instrument whether before or after the commencement of this clause, of property of the body.

(3) Subclause (1)(d) does not apply in relation to a corporation authorised by or under a law of the Commonwealth, of a State or of a Territory to act as receiver of property of the co-operative.

(4) Nothing in this clause prevents a person from acting as receiver of property of a co-operative under an appointment validly made before the commencement of this clause.

4. Supreme Court may declare whether controller is validly acting

(1) If there is doubt, on a specific ground, about —

(a) whether a purported appointment of a person, after the commencement of this clause, as receiver of property of a co-operative is valid; or

(b) whether a person who has entered into possession, or assumed control, of property of a co-operative after the commencement of this clause did so validly under the terms of a charge on that property,

the person, the co-operative or any of the co-operative's creditors may apply to the Supreme Court for an order under subclause (2).

(2) On an application, the Supreme Court may make an order declaring whether or not —

(a) the purported appointment was valid; or

(b) the person entered into possession, or assumed control, validly under the terms of the charge,

as the case may be, on the ground specified in the application or on some other ground.

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5. Liability of controller

(1) A receiver, or another authorised person, who, whether as agent for the co-operative or not, enters into possession or assumes control of a property of a co-operative for the purpose of enforcing a charge is, despite an agreement to the contrary, but without prejudice to the person's rights against the co-operative or another person, liable for debts incurred by the person in the course of the receivership, possession or control for services rendered, goods purchased or property hired, leased, used or occupied.

(2) Subclause (1) does not constitute the person entitled to the charge a mortgagee in possession.

(3) If —

(a) a person (the ***controller***) enters into possession or assumes control of property of a co-operative; and

(b) the controller purports to have been properly appointed as a receiver of that property under a power contained in an instrument, but has not been properly appointed; and

(c) civil proceedings in a federal court or a court of a State or Territory arise out of an act alleged to have been done by the controller,

the court may, if it is satisfied that the controller believed on reasonable grounds that the controller had been properly appointed, order that —

(d) the controller be relieved in whole or in part of a liability that the controller has incurred but would not have incurred if the controller had been properly appointed; and

(e) a person who purported to appoint the controller as receiver be liable for an act, matter or thing in so far as the controller has been relieved under paragraph (d) of liability for that act, matter or thing.

6. Liability of controller under pre-existing agreement about property used by co-operative

(1) This clause applies if —

(a) under an agreement made before the control day in relation to a controller of property of a co-operative, the co-operative

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continues after that day to use or occupy, or to be in possession of, property (the ***third party property***) of which someone else is the owner or lessor; and

(b) the controller is controller of the third party property.

(2) Subject to subclauses (4) and (7), the controller is liable for the portion of the rent or other amounts payable by the co-operative under the agreement that is attributable to a period —

(a) that begins more than 7 days after the control day; and

(b) throughout which —

(i) the co-operative continues to use or occupy, or to be in possession of, the third party property; and

(ii) the controller is controller of the third party property.

(3) Within 7 days after the control day, the controller may give to the owner or lessor a notice that specifies the third party property and states that the controller does not propose to exercise rights in relation to the property as controller of the property, whether on behalf of the co-operative or anyone else.

(4) Despite subclause (2), the controller is not liable for the portion of the rent or other amounts payable by the co-operative under the agreement as is attributable to a period during which a notice under subclause (3) is in force, but the notice does not affect a liability of the co-operative.

(5) A notice under subclause (3) ceases to have effect if —

(a) the controller revokes it by writing given to the owner or lessor; or

(b) the controller exercises, or purports to exercise, a right in relation to the third party property as controller of the property, whether on behalf of the co-operative or another person.

(6) For the purposes of subclause (5), the controller does not exercise, or purport to exercise, a right referred to in subclause (5)(b) merely because the controller continues to be in possession, or to have control, of the third party property, unless the controller —

(a) also uses the property; or

(b) asserts a right, as against the owner or lessor, to continue.

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(7) Subclause (2) does not apply to the extent that the Supreme Court, by order, excuses the controller from liability, but an order does not affect a liability of the co-operative.

(8) The controller is not taken because of subclause (2) —

(a) to have adopted the agreement; or

(b) to be liable under the agreement otherwise than as mentioned in subclause (2).

7. Powers of receiver

(1) Subject to this clause, a receiver of property of a co-operative has power to do, in Australia and elsewhere, all things necessary or convenient to be done for or in relation to, or as incidental to, the attainment of the objectives for which the receiver was appointed.

