



Western Australia

Co-operatives Amendment Act 2016

As at 14 Apr 2016

No. 7 of 2016

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Co-operatives Amendment Act 2016

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Western Australia

Co-operatives Amendment Act 2016

No. 7 of 2016

An Act to amend the *Co-operatives Act 2009*.

[Assented to 14 April 2016]

The Parliament of Western Australia enacts as follows:

s. 1

1. Short title

This is the *Co-operatives Amendment Act 2016*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Act amended

This Act amends the *Co-operatives Act 2009*.

4. Section 4 amended

- (1) In section 4(1) delete the definitions of:

co-operative capital unit

foreign co-operative

officer

records

- (2) In section 4(1) insert in alphabetical order:

books includes —

- (a) a register; and
- (b) minutes; and
- (c) any other record of information; and
- (d) financial reports or financial records, however compiled, recorded or stored; and
- (e) a document;

carry on business, in relation to a co-operative or a participating co-operative, has the same meaning as it

has in the Corporations Act Part 1.2 Division 3 in relation to a company;

CCU means a co-operative capital unit as defined in section 257(1);

corresponding co-operatives law means a law of another jurisdiction declared under section 5A to be a corresponding co-operatives law;

department means the department of the Public Service principally assisting the Minister in the administration of this Act;

director, of a co-operative, includes —

- (a) a person who occupies or acts in the position of a director or member of the board of a co-operative, whether or not the person is called a director and whether or not the person is validly appointed or properly authorised to act in the position; and
- (b) a person under whose directions or instructions the directors or members of the board of directors of the co-operative are accustomed to act;

financial year has the meaning given in section 244ZH;

half-year has the meaning given in section 244ZI;

involved, in a contravention, has the meaning given in section 5B;

jurisdiction means a State or Territory;

large co-operative means a co-operative that is not a small co-operative;

legal practitioner means an Australian legal practitioner within the meaning of that term in the *Legal Profession Act 2008* section 3;

officer, of a co-operative or participating co-operative, means —

- (a) a director or secretary of the co-operative; or
- (b) a person —
 - (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the co-operative; or
 - (ii) who has the capacity to affect significantly the co-operative's financial standing; or
 - (iii) in accordance with whose instructions or wishes the directors of the co-operative are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the co-operative);

or

- (c) a receiver, or receiver and manager, of property of the co-operative; or
- (d) an administrator of the co-operative; or
- (e) an administrator of a deed of arrangement executed by the co-operative; or
- (f) a liquidator of the co-operative; or
- (g) a trustee or other person administering a compromise or arrangement made between the co-operative and someone else;

participating co-operative means a body that is registered and incorporated under, and is subject to, a corresponding co-operatives law;

participating jurisdiction means a jurisdiction in which a corresponding co-operatives law is in force;

participating Registrar means a person exercising the functions of a Registrar under a corresponding co-operatives law;

quoted security means a security that is quoted on a prescribed financial market (as defined in the Corporations Act section 9);

small co-operative means a co-operative of a class or description prescribed by the regulations;

5. Sections 5A and 5B inserted

At the end of Part 1 Division 1 insert:

5A. Corresponding co-operatives laws

The regulations may declare a law of another jurisdiction that substantially corresponds to this Act to be a corresponding co-operatives law for the purposes of this Act.

5B. Involvement in contraventions

For the purposes of this Act, a person is involved in a contravention if, and only if, the person —

- (a) has aided, abetted, counselled or procured the contravention; or
- (b) has induced, whether by threats or promises or otherwise, the contravention; or
- (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention; or

- (d) has conspired with others to effect the contravention.

6. Section 10 amended

In section 10(1) after “co-operatives” insert:

or participating co-operatives

7. Section 11 amended

In section 11(1):

- (a) before paragraph (a) insert:

- (aa) a reference in the applied provisions to a corporation, company or public company is to be read as a reference to a co-operative;
- (ab) a reference in the applied provisions to ASIC is to be read as a reference to the Registrar;

- (b) after paragraph (d) insert:

- (ea) a reference in the applied provisions to a special resolution is to be read as a reference to a special resolution referred to in section 177 of this Act;
- (eb) a reference in the applied provisions to shareholders is to be read as a reference to members;
- (ec) a reference in the applied provisions (including the Corporations Act section 311) to “a contravention of this Act” is to be read as including a reference to a contravention of this Act;

- (ed) despite paragraph (aa), a reference in the applied provisions to a company that is the auditor of a company is to be read as a reference to a company that is the auditor of a co-operative;
 - (ee) a statement in the applied provisions that an offence based on a particular provision is an offence of strict liability is to be read as a statement that, despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of that provision that any event occurred by accident;
 - (ef) a reference in the applied provisions to “prescribed” is to be read as a reference to “approved by the Registrar” and, without limitation, a reference to a prescribed form is to be read as a reference to a form approved by the Registrar;
 - (eg) a reference in the applied provisions to regulations is to be read as a reference to regulations made under this Act;
 - (eh) the applied provisions are to be read as if all notes were deleted;
- (c) in paragraph (e) after “co-operatives” (each occurrence) insert:

or participating co-operatives

8. Part 2 Division 1 heading replaced

Delete the heading to Part 2 Division 1 and insert:

Division 1 — Introductory

9. Section 13 amended

- (1) In section 13(3)(b)(i) delete “prescribed by the regulations,” and insert:

approved by the Registrar,

- (2) After section 13(3) insert:

- (4) An approval under subsection (3)(b)(i) may be given in relation to a particular co-operative or class of co-operatives.

10. Section 14 amended

- (1) In section 14(3)(b)(i) delete “prescribed by the regulations,” and insert:

approved by the Registrar,

- (2) After section 14(3) insert:

- (4) An approval under subsection (3)(b)(i) may be given in relation to a particular co-operative or class of co-operatives.

11. Section 15A inserted

At the end of Part 2 Division 1 insert:

15A. Provisions regarding Registrar's approvals about numbers

- (1) The Registrar may give one composite approval that operates as more than one of the following —
 - (a) an approval concerning the number of active members of a co-operative required under section 13(3)(b)(i) or 14(3)(b)(i);
 - (b) an approval concerning the number of persons required to hold the formation meeting of a co-operative under section 15(3)(b);
 - (c) an approval concerning the number of members required to sign the application for registration of a proposed co-operative under section 18(1)(c)(ii);
 - (d) an approval concerning the minimum number of members for a co-operative to continue to carry on business under section 65(3)(b).
- (2) A composite approval may be given in relation to —
 - (a) a particular co-operative or proposed co-operative; or
 - (b) a particular class of co-operatives or proposed co-operatives; or
 - (c) all co-operatives or proposed co-operatives.
- (3) This section does not limit the power of the Registrar to give separate approvals under any of the relevant sections.

12. Section 15 amended

(1) Delete section 15(2)(b) and insert:

- (b) a disclosure statement approved under section 16 must be presented to the meeting in the case of —
 - (i) a proposed distributing co-operative; or
 - (ii) a proposed non-distributing co-operative that is the subject of a direction under section 16(2B);and

(2) In section 15(3)(b) delete “prescribed by the regulations, not less than the prescribed number” and insert:

approved by the Registrar, not less than the approved number

13. Section 16 amended

(1) After section 16(1) insert:

- (2A) If the Registrar so directs under subsection (2B), a draft disclosure statement of a proposed non-distributing co-operative must be submitted to the Registrar by the time specified in the direction.
- (2B) The Registrar may by written notice direct that —
 - (a) a draft disclosure statement of a proposed non-distributing co-operative must be submitted to the Registrar by the time specified in the direction, being a time before the formation meeting is due to be held; and

- (b) a disclosure statement approved under this section must be presented to the formation meeting for the co-operative.

- (2) In section 16(2):

- (a) delete “The draft” and insert:

A draft

- (b) after “subsection (1)” insert:

or (2A)

- (3) In section 16(3) delete “The disclosure statement” and insert:

A draft disclosure statement of a proposed distributing co-operative submitted under subsection (1)

- (4) After section 16(3) insert:

- (4A) A draft disclosure statement of a proposed non-distributing co-operative submitted under subsection (2A) must contain the information that the Registrar directs to be included.

- (5) In section 16(4) delete “The disclosure statement” and insert:

A draft disclosure statement submitted under subsection (1) or (2A)

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- (6) In section 16(5) delete “The Registrar may —” and insert:

The Registrar may, in respect of a draft disclosure statement submitted under subsection (1) or (2A) —

- (7) In section 16(6) and (7) after “disclosure statement” insert:

submitted under subsection (1) or (2A)

- (8) In section 16(8) delete “the disclosure statement as submitted to the Registrar” and insert:

a disclosure statement as submitted to the Registrar under subsection (1) or (2A)

- (9) After section 16(8) insert:

(9) If the Registrar approves an amended or different disclosure statement, or refuses to approve a disclosure statement, the Registrar must give the person who submitted the draft statement written notice of the reasons for doing so.

14. Section 17 amended

- (1) In section 17(4):
(a) in paragraph (c) delete “rules.” and insert:

rules; or

- (b) after paragraph (c) insert:
 - (d) require the person submitting the draft rules to give the Registrar any additional information the Registrar reasonably requires, and then act under paragraph (a), (b) or (c).

(2) After section 17(6) insert:

- (7) If the Registrar approves different rules to those submitted, or refuses to approve proposed rules, the Registrar must give the person who submitted the proposed rules notice of the reasons for doing so.

15. Section 18 amended

In section 18(1):

- (a) in paragraph (c)(ii) delete “prescribed under a regulation, at least the prescribed number” and insert:

approved by the Registrar, at least the approved number

- (b) in paragraph (d)(ii) delete “proposed distributing co-operative,” and insert:

proposed distributing co-operative, or a proposed non-distributing co-operative that is the subject of a direction under section 16(2B) —

16. Section 22 amended

- (1) In section 22(1):
- (a) delete “special resolution in accordance with its constitution” and insert:

resolution
 - (b) in paragraph (b) delete “Act.” and insert:

Act; and
 - (c) after paragraph (b) insert:

(c) the proposed rules of the proposed co-operative approved under section 17, including active membership provisions in accordance with Part 6.
- (2) Delete section 22(2) to (4) and insert:
- (2) At the meeting to pass the resolution, a disclosure statement approved under section 16 must be presented to the meeting in the case of —
 - (a) a proposed distributing co-operative; or
 - (b) a proposed non-distributing co-operative that is the subject of a direction under section 16(2B).
 - (3) A resolution under this section must have been passed by a two-thirds majority of eligible members present at the meeting.

Note: The heading to amended section 22 is to read:

Formation meeting

17. Section 23 amended

In section 23(1):

- (a) in paragraph (c)(iv) delete “22(2) by special” and insert:

22(1) by

- (b) in paragraph (c)(v) delete “proposed distributing co-operative,” and insert:

proposed distributing co-operative, or a proposed non-distributing co-operative that is the subject of a direction under section 16(2B) —

- (c) delete paragraph (c)(viii) and insert:

- (viii) a statement setting out the connection that the proposed co-operative would have to this State; and
- (ix) a statement of the address of the co-operative’s registered office or proposed registered office; and
- (x) any other particulars that the Registrar may require.

- (2) Delete section 23(2).

18. Section 24 amended

In section 24(2):

- (a) in paragraph (c) delete “co-operative.” and insert:

co-operative;

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(b) after paragraph (c) insert:

(d) the proposed co-operative must have a sufficient connection with this State.

19. Section 28 amended

(1) After section 28(2) insert:

(3A) An alteration of the rules for the conversion of a non-distributing co-operative to a distributing co-operative does not have effect without the prior approval of the Registrar under section 103.

(2) After section 28(3) insert:

(4) The Registrar may, by order published in the *Gazette*, exempt a co-operative or class of co-operatives from the requirements of subsection (3).

(5) An exemption may be granted unconditionally or subject to conditions.

20. Section 33 amended

At the end of section 33(1) insert:

Penalty for this subsection: a fine of \$6 000.

21. Section 65 amended

In section 65(3)(b) delete “prescribed by the regulations, the prescribed” and insert:

approved by the Registrar, the approved

22. Section 68 amended

(1) In section 68(1):

- (a) delete “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 —” and insert:

each person intending or applying to become a member of the co-operative and eligible to do so —

- (b) delete paragraph (c) and insert:

- (c) a copy of the most recent financial information reported to members of the co-operative under Part 10A.

(2) After section 68(1) insert:

- (2A) The board of a co-operative may comply with subsection (1) in relation to a person by giving the person a notice stating any or all of the following —
- (a) that the person may request to inspect the documents referred to in subsection (1) at an office of the co-operative nominated by the person;

- (b) that the person may request to be sent an electronic copy of the documents referred to in subsection (1) by an electronic means nominated by the person;
- (c) that the documents referred to in subsection (1) are available on a website and specifying the direct address on the website where the documents may be accessed.

(3) In section 68(2) delete “(1),” and insert:

(2A)(a) or (b),

23. Section 69A inserted

After section 68 insert:

69A. False copies of documents

- (1) A person who, in purported compliance with section 68 —
 - (a) gives a person intending or applying to become a member of a co-operative a document as a copy of —
 - (i) a special resolution of the co-operative; or
 - (ii) the most recent financial information reported to members of the co-operative under Part 10A;
- and
- (b) knows, or ought to know that, in a material respect, it is not a true copy of the resolution or information; and

- (c) does not indicate to that person that it is not a true copy,

is guilty of an offence.

Penalty for this subsection: a fine of \$1 000.

- (2) A person who, in purported compliance with section 68 —
 - (a) makes available for inspection by a person intending or applying to become a member of a co-operative a document as a copy of —
 - (i) a special resolution of the co-operative; or
 - (ii) the most recent financial information reported to members of the co-operative under Part 10A;
 - and
 - (b) knows, or ought to know that, in a material respect, it is not a true copy of the resolution or information; and
 - (c) does not indicate to that person that it is not a true copy,

is guilty of an offence.

Penalty for this subsection: a fine of \$1 000.

24. Section 75 amended

In section 75 delete “sections 76 and 159,” and insert:

sections 76, 158(2) and 159,

25. Section 76 amended

In section 76(1) delete “section 159,” and insert:

sections 158(2) and 159,

26. Section 84 amended

In section 84:

(a) in paragraph (k) delete “costs.” and insert:

costs;

(b) after paragraph (k) insert:

(l) an order making alterations to the rules of the co-operative.

27. Section 86 amended

In section 86 delete “member.” and insert:

member or unfairly prejudice the members as a whole.

28. Part 4 Division 6A inserted

After Part 4 Division 5 insert:

Division 6A — Inspection of books

90A. Order for inspection of books of co-operative

(1) On application by a member of a co-operative, the Supreme Court may make an order —

- (a) authorising the applicant to inspect books of the co-operative; or
 - (b) authorising another person (whether a member or not) to inspect books of the co-operative on the applicant's behalf.
- (2) A person who —
 - (a) is granted leave under section 91; or
 - (b) applies for leave under that section; or
 - (c) is eligible to apply for leave under that section,may apply to the Supreme Court for an order under subsection (3).
- (3) On application, the Supreme Court may make an order authorising —
 - (a) the applicant to inspect books of the co-operative; or
 - (b) another person to inspect books of the co-operative on the applicant's behalf.
- (4) The Supreme Court may make the order only if it is satisfied that —
 - (a) the applicant is acting in good faith; and
 - (b) the inspection is to be made for a purpose connected with —
 - (i) applying for leave under section 91; or
 - (ii) bringing or intervening in proceedings with leave under that section.
- (5) A person authorised to inspect books under this section may make copies of the books unless the Supreme Court orders otherwise.