(2) Without limiting subclause (1), but subject to any provision of the court order by which, or the instrument under which, the receiver was appointed, being a provision that limits the receiver's powers in any way, a receiver of property of a co-operative has, in addition to any powers conferred by the order or instrument, as the case may be, or by any other law, power, for the purpose of attaining the objectives for which the receiver was appointed —

(a) to enter into possession and take control of property of the co-operative in accordance with the terms of the order or instrument; and

(b) to lease, let on hire or dispose of property of the co-operative; and

(c) to grant options over property of the co-operative on conditions that the receiver considers appropriate; and

(d) to borrow money on the security of property of the co-operative; and

(e) to insure property of the co-operative; and

(f) to repair, renew or enlarge property of the co-operative; and

(g) to convert property of the co-operative into money; and

(h) to carry on a business of the co-operative; and

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(i) to take on lease or on hire, or to acquire, property necessary or convenient in connection with the carrying on of a business of the co-operative; and

(j) to execute a document, bring or defend proceedings or do any other act or thing in the name of and on behalf of the co-operative; and

(k) to draw, accept, make and endorse a bill of exchange or promissory note; and

(l) to use a seal of the co-operative; and

(m) to engage or discharge employees on behalf of the co-operative; and

(n) to appoint a legal practitioner, accountant or other professionally qualified person to assist the receiver; and

(o) to appoint an agent to do any business that the receiver is unable to do, or that it is unreasonable to expect the receiver to do, in person; and

(p) if a debt or liability is owed to the co-operative, to prove the debt or liability in a bankruptcy, insolvency or winding-up and, in that connection, to receive dividends and to assent to a proposal for a composition or a scheme of arrangement; and

(q) if the receiver was appointed under an instrument that created a charge on uncalled capital or uncalled premiums of the co-operative —

(i) in the name of the co-operative, to make a call for money unpaid on shares in the co-operative, whether on account of the nominal value of the shares or by way of premium; or

(ii) on the giving of an adequate indemnity to a liquidator of the co-operative, in the name of the liquidator, to make a call for money unpaid on account of the nominal value of shares in the co-operative;

and

(r) to enforce payment of a call that is due and unpaid, whether the calls were made by the receiver or otherwise; and

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(s) to make or defend an application for the winding-up of the co-operative; and

(t) to refer to arbitration a question affecting the co-operative.

(3) The conferring by this clause on a receiver of powers in relation to property of a co-operative does not affect the rights in relation to that property of any other person other than the co-operative.

(4) In this clause, a reference, in relation to a receiver, to property of a co-operative is, unless the contrary intention appears, a reference to the property of the co-operative in relation to which the receiver was appointed.

8. Controller's duty of care in exercising power of sale

(1) In exercising a power of sale in respect of property of a co-operative, a controller must take all reasonable care to sell the property for —

(a) if, when it is sold, it has a market value, not less than the market value; or

(b) otherwise, the best price that is reasonably obtainable, having regard to the circumstances existing when the property is sold.

(2) Nothing in subclause (1) limits anything in Part 9 Division 3.

9. Supreme Court may authorise managing controller to dispose of property despite prior charge

(1) On the application of a managing controller of property of a co-operative, the Supreme Court may by order authorise the controller to sell, or to dispose of in some other specified way, specified property of the co-operative, even though it is subject to a charge (the ***prior charge***) that has priority over a charge (the ***controller's charge***) on the property that the controller is enforcing.

(2) The Supreme Court may make an order if satisfied that —

(a) apart from the existence of the prior charge, the controller would have power to sell, or to dispose of, the property; and

(b) the controller has taken all reasonable steps to obtain the consent of the holder of the prior charge to the sale or disposal, but has not obtained the consent; and

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(c) sale or disposal of the property under the order is in the best interests of the co-operative's creditors and of the co-operative; and

(d) sale or disposal of the property under the order will not unreasonably prejudice the rights or interests of the holder of the prior charge.

(3) The Supreme Court may have regard to the need to protect adequately the rights and interests of the holder of the prior charge.

(4) If the property would be sold or disposed of together with other property that is subject to the controller's charge, the Supreme Court may have regard to —

(a) the amount, if any, by which it is reasonable to expect that the net proceeds of selling or disposing of the other property otherwise than together with the first-mentioned property would be less than so much of the net proceeds of selling or disposing of all the property together as would be attributable to that other property; and

(b) the amount, if any, by which it is reasonable to expect that the net proceeds of selling or disposing of the first-mentioned property otherwise than together with the other property would be greater than so much of the net proceeds of selling or disposing of all the property together as would be attributable to the first-mentioned property.

(5) Nothing in subclause (3) or (4) limits the matters to which the Supreme Court may have regard for the purposes of subclause (2).

(6) An order may be made subject to conditions.

10. Receiver's power to carry on co-operative's business during winding-up

(1) A receiver of property of a co-operative that is being wound-up may —

(a) with the written approval of the co-operative's liquidator or with the approval of the Supreme Court, carry on the co-operative's business either generally or as otherwise specified in the approval; and

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(b) do whatever is necessarily incidental to carrying on the business under paragraph (a).

(2) Subclause (1) does not —

(a) affect a power that the receiver has otherwise than under that subclause; or

(b) empower the receiver to do an act that the receiver would not have power to do if the co-operative were not being wound-up.

(3) A receiver of property of a co-operative who carries on the co-operative's business under subclause (1) does so —

(a) as agent for the co-operative; and

(b) in his or her capacity as receiver of property of the co-operative.