90B. Ancillary orders

If the Supreme Court makes an order under section 90A, the court may make any other orders it considers appropriate, including either or both of the following —

- (a) an order limiting the use that a person who inspects books may make of information obtained during the inspection;
- (b) an order limiting the right of a person who inspects books to make copies in accordance with section 90A(5).

90C. Disclosure of information acquired in inspection

- (1) A person who inspects books on behalf of an applicant under section 90A must not disclose information obtained during the inspection.

Penalty for this subsection: a fine of \$500.

- (2) Subsection (1) does not apply to the extent that the disclosure is to —
 - (a) the Registrar; or
 - (b) the applicant.
- (3) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsection (1) that any event occurred by accident.

90D. Co-operative may allow member to inspect books

- (1) The board of a co-operative, or the co-operative by resolution passed at a general meeting, may authorise a member to inspect books of the co-operative.
- (2) Subsection (1) does not apply to —
 - (a) minutes of board meetings; or

- (b) minutes of meetings of committees to which the board's functions have been delegated under section 204(1).

29. Section 98 amended

Delete section 98(4) and insert:

- (4) The rules may adopt by reference all or any of the provisions of the model rules prescribed under section 101 as in force at a particular time.

30. Section 103 amended

- (1) Before section 103(1) insert:

- (1A) This section applies to —

- (a) an alteration of rules referred to in subsection (1B); and
- (b) an alteration of rules referred to in section 28(3A) relating to the conversion of a non-distributing co-operative to a distributing co-operative.

- (1B) The Registrar may, by order published in the *Gazette*, specify for the purposes of this section classes of alterations that must not be made to the rules of a co-operative without the prior approval of the Registrar and, without limitation, may do so by reference to classes or subclasses of matters referred to in Schedule 1.

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- (2) In section 103(1) after “rules of a co-operative” insert:
- to which this section applies
- (3) In section 103(5):
- (a) in paragraph (c) delete “alteration.” and insert:
- alteration; or
- (b) after paragraph (c) insert:
- (d) require the co-operative to give the Registrar any additional information the Registrar reasonably requires, and then act under paragraph (a), (b) or (c).
- (4) After section 103(7) insert:
- (8) If the Registrar approves a different alteration to that submitted, or refuses to approve a proposed alteration, the Registrar must give the co-operative written notice of the reasons for doing so.

Note: The heading to amended section 103 is to read:

Approval of certain alterations of rules

31. Section 126 amended

- (1) In section 126(1) delete “Court may” and insert:

Court may, on application by the member or former member,

- (2) After section 126(1) insert:
- (2A) An application for an order can only be made within 6 months after —
- (a) notice of the board’s intention to declare the membership to be cancelled is given to the member under section 125(1); or
 - (b) if notice was not required as referred to in section 125(2) — the cancellation takes effect.

32. Section 131 amended

In section 131(2) delete “the extent they are not inconsistent with the rules of each particular distributing co-operative.” and insert:

a distributing co-operative only to the extent that they are not inconsistent with rules of the co-operative that were in effect immediately before the commencement of the *Co-operatives Amendment Act 2016* section 32.

33. Section 132 amended

- (1) In section 132(1)(a) delete “289(a),” and insert:

289(1)(a),

- (2) In section 132(2)(a) delete “289(a)” and insert:

289(1)(a)

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34. Section 133 amended

Delete section 133(1)(a).

35. Part 7 Division 2 heading replaced

Delete the heading to Part 7 Division 2 and insert:

**Division 2 — Disclosure requirements for distributing
co-operatives**

36. Sections 137A and 137B inserted

At the beginning of Part 7 Division 2 insert:

137A. Registration of current disclosure statement

- (1) A distributing co-operative must take all reasonable steps to ensure that it has a current disclosure statement in accordance with this section registered with the Registrar.

Penalty for this subsection: a fine of \$1 000.

- (2) The disclosure statement must contain the information necessary to ensure prospective members are adequately informed of the nature and extent of a person's financial involvement or liability as a member of the co-operative including so far as applicable —
- (a) the active membership provisions of the co-operative; and
 - (b) the rights and liabilities attaching to shares in the co-operative; and
 - (c) any other information that the Registrar directs to be included.

-
- (3) A disclosure statement approved by the Registrar under section 16 is taken to be registered with the Registrar for the purposes of this section until it stops being current under subsection (4).
 - (4) A disclosure statement stops being current when —
 - (a) a change occurs in the rights or liabilities attaching to any class of share in the co-operative; or
 - (b) a significant change occurs in the financial position or prospects of the co-operative.
 - (5) The co-operative must lodge a new disclosure statement with the Registrar for registration when the currently registered disclosure statement stops being current, and must do so within 14 days (or a longer period approved by the Registrar) after it stops being current.

Penalty for this subsection: a fine of \$1 000.
 - (6) A disclosure statement lodged under subsection (5) is taken to be registered with the Registrar.

137B. Restrictions on advertising and publicity: shares

- (1) A person must not —
 - (a) advertise; or
 - (b) publish a statement that directly or indirectly refers to,

an offer, or intended offer, of shares in a distributing co-operative unless a current disclosure statement relating to the shares is registered with the Registrar under section 137A.

Penalty for this subsection: a fine of \$1 000.
- (2) Subsection (1) applies in relation to shares in a distributing co-operative only if the shares are offered,

or intended to be offered, to persons who are not shareholders in the co-operative.

- (3) A person does not contravene subsection (1) by publishing an advertisement or statement if they publish it in the ordinary course of business of —
 - (a) publishing a newspaper or a magazine; or
 - (b) broadcasting by radio or television,and the person did not know and had no reason to suspect that its publication would amount to a contravention of that subsection.
- (4) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsection (1) that any event occurred by accident.

37. Sections 137 and 138 replaced

Delete sections 137 and 138 and insert:

137. Disclosure to intending shareholders in distributing co-operative

- (1) The board of a distributing co-operative must give a person who intends to acquire shares in the co-operative and is not already a shareholder in the co-operative —
 - (a) a current disclosure statement; and
 - (b) any other information the Registrar directs.
- (2) The disclosure statement and any other information required under subsection (1) and Part 4 must be given before the person becomes bound to acquire the shares.

- (3) The board of a co-operative may comply with subsection (1) in relation to a person by giving the person a notice stating any or all of the following —
- (a) that the person may request to inspect the statement and information referred to in subsection (1) at an office of the co-operative nominated by the person;
 - (b) that the person may request to be sent an electronic copy of the statement and information referred to in subsection (1) by an electronic means nominated by the person;
 - (c) that the statement and information referred to in subsection (1) are available on a website and specifying the direct address on the website where the documents may be accessed.
- (4) If a person who has received notice under this section makes a request referred to in subsection (3)(a) or (b), the co-operative must comply with that request.

38. Section 139 amended

- (1) Delete section 139(1) and insert:
- (1) The Registrar may, by order published in the *Gazette*, exempt a co-operative or a class of co-operatives from any or all of the provisions of this Division.
- (2) After section 139(2) insert:
- (3) An exemption may be granted unconditionally or subject to conditions.

39. Part 7 Division 3A inserted

After Part 7 Division 2 insert:

Division 3A — Compensation for defective disclosure

140A. Contravention leading to right to recover loss or damage

- (1) A co-operative contravenes this subsection if —
 - (a) a disclosure statement is given to a person under section 137; and
 - (b) there is —
 - (i) a misleading or deceptive statement in the disclosure statement or in any application form or document that accompanies the disclosure statement; or
 - (ii) an omission from the disclosure statement of material or information that is required to be contained in the statement by or under this Act;and
 - (c) the misleading or deceptive statement or the omission is materially adverse from the point of view of the person to whom it is given.
- (2) A co-operative contravenes this subsection if —
 - (a) a disclosure statement is given to a person under section 137; and
 - (b) the disclosure statement is not current (as referred to in section 137A(4)).

140B. Right to recover for loss or damage resulting from contravention

- (1) A person who suffers loss or damage because of a contravention of section 140A(1) or (2) in relation to a co-operative may recover the amount of the loss or damage from a person referred to in a paragraph of subsection (2) if the loss or damage is one that the paragraph makes the person liable for, even if the person did not commit, and was not involved in, the contravention.
- (2) For the purposes of subsection (1) —
 - (a) the co-operative is liable for loss or damage caused by any contravention of section 140A(1) or (2) in relation to the disclosure statement; and
 - (b) each director of the co-operative is liable for loss or damage caused by any contravention of section 140A(1) or (2) in relation to the disclosure statement; and
 - (c) a person named in the disclosure statement with their consent as having made a statement (see section 487) —
 - (i) that is included in the disclosure statement; or
 - (ii) on which a statement in the disclosure statement is based,is liable for loss or damage caused by the inclusion of the statement in the disclosure statement; and
 - (d) a person who is involved in the contravention of section 140A(1) or (2) is liable for loss or damage caused by that contravention.

- (3) Any action under subsection (1) may begin at any time within 6 years after the day on which the cause of the action arose.
- (4) This Division does not affect any liability that a person has under any other written law.

140C. Due diligence defence

- (1) A person is not liable under this Division in relation to a contravention of section 140A(1) because of a misleading or deceptive statement if the person proves they —
 - (a) made all inquiries (if any) that were reasonable in the circumstances; and
 - (b) after doing so, believed on reasonable grounds that the statement was not misleading or deceptive.
- (2) A person is not liable under this Division in relation to a contravention of section 140A(1) because of an omission from a disclosure statement in relation to a particular matter or particular information if the person proves they —
 - (a) made all inquiries (if any) that were reasonable in the circumstances; and
 - (b) after doing so, believed on reasonable grounds that there was no omission from the statement in relation to that matter or information.
- (3) A person is not liable under this Division in relation to a contravention of section 140A(2) because a disclosure statement is not current if the person proves they —
 - (a) made all inquiries (if any) that were reasonable in the circumstances; and

- (b) after doing so, believed on reasonable grounds that the statement was current.

140D. General defences

- (1) A person is not liable under this Division in relation to a contravention of section 140A(1) if the person proves that they placed reasonable reliance on information given to them by —
 - (a) if the person is a body — someone other than a director, employee or agent of the body; or
 - (b) if the person is an individual — someone other than an employee or agent of the individual.
- (2) For the purposes of subsection (1), a person is not the agent of a body or individual merely because they perform a particular professional or advisory function for the body or individual.
- (3) A person is not liable under this Division in relation to a contravention of section 140A(2) if the person proves that they were not aware of the circumstance or event that caused the disclosure statement to cease to be current.

40. Section 141 deleted

Delete section 141.

41. Section 146 amended

- (1) In section 146(1) delete “the co-operative.” and insert:

the co-operative passed by a special postal ballot.

(2) Delete section 146(7) and insert:

- (7) The requirements in respect of a proposal to take up additional shares under subsection (3) do not apply to the issue of bonus shares under section 144(4)(a), 147 or 271(2).

42. Part 7 Division 4A inserted

After Part 7 Division 3 insert:

Division 4A — Provisions applying to particular share subscriptions

150A. Term used: disclosure statement

In this Division —

disclosure statement means a disclosure statement, of any type, under this Act.

150B. Application of this Division

This Division applies in relation to shares in a co-operative only if the shares are offered to persons who are not shareholders in the co-operative.

150C. Application money to be held on trust

- (1) If a person offers shares for issue or sale under a disclosure statement, the person must hold —
- (a) all application money received from people applying for shares under the disclosure statement; and

- (b) all other money paid by them on account of the shares before they are issued or transferred,

in trust under this section for the applicants until the shares are issued or transferred or the money is returned to the applicants.

Penalty for this subsection: a fine of \$2 500, or imprisonment for 6 months, or both.

- (2) If the application money needs to be returned to an applicant, the person must return the money as soon as practicable.

Penalty for this subsection: a fine of \$2 500, or imprisonment for 6 months, or both.

- (3) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsections (1) and (2) that any event occurred by accident.

150D. Minimum subscription condition must be fulfilled before issue or transfer

- (1) If a disclosure statement for an offer of shares states that the shares will not be issued or transferred unless —

- (a) applications for a minimum number of the shares are received from members, or persons eligible to become members, of the co-operative; or
(b) a minimum amount is raised,

the person making the offer must not issue or transfer any of the shares until that condition is satisfied.

- (2) For the purpose of working out whether a condition referred to in subsection (1) has been satisfied, a person who has agreed to take securities as underwriter is taken to have applied for those shares.

150E. Repayment of money if disclosure statement condition not met

- (1) If —
- (a) a person offers shares under a disclosure statement; and
 - (b) the disclosure statement states (expressly or impliedly) that it is a condition that the shares will not be issued or transferred unless —
 - (i) applications for a minimum number of the shares are received from members, or persons eligible to become members, of the co-operative; or
 - (ii) a minimum amount is raised;
 - and
 - (c) that condition is not satisfied within 4 months after the date of the disclosure statement,

the person must repay the money received by the person in respect of any applications for the shares made under the disclosure statement that have not resulted in an issue or transfer of the shares.

Penalty for this subsection: a fine of \$2 500, or imprisonment for 6 months, or both.

- (2) For the purpose of working out whether a condition referred to in subsection (1) has been satisfied, a person who has agreed to take shares as underwriter is taken to have applied for those shares.
- (3) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsection (1) that any event occurred by accident.

43. Part 7 Division 4 heading replaced

Delete the heading to Part 7 Division 4 and insert:

**Division 4 — Disclosure and registration of interests
in shares**

44. Section 151 amended

- (1) In section 151(1) delete the Penalty and insert:

Penalty for this subsection: a fine of \$1 000.

- (2) After section 151(2) insert:

- (3A) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsection (1) that any event occurred by accident.

- (3) After section 151(5) insert:

- (6A) A person does not have to comply with a direction if the person proves that the giving of the direction is vexatious.

45. Section 163 amended

- (1) In section 163(4)(a) delete “records” and insert:

books

(2) After section 163(4) insert:

- (5A) A co-operative must not purchase shares or repay amounts paid up on shares if —
- (a) the co-operative is likely to become insolvent because of the repurchase of the shares or because of the repayment of amounts paid up on the shares; or
 - (b) the co-operative is insolvent.

46. Section 169 amended

In section 169(1) delete the Penalty and insert:

Penalty for this subsection: a fine of \$6 000, or imprisonment for 6 months, or both.

47. Section 171 amended

In section 171(1) delete “A member” and insert:

Subject to subsection (3) and section 167(5), a member

48. Section 180 amended

After section 180(2) insert:

- (3) Subsection (2) and sections 181 and 182 do not apply to a special resolution altering the rules of a co-operative.

49. Section 181 amended

- (1) At the end of section 181(1) insert:

Penalty for this subsection: a fine of \$2 000.

- (2) Delete section 181(4) and insert:

- (4) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsection (1) that any event occurred by accident.