(4) The consequences of subclause (3) include, but are not limited to, the following —

(a) for the purposes of clause 5(1), a debt that the receiver incurs in carrying on the business as mentioned in subclause (3) of this clause is incurred in the course of the receivership;

(b) a debt or liability that the receiver incurs in so carrying on the business is not a cost, charge or expense of the winding-up.

11. Controller's duties in relation to financial institution accounts and financial records

(1) A controller of property of a co-operative must —

(a) open and maintain an account with a financial institution, bearing —

(i) the controller's name; and

(ii) in the case of a receiver of the property, the title "receiver"; and

(iii) otherwise, the title "controller"; and

(iv) the co-operative's name;

and

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(b) within 3 business days after money of the co-operative comes under the control of the controller, pay the money into an account referred to in paragraph (a); and

(c) ensure that no account that the controller maintains contains money other than money of the co-operative that comes under the control of the controller; and

(d) keep the financial records that correctly record and explain all transactions that the controller enters into as the controller.

(2) A director, creditor or member of a co-operative may, unless the Supreme Court otherwise orders, personally or by an agent, inspect records kept by a controller of property of the co-operative for the purposes of subclause (1)(d).

12. Managing controller to report within 2 months about co-operative's affairs

(1) A managing controller of property of a co-operative must prepare a report about the co-operative's affairs that is in the form approved by the Registrar and is made up to a day not later than 28 days before the day when it is prepared.

(2) The managing controller must prepare the report and lodge it with the Registrar within 2 months after the control day.

(3) As soon as practicable, and in any event within 14 days, after lodging the report with the Registrar, the managing controller must cause to be published in a national newspaper, or in each State and Territory in a daily newspaper that circulates generally in that State or Territory, a notice stating —

(a) that the report has been prepared; and

(b) that a person can, on paying the fee prescribed by the regulations, inspect the report at specified offices of the Registrar.

(4) If, in the managing controller's opinion, it would seriously prejudice —

(a) the co-operative's interests; or

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(b) the achievement of the objectives for which the controller was appointed, or entered into possession or assumed control of property of the co-operative, as the case requires,

if particular information that the controller would otherwise include in the report were made available to the public, the controller need not include the information in the report.

(5) If the managing controller omits information from the report as permitted by subclause (4), the controller must include instead a notice —

(a) stating that certain information has been omitted from the report; and

(b) summarising what the information is about, but without disclosing the information itself.

13. Reports by receiver

(1) If it appears to the receiver of property of a co-operative that —

(a) a past or present officer, or a member, of the co-operative may have been guilty of an offence under a law of the Commonwealth or of a State or Territory in relation to the co-operative; or

(b) a person who has taken part in the formation, promotion, administration, management or winding-up of the co-operative —

(i) may have misapplied or retained, or may have become liable or accountable for, money or property, whether the property is within or outside Australia, of the co-operative; or

(ii) may have been guilty of negligence, default, breach of duty or breach of trust in relation to the co-operative,

the receiver must —

(c) lodge with the Registrar as soon as practicable a report about the matter; and

(d) give to the Registrar the information, and access to and facilities for inspecting and taking copies of any documents, as the Registrar requires.

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(2) The receiver may also lodge further reports specifying any other matter that, in the receiver's opinion, it is desirable to bring to the notice of the Registrar.

(3) If it appears to the Supreme Court —

(a) that a past or present officer, or a member, of a co-operative in relation to property of which a receiver has been appointed has been guilty of an offence under a law referred to in subclause (1)(a) in relation to the co-operative; or

(b) that a person who has taken part in the formation, promotion, administration, management or winding-up of a co-operative in relation to property of which a receiver has been appointed has engaged in conduct referred to in subclause (1)(b) in relation to the co-operative,

and that the receiver has not lodged a report with the Registrar about the matter, the Court may, on the application of a person interested in the appointment of the receiver or of its initiative, direct the receiver to lodge the report.

14. Supervision of controller

(1) If —

(a) it appears to the Supreme Court or to the Registrar that a controller of property of a co-operative has not faithfully performed, or is not faithfully performing, the controller's functions or has not observed, or is not observing, a requirement of —

(i) in the case of a receiver, the order by which, or the instrument under which, the receiver was appointed; or

(ii) otherwise, an instrument under which the controller entered into possession, or took control, of the property; or

(iii) in any case, the Supreme Court; or

(iv) in any case, this Act or the rules of court;

or

(b) a person complains to the Supreme Court or to the Registrar about an act or omission of a controller of property of a

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co-operative in connection with performing or exercising any of the controller's functions and powers,

the Supreme Court or the Registrar, as the case may be, may inquire into the matter and, if the Court or the Registrar inquires under this subclause, the Supreme Court may take the action that it considers appropriate.

(2) The Registrar may report to the Supreme Court any matter that in the Registrar's opinion is a misfeasance, neglect or omission on the part of a controller of property of a co-operative and the Court may —

(a) order the controller to make good any loss that the estate of the co-operative has sustained because of the misfeasance, neglect or omission; and

(b) make any other order that it considers appropriate.