50. Section 185 amended

Delete section 185(1) and insert:

- (1) A postal ballot may be held as provided by the rules of the co-operative and must be conducted in the way prescribed by the regulations.

51. Section 187 amended

In section 187:

- (a) in paragraph (h) delete “winding-up.” and insert:

winding-up;

- (b) after paragraph (h) insert:

- (i) a requirement for members to take up or subscribe for additional shares;
- (j) a requirement for members to lend money to the co-operative.

52. Section 190 amended

After section 190(3) insert:

- (4) An annual general meeting is to be held in addition to any other meetings held by a co-operative in a year.
- (5) A co-operative commits an offence if it does not hold an annual general meeting as required by this section.
Penalty for this subsection: a fine of \$1 000.
- (6) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsection (5) that any event occurred by accident.

53. Section 194 amended

In section 194(3) delete “poll.” and insert:

poll, unless the rules of the co-operative restrict the number of votes that a proxy may exercise.

54. Section 196 amended

- (1) In section 196(1) delete “records within one month after the meeting and confirmed at, and signed by the chairman of, the next meeting.” and insert:

books within one month after the meeting.

- (2) After section 196(1) insert:

- (2A) A co-operative must ensure that minutes of a meeting are signed within a reasonable time after the meeting by one of the following —
 - (a) the chairman of the meeting;

- (b) the chairman of the next meeting.

55. Sections 197A to 197D inserted

At the end of Part 8 Division 5 insert:

197A. Auditor entitled to notice and other communications

- (1) A co-operative must give its auditor —
 - (a) notice of a general meeting in the same way that a member of the co-operative is entitled to receive notice; and
 - (b) any other communications relating to the general meeting that a member of the co-operative is entitled to receive.

Penalty for this subsection: a fine of \$500.

- (2) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsection (1) that any event occurred by accident.

197B. Auditor's right to be heard at general meetings

- (1) A co-operative's auditor is entitled to attend any general meeting of the co-operative.
- (2) The auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- (3) The auditor is entitled to be heard even if —
 - (a) the auditor retires at the meeting; or
 - (b) the meeting passes a resolution to remove the auditor from office.

- (4) The auditor may authorise a person in writing as the auditor's representative for the purpose of attending and speaking at any general meeting.

197C. Questions and comments by members on co-operative management at annual general meeting

- (1) The chairman of an annual general meeting of a co-operative must allow a reasonable opportunity for the members as a whole at the meeting to ask questions about or make comments on the management of the co-operative.

Penalty for this subsection: a fine of \$500.

- (2) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsection (1) that any event occurred by accident.

197D. Questions by members of auditors at annual general meeting

- (1) If a co-operative's auditor or their representative is at the meeting, the chairman of an annual general meeting of the co-operative must —
 - (a) allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor or the auditor's representative questions relevant to —
 - (i) the conduct of the audit; and
 - (ii) the preparation and content of the auditor's report; and
 - (iii) the accounting policies adopted by the co-operative in relation to the preparation of the financial statements; and

(iv) the independence of the auditor in relation to the conduct of the audit;

and

(b) allow a reasonable opportunity for the auditor or their representative to answer written questions submitted to the auditor.

Penalty for this subsection: a fine of \$500.

(2) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsection (1) that any event occurred by accident.

(3) If —

(a) the co-operative's auditor or their representative is at the meeting; and

(b) the auditor has prepared a written answer to a written question submitted to the auditor,

the chairman of the annual general meeting may permit the auditor or their representative to table the written answer to the written question.

(4) The co-operative must make the written answer tabled under subsection (3) reasonably available to members as soon as practicable after the annual general meeting.

Penalty for this subsection: a fine of \$500.

56. Section 197 amended

After section 197(1) insert:

(2A) The board must consist of at least 3 directors (not counting alternates of directors) and at least 2 of the directors must be ordinarily resident in Australia.

57. Section 198 amended

Delete section 198(3) and insert:

- (3) If authorised by the rules of the co-operative, a board of directors may —
- (a) appoint a person to fill a casual vacancy in the office of a director until the next annual general meeting; or
 - (b) appoint an employee of the co-operative, or a person qualified as provided by the rules, to be a director of the co-operative until the next annual general meeting.

58. Section 200 deleted

Delete section 200.

59. Section 205 amended

In section 205(2):

- (a) in paragraph (a) delete “disqualified from being a director as provided by section 200;” and insert:

a disqualified person under section 206B;
- (b) in paragraph (d) delete “by special resolution of the co-operative;” and insert:

under section 206A;
- (c) in paragraph (f) delete “Division 5.” and insert:

Division 4.

60. Section 206A inserted

At the end of Part 9 Division 1 insert:

206A. Removal from office by resolution

- (1) A co-operative may by ordinary resolution remove a director from office despite anything in —
 - (a) the rules of the co-operative; or
 - (b) an agreement between the co-operative and the director; or
 - (c) an agreement between any or all members of the co-operative and the director.
- (2) Notice of intention to move the resolution must be given to the co-operative at least 2 months before the meeting is to be held.
- (3) However, subject to subsection (4), if the co-operative calls a meeting after the notice of intention is given under subsection (2), the meeting may pass the resolution even though the meeting is held less than 2 months after the notice of intention is given.
- (4) At least 21 days' notice must be given of a meeting of the members of the co-operative at which a resolution will be moved —
 - (a) to remove a director from office; or
 - (b) to appoint a director in place of a director removed from office.
- (5) The co-operative must give the director a copy of the notice as soon as practicable after it is received.
Penalty for this subsection: a fine of \$500.

- (6) The director is entitled to put his or her case to members by —
 - (a) giving the co-operative a written statement for circulation to members (see subsections (7) and (8)); and
 - (b) speaking to the motion at the meeting.
- (7) The co-operative must circulate the written statement to members by —
 - (a) sending a copy to everyone to whom notice of the meeting is sent if there is time to do so; or
 - (b) if there is not time to comply with paragraph (a) — having the statement distributed to members attending the meeting and read out at the meeting before the resolution is voted on.

Penalty for this subsection: a fine of \$500.

- (8) The director's statement does not have to be circulated to members if it is more than 1 000 words long or defamatory.
- (9) If a person is appointed to replace a director removed under this section, the time at which —
 - (a) the replacement director; or
 - (b) any other director,is to retire is to be worked out as if the replacement director had become director on the day on which the replaced director was last appointed a director.
- (10) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsections (5) and (7) that any event occurred by accident.

61. Part 9 Division 2A inserted

After Part 9 Division 1 insert:

Division 2A — Disqualification from managing co-operatives**206B. Offence for disqualified person to manage co-operative**

- (1) A person is a *disqualified person* in relation to a co-operative if the person —
 - (a) is disqualified from managing corporations under the Corporations Act Part 2D.6; or
 - (b) is disqualified from managing co-operatives under this Division; or
 - (c) is disqualified from managing co-operatives under a corresponding co-operatives law; or
 - (d) is the auditor of the co-operative or a business partner, employee or employer of the auditor.
- (2) A disqualified person in relation to a co-operative must not —
 - (a) act as a director of the co-operative; or
 - (b) directly or indirectly take part in, or be concerned with, the management of the co-operative.

Penalty for this subsection: a fine of \$24 000, or imprisonment for 2 years, or both.
- (3) It is a defence to an offence arising under this section if the person had permission or leave —
 - (a) in the case of an offence arising in relation to subsection (1)(a) — to manage corporations granted under the Corporations Act

section 206G and as referred to in section 206G(1)(a) of that Act; or

- (b) in any case — to manage co-operatives given or granted under either section 206I or 206J,

and their conduct was within the terms of that permission or leave.