(3) The Supreme Court may at any time —

(a) require a controller of property of a co-operative to answer questions about the performance or exercise of any of the controller's functions and powers as controller; or

(b) examine a person about the performance or exercise by the controller of any of the controller's functions and powers as controller; or

(c) direct an investigation to be made of the controller's books.

15. Controller may apply to Supreme Court

(1) A controller of property of a co-operative may apply to the Supreme Court for directions in relation to any matter arising in relation to the performance or exercise of any of the controller's functions and powers as controller.

(2) In the case of a receiver of property of a co-operative, subclause (1) applies only if the receiver was appointed under a power contained in an instrument.

16. Power of Supreme Court to fix receiver's remuneration

(1) The Supreme Court may by order fix the amount to be paid by way of remuneration to a person who, under a power contained in an instrument, has been appointed as receiver of property of a co-operative.

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(2) The power of the Supreme Court to make an order under this clause —

(a) extends to fixing the remuneration for a period before the making of the order or the application for the order; and

(b) is exercisable even if the receiver has died, or ceased to act, before the making of the order or the application for the order; and

(c) if the receiver has been paid or has retained for the receiver's remuneration for any period before the making of the order any amount in excess of that fixed for the period, extends to requiring the receiver or the receiver's personal representatives to account for the excess or the part of the excess that is specified in the order.

(3) The power conferred by subclause (2)(c) cannot be exercised in relation to a period before the making of the application for the order unless, in the opinion of the Supreme Court, there are special circumstances that make it appropriate for the power to be exercised.

(4) The Supreme Court may from time to time vary or amend an order under this clause.

(5) An order under this clause may be made, varied or amended on the application of —

(a) a liquidator of the co-operative; or

(b) an administrator of the co-operative; or

(c) an administrator of a deed of arrangement executed by the co-operative; or

(d) the Registrar.

(6) An order under this clause may be varied or amended on the application of the receiver concerned.

(7) An order under this clause may be made, varied or amended only as provided in subclauses (5) and (6).

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17. Controller has qualified privilege in certain cases

A controller of property of a co-operative has qualified privilege in relation to —

(a) a matter contained in a report that the controller lodges under clause 12 or 13; or

(b) a comment that the controller makes under clause 20(2)(c).

18. Notification of matters relating to controller

(1) A person who obtains an order for the appointment of a receiver of property of a co-operative, or who appoints such a receiver under a power contained in an instrument, must —

(a) within 7 days after obtaining the order or making the appointment, lodge notice that the order has been obtained, or that the appointment has been made, as the case requires; and

(b) within 21 days after obtaining the order or making the appointment, cause notice that the order has been obtained, or that the appointment has been made, as the case requires, to be published in the *Gazette*.

(2) A person who appoints another person to enter into possession, or take control, of property of a co-operative, whether or not as agent for the co-operative, for the purpose of enforcing a charge otherwise than as receiver of that property must —

(a) within 7 days after making the appointment, lodge notice of the appointment with the Registrar; and

(b) within 21 days after making the appointment, cause notice of the appointment to be published in the *Gazette*.

(3) A person who enters into possession, or takes control, as mentioned in subclause (2) must —

(a) within 7 days after entering into possession or taking control, lodge notice with the Registrar that the person has done so; and

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(b) within 21 days after entering into possession or taking control, cause to be published in the *Gazette* notice that the person has done so,

unless another person —

(c) appointed the first-mentioned person to enter into possession or take control; and

(d) complies with subclause (2) in relation to the appointment.

(4) Within 14 days after becoming a controller of property of a co-operative, a person must lodge with the Registrar notice, in the form approved by the Registrar, of the address of the person's office.

(5) A controller of property of a co-operative must, within 14 days after a change in the situation of the controller's office, lodge with the Registrar notice, in the form approved by the Registrar, of the change.

(6) A person who ceases to be a controller of property of a co-operative must —

(a) within 7 days after ceasing to be a controller, lodge with the Registrar notice that the person has ceased; and

(b) within 21 days after ceasing to be a controller, cause notice that the person has ceased to be published in the *Gazette*.

19. Statement that receiver appointed or other controller acting

(1) If a receiver of property, whether within or outside this State or within or outside Australia, of a co-operative has been appointed, the co-operative must set out, in every public document, and in every eligible negotiable instrument, of the co-operative, after the name of the co-operative where it first appears, a statement that a receiver, or a receiver and manager, as the case requires, has been appointed.

(2) If a controller, other than a receiver, controls the property, whether within or outside Australia, of a co-operative, the co-operative must set out, in every public document, and in every negotiable instrument, of the co-operative, after the co-operative's name where it first appears, a statement that a controller is acting.

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20. Officers to report to controller about co-operative's affairs

(1) In this clause —

reporting officer, in relation to a co-operative and in relation to property of which a person is controller, means a person who was on the control day —

(a) in the case of a co-operative other than a foreign co-operative, a director or secretary of the co-operative; or

(b) in the case of a foreign co-operative, a local agent of the foreign co-operative.