206C. Automatic disqualification for offences

- (1) A person who has been convicted of an offence under this Act or a corresponding co-operatives law is disqualified from managing co-operatives during the period of 5 years after the conviction or, if sentenced to imprisonment, after his or her release from prison.
- (2) A person who has, whether before or after the commencement of the *Co-operatives Amendment Act 2016* section 61, been convicted of an offence under a previous law of this or any other jurisdiction relating to co-operatives is disqualified from managing co-operatives during the period of 5 years after the conviction or, if sentenced to imprisonment, after his or her release from prison.
- (3) In proceedings for an offence arising under this Division in relation to this section, a certificate by an authority prescribed by the regulations stating that a person has been convicted of an offence under a stated law on a stated date is evidence the person was convicted of that offence on that date.
- (4) In proceedings for an offence arising under this Division in relation to this section, a certificate by an authority prescribed by the regulations stating that a person was released from prison on a stated date is evidence the person was released from prison on that date.

206D. Extension of period of automatic disqualification

- (1) This section applies if a person is disqualified from managing co-operatives on being convicted of an offence under the Corporations Act, this Act, a corresponding co-operatives law, or a previous law of this or any other jurisdiction relating to co-operatives.
- (2) On application by the Registrar, the Supreme Court may extend the period of disqualification by up to an additional 15 years.
- (3) The Registrar must apply —
 - (a) before the period of disqualification begins; or
 - (b) before the end of the first year of the disqualification.
- (4) The Registrar may apply only once in relation to the disqualification.
- (5) In determining whether an extension is justified (and if so, for how long), the Supreme Court may have regard to any matters that the court considers appropriate.

206E. Court's power of disqualification: contravention of civil penalty provision

- (1) On application by the Registrar, the Supreme Court may disqualify a person from managing co-operatives for a period that the court considers appropriate if —
 - (a) a declaration is made under section 482B that the person has contravened a civil penalty provision; and
 - (b) the court is satisfied that the disqualification is justified.

- (2) In determining whether the disqualification is justified, the court may have regard to —
 - (a) the person's conduct in relation to the management, business or property of any corporation; and
 - (b) any other matters that the court considers appropriate.

206F. Court's power of disqualification: insolvency and non-payment of debts

- (1) On application by the Registrar, the Supreme Court may disqualify a person from managing co-operatives for up to 20 years if —
 - (a) within the last 7 years, the person has been an officer of 2 or more entities (being co-operatives or other corporations) when they have failed; and
 - (b) the court is satisfied that —
 - (i) the manner in which the entity was managed was wholly or partly responsible for the entity failing; and
 - (ii) the disqualification is justified.
- (2) For the purposes of subsection (1), an entity fails if —
 - (a) a court orders the entity to be wound up because the court is satisfied that it is insolvent; or
 - (b) the entity enters into voluntary liquidation and creditors are not fully paid or are unlikely to be fully paid; or
 - (c) the entity executes a deed of arrangement and creditors are not fully paid or are unlikely to be fully paid; or

- (d) the entity ceases to carry on business and creditors are not fully paid or are unlikely to be fully paid; or
 - (e) a levy of execution against the entity is not satisfied; or
 - (f) a receiver, receiver and manager, or provisional liquidator is appointed in relation to the entity; or
 - (g) the entity enters into a compromise or arrangement with its creditors; or
 - (h) the entity is wound up and a liquidator lodges a report about the entity's inability to pay its debts.
- (3) In determining whether the disqualification is justified, the Supreme Court may have regard to —
- (a) the person's conduct in relation to the management, business or property of any entity; and
 - (b) any other matters that the court considers appropriate.

206G. Court's power of disqualification: repeated contraventions of law

- (1) In this section —
co-operatives legislation means this Act or a corresponding co-operatives law.
- (2) On application by the Registrar, the Supreme Court may disqualify a person from managing co-operatives for the period that the court considers appropriate if —
- (a) the person —
 - (i) has at least twice been an officer of a co-operative that has contravened co-operatives legislation while they

were an officer of the co-operative and each time the person has failed to take reasonable steps to prevent the contravention; or

- (ii) has at least twice contravened co-operatives legislation while they were an officer of a co-operative; or
- (iii) has been an officer of a body corporate and has done something that would have contravened section 207 or 208 if the body corporate had been a co-operative;

and

- (b) the court is satisfied that the disqualification is justified.
- (3) In determining whether the disqualification is justified, the Supreme Court may have regard to —
- (a) the person's conduct in relation to the management, business or property of any entity; and
 - (b) any other matters that the court considers appropriate.

206H. Registrar's power of disqualification

- (1) The Registrar may disqualify a person from managing co-operatives for up to 5 years if —
- (a) within 7 years immediately before the Registrar gives a notice under paragraph (b)(i) —
 - (i) the person has been an officer of 2 or more co-operatives; and
 - (ii) while the person was an officer, or within 12 months after the person ceased to be an officer of those co-operatives, each of the co-operatives was wound up and a liquidator lodged a

report about the co-operative's inability to pay its debts;

and

- (b) the Registrar has given the person —
 - (i) a notice in the form approved by the Registrar requiring them to demonstrate why they should not be disqualified; and
 - (ii) an opportunity to be heard on the question;

and

- (c) the Registrar is satisfied that the disqualification is justified.

- (2) If the Registrar disqualifies a person from managing co-operatives under this section, the Registrar must serve a notice on the person advising them of the disqualification.
- (3) The notice must be in the form approved by the Registrar.
- (4) The disqualification takes effect from the time when a notice referred to in subsection (2) is served on the person.

206L. Registrar's power to give permission

- (1) The Registrar may give a person whom the Registrar has disqualified from managing co-operatives under this Division written permission to manage a particular co-operative or co-operatives.
- (2) The permission may be expressed to be subject to conditions and limitations determined by the Registrar.
- (3) A person must comply with any condition or limitation subject to which permission is given.

Penalty for this subsection: a fine of \$24 000, or imprisonment for 2 years, or both.

206J. Court's power to grant leave

- (1) A person who is disqualified from managing co-operatives may apply to the Supreme Court for leave to manage —
 - (a) co-operatives; or
 - (b) a particular class of co-operatives; or
 - (c) a particular co-operative,except where the person was disqualified by the Registrar under section 206H.
- (2) The person must lodge a notice with the Registrar at least 21 days before commencing the proceedings.
- (3) The notice must be in the form approved by the Registrar.
- (4) The order granting leave may be expressed to be subject to conditions or limitations determined by the Supreme Court.
- (5) The person must lodge with the Registrar a copy of any order granting leave within 14 days after the order is made.
- (6) On application by the Registrar, the Supreme Court may revoke the leave.
- (7) An order revoking leave under subsection (6) does not take effect until it is served on the person.
- (8) A person must comply with any condition or limitation subject to which leave is granted.
Penalty for this subsection: a fine of \$24 000, or imprisonment for 2 years, or both.
- (9) This section does not apply to a person who is disqualified from managing co-operatives because of section 206B(1)(d).

62. Section 207A inserted

At the end of Part 9 Division 2 insert:

207A. Responsibility of secretary

The secretary of a co-operative must take all reasonable steps to ensure that the co-operative does not contravene a provision of this Act that is prescribed by the regulations for the purposes of this section.

Penalty: a fine of \$500.

63. Sections 207 to 212 replaced

Delete sections 207 to 212 and insert:

207. Care and diligence: civil obligations

(1) In this section —

business judgment means any decision to take or not take action in respect of a matter relevant to the business operations of the co-operative.

(2) A director or other officer of a co-operative must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they —

- (a) were a director or officer of a co-operative in the co-operative's circumstances; and
- (b) occupied the office held by, and had the same responsibilities within the co-operative as, the director or officer.

Note for this subsection: This is a civil penalty provision (see section 482A).

(3) A director or other officer of a co-operative who makes a business judgment is taken to meet the requirements

of subsection (2), and their equivalent duties at common law and in equity in respect of the judgment, if they —

- (a) make the judgment in good faith for a proper purpose (taking into account the co-operative principles where relevant and other relevant matters); and
 - (b) do not have a material personal interest in the subject matter of the judgment; and
 - (c) inform themselves about the subject matter of the judgment to the extent they reasonably believe to be appropriate; and
 - (d) rationally believe that the judgment is in the best interests of the co-operative.
- (4) The director's or 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.

208. Good faith: civil obligations

- (1) A director or other officer of a co-operative must exercise their powers and discharge their duties —
- (a) in good faith in the best interests of the co-operative; and
 - (b) for a proper purpose.

Note for this subsection: This is a civil penalty provision (see section 482A).

- (2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note for this subsection: This is a civil penalty provision (see section 482A).

209. Use of position: civil obligations

- (1) A director, secretary, other officer or employee of a co-operative must not improperly use their position to —
 - (a) gain an advantage for themselves or someone else; or
 - (b) cause detriment to the co-operative.

Note for this subsection: This is a civil penalty provision (see section 482A).

- (2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note for this subsection: This is a civil penalty provision (see section 482A).

210. Use of information: civil obligations

- (1) A person who obtains information because they are, or have been, a director or other officer or employee of a co-operative must not improperly use the information to —
 - (a) gain an advantage for themselves or someone else; or
 - (b) cause detriment to the co-operative.

Note for this subsection: This is a civil penalty provision (see section 482A).

- (2) The duty under subsection (1) continues after the person stops being a director or other officer or employee of the co-operative.
- (3) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note for this subsection: This is a civil penalty provision (see section 482A).

211. Good faith, use of position and use of information: criminal offences

- (1) A director or other officer of a co-operative commits an offence if they are reckless, or are intentionally

dishonest, and fail to exercise their powers and discharge their duties —

- (a) in good faith in the best interests of the co-operative; or
- (b) for a proper purpose.

Penalty for this subsection: a fine of \$200 000, or imprisonment for 5 years, or both.

- (2) A director, other officer or employee of a co-operative commits an offence if they use their position dishonestly —

- (a) with the intention of directly or indirectly gaining an advantage for themselves, or someone else, or causing detriment to the co-operative; or
- (b) recklessly as to whether the use may result in themselves or someone else directly or indirectly gaining an advantage, or in causing detriment to the co-operative.

Penalty for this subsection: a fine of \$200 000, or imprisonment for 5 years, or both.

- (3) A person who obtains information because they are, or have been, a director or other officer or employee of a co-operative commits an offence if they use the information dishonestly —

- (a) with the intention of directly or indirectly gaining an advantage for themselves, or someone else, or causing detriment to the co-operative; or
- (b) recklessly as to whether the use may result in themselves or someone else directly or indirectly gaining an advantage, or in causing detriment to the co-operative.

Penalty for this subsection: a fine of \$200 000, or imprisonment for 5 years, or both.

212. Other duties and liabilities not affected

- (1) Sections 207 to 211 —
 - (a) have effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person because of their office or employment in relation to a co-operative; and
 - (b) do not prevent the commencement of civil proceedings for a breach of duty or in respect of a liability referred to in paragraph (a).
- (2) This section does not apply to section 207(1), (3) and (4) to the extent to which they operate on the duties at common law and in equity that are equivalent to the requirements of section 207(2).

64. Section 213 amended

In section 213:

- (a) delete paragraphs (a) and (b);
- (b) in paragraph (c) delete “210(1)” and insert:

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- (c) in paragraph (d) delete “210(2)” and insert:

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65. Section 214 amended

In section 214:

- (a) delete “sections 344, 589 to 598 and 1307,” and insert:

Parts 5.8 and 5.8A,

(b) delete paragraphs (a) to (c) and insert:

- (a) section 589(2) and (3) are taken to be deleted;
- (b) a reference in section 592(1)(a) to 23 June 1993 is to be read as a reference to 1 September 2010;

66. Section 215 amended

In section 215 delete the Penalty and insert:

Penalty: a fine of \$24 000, or imprisonment for 2 years, or both.

67. Section 216 amended

In section 216(1) delete the Penalty and insert:

Penalty for this subsection: a fine of \$24 000, or imprisonment for 2 years, or both.

68. Section 217 amended

In section 217(5) delete the Penalty and insert:

Penalty for this subsection: a fine of \$24 000, or imprisonment for 2 years, or both.

69. Section 218 amended

In section 218 delete the Penalty and insert:

Penalty: a fine of \$24 000, or imprisonment for 2 years, or both.

70. Section 220 amended

- (1) In section 220(1) delete the Penalty and insert:

Penalty for this subsection: a fine of \$24 000, or imprisonment for 2 years, or both.

- (2) In section 220(5) delete the Penalty and insert:

Penalty for this subsection: a fine of \$24 000, or imprisonment for 2 years, or both.

71. Part 9 Division 6 deleted

Delete Part 9 Division 6.

72. Part 9 Division 7 heading replaced

Delete the heading to Part 9 Division 7 and insert:

Division 7 — Registers, books and returns

73. Section 230 amended

- (1) In section 230(1):

- (a) in paragraphs (b) and (c) delete “co-operative capital units” and insert:

CCUs

- (b) in paragraph (e) delete “co-operative capital units,” and insert:

CCUs,

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- (c) delete paragraph (i).
- (2) After section 230(2) insert:
 - (3) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsection (1) that any event occurred by accident.

74. Section 232 amended

- (1) In section 232(1):
 - (a) delete paragraph (d) and insert:
 - (d) a copy of the most recent annual return of the co-operative under section 244ZB;
 - (ea) a copy of the most recent financial information reported to members of the co-operative under Part 10A;
 - (b) in paragraph (f) delete “co-operative capital units” and insert:

CCUs
- (2) After section 232(7) insert:
 - (8) The rules of a co-operative may provide for the availability or non-availability for inspection by members of —
 - (a) minutes of board meetings; and
 - (b) minutes of meetings of committees to which the board’s functions have been delegated under section 204(1).

- (9) Minutes referred to in subsection (8) are not available for inspection by members otherwise than in accordance with rules referred to in that subsection.

75. Section 233 amended

- (1) In section 233(1)(c) delete “co-operative capital units” and insert:

CCUs

- (2) After section 233(4) insert:

- (5) The use or disclosure of information referred to in subsection (1)(a) or (b) in the circumstances referred to in subsection (1)(c), (d) or (e) is authorised by this Act.

76. Section 234 amended

- (1) In section 234(1) delete “or a subsidiary of the co-operative,”.
(2) At the end of section 234(1) insert:

Penalty for this subsection: a fine of \$2 000.

- (3) In section 234(2) delete the Penalty.
(4) After section 234(2) insert:

- (3) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsection (1) that any event occurred by accident.

77. Section 235 deleted

Delete section 235.

78. Section 236 amended

(1) In section 236 delete “A co-operative” and insert:

(1) A co-operative

(2) At the end of section 236 insert:

(2) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsection (1) that any event occurred by accident.

79. Section 237 amended

After section 237(2) insert:

(3) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsection (2) that any event occurred by accident.

80. Section 238 amended

Delete section 238(9) and insert:

(9) The regulations may exempt or provide for the exemption of specified entities or kinds of entities from subsection (7).

81. Section 240 replaced

Delete section 240 and insert:

240. Name to appear on business documents etc.

(1) In this section —

business document, of a co-operative, means a document that is issued, signed or endorsed by or on behalf of the co-operative and is —

- (a) a business letter, statement of account, invoice or order for goods or services; or
- (b) a bill of exchange, promissory note, cheque or other negotiable instrument; or
- (c) a receipt or letter of credit issued by the co-operative; or
- (d) a document belonging to a class prescribed by the regulations as a class of business document.