(2) If a person becomes a controller of property of a co-operative —

(a) the person must serve on the co-operative, as soon as practicable, notice that the person is a controller of property of the co-operative; and

(b) within 14 days after the co-operative receives the notice, the reporting officers must make out and submit to the person a report, in the form approved by the Registrar, about the affairs of the co-operative as at the control day; and

(c) the person must, within 28 days after receipt of the report —

(i) lodge with the Registrar a copy of the report and a notice setting out any comments the person considers appropriate to make relating to the report or, if the person does not consider it appropriate to comment, a notice stating that the person does not consider it appropriate to comment; and

(ii) send to the co-operative a copy of the notice lodged in accordance with subparagraph (i);

and

(d) the person must, within 28 days after receipt of the report, if the person became a controller of the property —

(i) because of an appointment as receiver of the property that was made by or on behalf of the holder of debentures of the co-operative; or

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(ii) by entering into possession, or taking control, of the property for the purpose of enforcing a charge securing such debentures,

and there are trustees for the holders of the debentures, send to those trustees a copy of the report and a copy of the notice lodged under paragraph (c)(i).

(3) If notice has been served on a co-operative under subclause (2)(a), the reporting officers may apply to the controller or to the Supreme Court to extend the period within which the report is to be submitted and —

(a) if application is made to the controller, if the controller believes that there are special reasons for so doing, the controller may, by written notice given to the reporting officers, extend that period until a specified day; and

(b) if application is made to the Supreme Court, if the Court believes that there are special reasons for so doing, the Court may, by order, extend that period until a specified day.

(4) As soon as practicable after granting an extension under subclause (3)(a), the controller must lodge a copy of the notice with the Registrar.

(5) As soon as practicable after the Supreme Court grants an extension under subclause (3)(b), the reporting officers must lodge a copy of the order with the Registrar.

(6) Subclauses (2), (3) and (4) do not apply in a case where a person becomes a controller of property of a co-operative —

(a) to act with an existing controller of property of the co-operative; or

(b) in place of a controller of the property who has died or ceased to be a controller of the property.

(7) However, if subclause (2) applies in a case where a controller of property of a co-operative dies, or ceases to be a controller of property of the co-operative, before subclause (2) is fully complied with, then —

(a) the references in subclauses (2)(b), (c) and (d) to the person; and

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(b) the references in subclauses (3) and (4) to the controller,

include references to the controller's successor and to any continuing controller.

(8) If a co-operative is being wound-up, this clause and clause 21 apply even if the controller and the liquidator are the same person, but with the necessary modifications arising from that fact.

21. Controller may require reports

(1) A controller of property of a co-operative may, by notice given to the person or persons, require one or more persons included in one or more of the following classes of persons to make out as required by the notice, verify by a written statement in the approved form, and submit to the controller, a report, containing such information as is specified in the notice as to the affairs of the co-operative or as to such of those affairs as are specified in the notice, as at a date specified in the notice —

(a) persons who are or have been officers of the co-operative;

(b) if the co-operative was incorporated within 12 months before the control day, persons who have taken part in the formation of the co-operative;

(c) persons who are employed by the co-operative or have been so employed within 12 months before the control day and are, in the opinion of the controller, capable of giving the information required;

(d) persons who are, or have been within 12 months before the control day, officers of, or employed by, a co-operative that is, or within that year was, an officer of the co-operative.

(2) Without limiting subclause (1), a notice under that subclause may specify the information that the controller requires as to affairs of the co-operative by reference to information that this Act requires to be included in another report, statement or notice under this Act.

(3) A person making a report and verifying it as required by subclause (1) must, subject to the regulations, be allowed, and must be paid by the receiver (or the controller's successor) out of the controller's receipts, any costs and expenses incurred in and about the preparation and

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making of the report and the verification of the report that the controller (or the controller's successor) considers reasonable.

(4) A person must comply with a requirement made under subclause (1).

(5) A reference in this clause to the controller's successor includes a reference to a continuing controller.

22. Controller may inspect records

A controller of property of a co-operative is entitled to inspect at any reasonable time any records of the co-operative that relate to the property and a person must not fail to allow the controller to inspect those books at such a time.

23. Lodging controller's accounts

(1) A controller of property of a co-operative must lodge with the Registrar an account —

(a) within 28 days after the end of —

(i) 6 months, or a shorter period the controller determines, after the day when the controller became a controller of property of the co-operative; and

(ii) each subsequent period of 6 months throughout which the controller is a controller of property of the co-operative;

and

(b) within 28 days after the controller ceases to be a controller of property of the co-operative.

(2) An account must be in the form approved by the Registrar and show —

(a) the controller's receipts and payments during —

(i) in the case of an account under subclause (1)(a), the 6 months or shorter period, as the case requires; or

(ii) in the case of an account under subclause (1)(b), the period beginning at the end of the period to which the last account related, or on the control day, as the case requires and ending on the day when the controller ceased to be the controller;

and

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(b) except in the case of an account lodged under subclause (1)(a)(i), the respective aggregates of the controller's receipts and payments since the control day.

(3) In the case of —

(a) a receiver appointed under a power contained in an instrument; or

(b) anyone else who is in possession, or has control, of property of the co-operative for the purpose of enforcing a charge,

the accounts must also show the following —

(c) the amount, if any, owing under that instrument or charge —

(i) in the case of an account lodged under subclause (1)(a)(i), at the end of the control day and at the end of the period to which the account relates; or

(ii) otherwise, at the end of the period to which the account relates;

(d) the controller's estimate of the total value, at the end of the period to which the account relates, of the property of the co-operative that is subject to the instrument or charge.

(4) The Registrar may, of the Registrar's own initiative or on the application of the co-operative or a creditor of the co-operative, cause the accounts lodged in accordance with subclause (1) to be audited by a registered company auditor appointed by the Registrar.

(5) For the purpose of the audit, the controller must give the auditor any records and information that the auditor requires.

(6) If the Registrar causes the accounts to be audited on the request of the co-operative or a creditor, the Registrar may require the co-operative or creditor, as the case may be, to give security for the payment of the cost of the audit.

(7) The costs of an audit under subclause (3) are to be fixed by the Registrar.

(8) The Registrar may if the Registrar considers it appropriate make an order declaring that, for the purposes of clause 5(1), the costs of the audit are taken to be a debt incurred by the controller as referred to in

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clause 5(1) and, if such an order is made, the controller is liable accordingly.

(9) A person must comply with a requirement made under this clause.

24. Payment of certain debts, out of property subject to floating charge, in priority to claims under charge

(1) This clause applies if —

(a) a receiver is appointed on behalf of the holders of debentures of a co-operative that are secured by a floating charge, or possession is taken or control is assumed, by or on behalf of the holders of any debentures of a co-operative, of property subject to a floating charge; and

(b) at the date of the appointment or of the taking of possession or assumption of control (the ***relevant date***) —

(i) the co-operative has not commenced to be wound-up voluntarily; and

(ii) the co-operative has not been ordered to be wound-up by the Supreme Court.

(2) The receiver or other person taking possession or assuming control of property of the co-operative must pay, out of the property coming into the receiver's possession or control, the following debts or amounts in priority to a claim for principal or interest in relation to the debentures —

(a) first, an amount that in a winding-up is payable in priority to unsecured debts under the Corporations Act section 556, as applying under this Act;

(b) next, if an auditor of the co-operative applied to the Registrar for consent to resign as auditor and the Registrar refused that consent before the relevant date, the reasonable fees and expenses of the auditor incurred during the period beginning on the day of the refusal and ending on the relevant date;

(c) subject to subclauses (4) and (5), next, a debt or amount that in a winding-up is payable in priority to other unsecured debts under the Corporations Act section 556(1)(e), (g) or (h) or 560, as applying under this Act.

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(3) The receiver or other person taking possession or assuming control of property must pay debts and amounts payable under subclause (2)(c) in the same order of priority as is prescribed by the Corporations Act Part 5.6 Division 6, as applying under this Act, for those debts and amounts.

(4) If an auditor of the co-operative applied to the Registrar for consent to resign as auditor and the Registrar, before the relevant date, refused consent, a receiver must, when property comes into the receiver's possession or control, before paying a debt or amount referred to in subclause (2)(c), make provision out of the property for the reasonable fees and expenses of the auditor incurred after the relevant date but before the date on which the property comes into the receiver's possession or control, being fees and expenses for which provision has not already been made under this subclause.

(5) If an auditor of the co-operative applies to the Registrar for consent to resign as auditor and, after the relevant date, the Registrar refuses consent, the receiver must, in relation to property that comes into the receiver's possession or control after the refusal, before paying any debt or amount referred to in subclause (2)(c), make provision out of the property for the reasonable fees and expenses of the auditor incurred after the refusal and before the date on which the property comes into the receiver's possession or control, being fees and expenses for which provision has not already been made under this subclause.

(6) A receiver must make provision for reasonable fees and expenses of an auditor for a particular period as required by subclause (4) or (5) whether or not the auditor has made a claim for fees and expenses for the period, but if the auditor has not made a claim, the receiver may estimate the reasonable fees and expenses of the auditor for the period and make provision in accordance with the estimate.

(7) For the purposes of this clause, the references in the Corporations Act Part 5.6 Division 6, as applying under this Act, to the relevant date are to be read as references to the date of the appointment of the receiver, or of possession being taken or control being assumed, as the case may be.

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25. Enforcement of controller's duty to make returns

(1) If a receiver of property of a co-operative —

(a) who has defaulted in making or lodging a return, account or other document or in giving notice required by law fails to make good the default within 14 days after the service on the controller, by a member or creditor of the co-operative or trustee for debenture holders, of a notice requiring the controller to make good the default; or

(b) who has become a controller of property of the co-operative otherwise than by being appointed a receiver of the property by a court and who has, after being required at any time by the liquidator of the co-operative so to do, failed to render proper accounts of, and to vouch, the controller's receipts and payments and to pay over to the liquidator the amount properly payable to the liquidator,

the Supreme Court may make an order directing the controller to make good the default within the time specified in the order.

(2) An application for an order under subclause (1) may be made —

(a) if subclause (1)(a) applies, by a member or creditor of the co-operative or by a trustee for debenture holders; and

(b) if subclause (1)(b) applies, by the liquidator of the co-operative.

26. Supreme Court may remove controller for misconduct

If, on the application of a co-operative, the Supreme Court is satisfied that a controller of property of the co-operative has been guilty of misconduct in connection with performing or exercising the controller's functions and powers, the Court may order that, on and after a specified day, the controller cease to act as receiver or give up possession or control, as the case requires, of property of the co-operative.

27. Supreme Court may remove redundant controller

(1) The Supreme Court may order that, on and after a specified day, a controller of property of a co-operative —

(a) cease to act as receiver, or give up possession or control, as the case requires, of property of the co-operative; or

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(b) act as receiver, or continue in possession or control, as the case requires, only of specified property of the co-operative.

(2) The Supreme Court may make an order under subclause (1) if it is satisfied that the objectives for which the controller was appointed, or entered into possession or took control of property of the co-operative, as the case requires, have been achieved, so far as is reasonably practicable, except in relation to property specified in the order under subclause (1)(b).

(3) For the purposes of subclause (2), the Supreme Court may have regard to —

(a) the co-operative's interests; and

(b) the interests of the holder of the charge that the controller is enforcing; and

(c) the interests of the co-operative's other creditors; and

(d) any other relevant matter.

(4) The Supreme Court may make an order under subclause (1) on the application of a liquidator appointed for the purposes of winding-up the co-operative in insolvency.

(5) An order under subclause (1) may also prohibit the holder of the charge from doing any or all of the following, except with the leave of the Supreme Court —

(a) appointing a person as receiver of property of the co-operative under a power contained in an instrument relating to the charge;

(b) entering into possession, or taking control, of the property for the purpose of enforcing the charge;

(c) appointing a person to enter into possession or take control of the property for the purpose of enforcing the charge, whether as agent for the chargee or for the co-operative.

28. Effect of clauses 26 and 27

(1) Except as expressly provided in clause 26 or 27, an order under that clause does not affect a charge on property of a co-operative.

(2) Nothing in clause 26 or 27 limits any other power of the Supreme Court to remove, or otherwise deal with, a controller of property of a co-operative.

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Schedule 5 — Applied co-operatives provisions

[s. 379]

1. Provisions applicable to participating co-operatives

The following provisions apply to participating co-operatives —

(a) Part 1 Division 4, other than section 9;

(b) section 238;

(c) section 248;

(d) section 448;

(e) section 449;

(f) Part 17;

(g) section 483;

(h) section 485.

2. Provisions applicable to non-participating co-operatives

(a) Part 1 Division 3 and 4, other than section 9;

(b) section 12(2);

(c) section 13

(d) section 14;

(e) Part 3;

(f) section 75;

(g) section 76;

(h) Part 4 Division 5;

(i) section 97;

(j) section 99;

(k) section 100;

(l) section 236;

(m) section 237;

(n) section 238;

(o) Part 10 Division 1;

(p) Part 13;

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(q) section 448;

(r) section 449;

(s) Part 17;

(t) section 484;

(u) section 485.

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Schedule 6 — Modifications to Corporations Act

[s. 387]

1. Modifications to winding-up provisions

The Corporations Act Parts 5.4B and 5.6 apply with the following modifications —

(a) a reference in those Parts to ASIC is to be read as a reference to the Registrar;

(b) a reference in those Parts to an application to wind-up a company under section 464 or Part 5.4A is to be read as a reference to an application by the Registrar under Part 14 Division 4;

(c) a reference in those Parts to a winding-up ordered by the Court under a provision of Part 5.4A is a reference to a winding-up ordered by the Court under Part 1 Division 4;

(d) a reference in those Parts to an order under a provision of Part 5.4A is a reference to an order under section 386;

(e) for the purposes of an application by the Registrar to wind-up a foreign co-operative, those Parts apply, with such modifications as the circumstances require, as if a winding-up application had been made by the co-operative;

(f) those Parts apply as if a ground specified in section 386 were a ground for winding-up by the Court specified in the Corporations Act section 461;

(g) a reference in those Parts to an official liquidator is to be read as a reference to a person approved by the Registrar as a liquidator of a co-operative;

(h) sections 467(4) and (5), 480(d), 481(5)(b), 513B, 517, 518, 523 and 524 do not apply;

(i) a reference in section 485(2) to persons entitled to any surplus is a reference to a person entitled to the surplus under section 388 of this Act;

(j) section 516 is to be read as if "together with any charges payable by the member to the co-operative in accordance with the rules" were inserted after "past member";

(k) Part 5.6 Division 6 Subdivision C does not apply;

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(l) a reference in those Parts to section 233 is to be read as a reference to Part 4 Division 5 of this Act;

(m) those Parts are to be read subject to sections 76 and 331 of this Act for the purposes of determining the liability of members and past members to contribute on a winding-up of a co-operative;

(n) any other modifications, within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*, that are prescribed by the regulations.

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Notes

[1] This is a compilation of the *Co-operatives Act 2009* and includes the amendments made by the other written laws referred to in the following table [1a].

Compilation table

Short title	Number and year	Assent	Commencement
Co-operatives Act 2009	24 of 2009	22 Oct 2009	s. 1 and 2: 22 Oct 2009 (see s. 2(a)); Act other than s. 1, 2, 490, 491, Pt. 20 Div. 1 and 3: 1 Sep 2010 (see s. 2(b) and *Gazette* 13 Aug 2010 p. 3975)
Acts Amendment (Fair Trading) Act 2010 s. 180	58 of 2010	8 Dec 2010	1 Jan 2011 (see s. 2(c) and *Gazette* 24 Dec 2010 p. 6805)
Personal Property Securities (Consequential Repeals and Amendments) Act 2011 Pt. 4 Div. 4 (s. 37-44)	42 of 2011	4 Oct 2011	s. 44: 5 Oct 2011 (see s. 2(b)) s. 37-43: 30 Jan 2012 (see s. 2(c) and Cwlth Legislative Instrument No. F2011L02397 cl. 5 registered 21 Nov 2011)

[1a] On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
Co-operatives Act 2009 s. 490, 491, Pt. 20 Div. 1 and 3 [2]	24 of 2009	22 Oct 2009	s. 490 and 491 and Pt. 20 Div. 3: 1 Sep 2012 (see s. 2(c) and *Gazette* 13 Aug 2010 p. 3975); Pt. 20 Div. 1: operative on the day that Co-operative Bulk Handling Limited becomes registered under this Act (see s. 2(d))

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[2] On the date as at which this compilation was prepared, the *Co-operatives Act 2009* s. 490, 491, Pt. 20 Div. 1 and 3 had not come into operation. They read as follows:

490. *Companies (Co-operative) Act 1943* repealed

The *Companies (Co-operative) Act 1943* is repealed.

491. *Co-operative and Provident Societies Act 1903* repealed

The *Co-operative and Provident Societies Act 1903* is repealed.

Part 20 — Consequential amendments

Division 1 — Consequential amendments commencing on registration of Co-operative Bulk Handling Limited

505. *Grain Marketing Act 2002* amended

(1) This section amends the *Grain Marketing Act 2002*.

(2) In section 48(2)(b) delete subparagraph (ii) and insert:

(ii) Co-operative Bulk Handling Limited, a co-operative registered under the *Co-operatives Act 2009*,

(3) In Schedule 1 clause 5(3) in the definition of ***CBH*** delete the passage that begins with "a company" and ends with "*1943*." and insert:

a co-operative registered under the *Co-operatives Act 2009*.

506. *Local Government Act 1995* amended

(1) This section amends the *Local Government Act 1995*.

(2) In section 6.26(2)(i) delete "company" (each occurrence) and insert:

co-operative

(3) In section 6.26(3) delete "company" and insert:

co-operative

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Division 3 — Consequential amendments commencing on repeal of former Acts

512. *Civil Judgments Enforcement Act 2004* amended

(1) This section amends the *Civil Judgments Enforcement Act 2004*.

(2) In section 45 in paragraph (c) of the definition of ***financial institution*** delete "a society registered or deemed to be registered under the *Co-operative and Provident Societies Act 1903*, or".

513. *Criminal Property Confiscation Act 2000* amended

(1) This section amends the *Criminal Property Confiscation Act 2000*.

(2) In the Glossary in paragraph (e) of the definition of ***financial institution*** delete "a registered society within the meaning of the *Co-operative and Provident Societies Act 1903*, or".

514. *Equal Opportunity Act 1984* amended

(1) This section amends the *Equal Opportunity Act 1984*.

(2) In section 35N(1)(a) delete "of a society registered under the *Co-operative and Provident Societies Act 1903* or".

(3) In section 66ZS(1)(a)(i) delete "of a society registered under the *Co-operative and Provident Societies Act 1903* or".

(4) In section 69(1)(b)(i) delete "of a society registered under the *Co-operative and Provident Societies Act 1903* or".

515. Housing Loan Guarantee Act 1957 amended

(1) This section amends the *Housing Loan Guarantee Act 1957*.

(2) In section 5(1)(a) delete "or *Co-operative and Provident Societies Act 1903*".

(3) In section 10 delete "or *Co-operative and Provident Societies Act 1903*".

516. *Local Government Act 1995* amended

(1) This section amends the *Local Government Act 1995*.

(2) In section 5.74 in the definition of ***corporation***:

(a) delete paragraph (d) and "or" after it;

(b) after each of paragraphs (a) and (b) insert:

or

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517. *Taxi Act 1994* amended

(1) This section amends the *Taxi Act 1994*.

(2) In section 3(3)(b) delete "a company within the meaning of the *Companies (Co-operative) Act 1943*, and".

518. *Western Australian Treasury Corporation Act 1986* amended

(1) This section amends the *Western Australian Treasury Corporation Act 1986*.

(2) In Schedule 1 delete items 5 and 6.

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Defined Terms

[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]

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