(2) A co-operative must ensure its name appears in legible characters —

- (a) on each seal of the co-operative; and
- (b) in all its business documents.

Penalty for this subsection: a fine of \$2 000.

(3) An officer of a co-operative or a person on its behalf must not —

- (a) use any seal of the co-operative; or
- (b) sign or authorise to be signed on behalf of the co-operative a business document of the co-operative,

in or on which the co-operative's name does not appear in legible characters.

Penalty for this subsection: a fine of \$2 000.

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- (4) A director of a co-operative must not knowingly authorise or permit a contravention of this section.
Penalty for this subsection: a fine of \$2 000.
- (5) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsection (2) that any event occurred by accident.

82. Section 241 amended

After section 241(7) insert:

- (8) A co-operative that is given a direction under subsection (7) must comply with the direction.
Penalty for this subsection: a fine of \$500.
- (9) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsection (8) that any event occurred by accident.

83. Section 242 amended

Delete section 242(2) and insert:

- (2) The regulations may exempt or provide for the exemption of specified entities or kinds of entities from subsection (1).

84. Section 243 amended

After section 243(3) insert:

- (4) The Registrar may, by order published in the *Gazette*, exempt a small co-operative, a class of small

co-operatives or all small co-operatives from subsection (2).

- (5) An exemption may be granted unconditionally or subject to conditions.
- (6) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsections (1), (2) and (3) that any event occurred by accident.

85. Part 10A inserted

After section 243 insert:

Part 10A — Financial reports and audit

Division 1 — Preliminary

244A. Terms used

- (1) In this Part —

accounting standard has the meaning given in section 244ZZB;

audit means —

- (a) an audit conducted for the purposes of this Act;
or
- (b) a review of a financial report conducted for the purposes of this Act;

auditing standard has the meaning given in section 244ZZB;

consolidated entity means a co-operative together with all the entities it is required by the accounting standards to include in consolidated financial statements;

directors' declaration has the meaning given in section 244K(4);

financial report means an annual financial report or a half-year financial report prepared by the co-operative under this Part (and see section 244K);

financial statements has the meaning given in section 244K(2);

notes to the financial statements has the meaning given in section 244K(3).

- (2) Terms used in this Part have the same meaning as they have in the Corporations Act and in particular in Chapter 2M of the Corporations Act.
- (3) Without limiting subsection (2), a reference in this Part to an entity that a co-operative controls is a reference to an entity that the co-operative controls within the meaning of the Corporations Act section 50AA.

244B. General modifications to applied provisions of the Corporations Act Chapter 2M

If a provision of this Part 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 a listed company is to be read as a reference to a co-operative;
- (b) a reference in the applied provisions to a small proprietary company is to be read as a reference to a small co-operative;
- (c) any other modifications, within the meaning of the *Corporations (Ancillary Provisions) Act 2001* Part 3, that are prescribed by the regulations.

Division 2 — Financial records**244C. Obligation to keep financial records**

- (1) A co-operative must keep written financial records that —
 - (a) correctly record and explain its transactions and financial position and performance; and
 - (b) would enable true and fair financial statements to be prepared and audited.

Penalty for this subsection: a fine of \$2 500.

- (2) The obligation to keep financial records of transactions extends to transactions undertaken as trustee.
- (3) The co-operative must retain the financial records for 7 years after the transactions covered by the records are completed.

Penalty for this subsection: a fine of \$2 500.

- (4) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsections (1) and (3) that any event occurred by accident.

244D. Language requirements

- (1) The financial records may be kept in any language.
- (2) A co-operative must ensure that an English translation of financial records not kept in English is made available within a reasonable time to a person who —
 - (a) is entitled to inspect the records; and
 - (b) asks for the English translation.

Penalty for this subsection: a fine of \$2 500.

- (3) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsection (2) that any event occurred by accident.

244E. Physical format

- (1) A co-operative must ensure that, if financial records are kept in electronic form, they are to be convertible into hard copy.

Penalty for this subsection: a fine of \$2 500.

- (2) If financial records are kept in electronic form, the co-operative must ensure that a hard copy is made available within a reasonable time to a person who is entitled to inspect the records.

Penalty for this subsection: a fine of \$2 500.

- (3) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsections (1) and (2) that any event occurred by accident.

244F. Place where records are kept

- (1) A co-operative may decide where to keep the financial records.

- (2) If financial records about particular matters are kept outside the State, the co-operative must ensure that sufficient written information about those matters is kept in the State to enable true and fair financial statements to be prepared.

Penalty for this subsection: a fine of \$2 500.

- (3) If financial records about particular matters are kept outside the State, the co-operative must give the Registrar written notice in the form approved by the Registrar of the place where the information is kept.

Penalty for this subsection: a fine of \$2 500.

- (4) The Registrar may direct a co-operative to produce specified financial records that are kept outside the State.

- (5) The co-operative must comply with a direction under subsection (4).
Penalty for this subsection: a fine of \$2 000.
- (6) A direction under subsection (4) must —
- (a) be in writing; and
 - (b) specify a place in the State where the records are to be produced (the place must be reasonable in the circumstances); and
 - (c) specify a day (at least 14 days after the day on which the direction is given) by which the records are to be produced.
- (7) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsections (2), (3) and (5) that any event occurred by accident.

244G. Director access

- (1) A director of a co-operative has a right of access to the financial records at all reasonable times.
- (2) On application by a director, the Supreme Court may authorise a person to inspect the financial records on the director's behalf.
- (3) A person authorised to inspect records may make copies of the records unless the Supreme Court orders otherwise.
- (4) The Supreme Court may make any other orders it considers appropriate, including either or both of the following —
 - (a) an order limiting the use that a person who inspects the records may make of information obtained during the inspection;

- (b) an order limiting the right of a person who inspects the records to make copies in accordance with subsection (3).

Division 3 — Annual financial reports and directors’ reports generally

244H. Who has to prepare annual financial reports and directors’ reports

- (1) A large co-operative must prepare a financial report and a directors’ report in accordance with this Part for each financial year.
- (2) A small co-operative must prepare a financial report and a directors’ report if and as directed under section 244I or 244J.
- (3) A small co-operative that is not the subject of a direction under either section 244I or 244J —
 - (a) is not required to prepare reports in accordance with this Part; and
 - (b) must comply with the requirements (if any) of the regulations regarding the preparation and provision of reports to members.

244I. Small co-operative: direction by members

- (1) Members with at least 5% of the votes in a small co-operative may give the co-operative a direction to —
 - (a) prepare a financial report or directors’ report or both for a financial year in accordance with all or specified requirements of this Part; and
 - (b) report to members in accordance with the direction.

- (2) The small co-operative must comply with the direction.
Penalty for this subsection: a fine of \$1 000.
- (3) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsection (2) that any event occurred by accident.
- (4) The direction must be —
 - (a) signed by all members giving the direction; and
 - (b) made no later than 12 months after the end of the financial year concerned.
- (5) The direction may specify all or any of the following —
 - (a) that the financial report does not have to comply with some or all of the accounting standards;
 - (b) that a directors' report or a part of that report need not be prepared in accordance with this Part;
 - (c) that the financial report is to be audited or reviewed.
- (6) If the direction specifies that the financial report is to be audited or reviewed, the direction may specify that the audit or review is to be conducted —
 - (a) in accordance with the Corporations Act Part 2M.3 Division 3 (as applying under section 244U); or
 - (b) in accordance with requirements prescribed by the regulations.
- (7) The direction must specify the date by which the co-operative must report to members.
- (8) The date must be a reasonable one in view of the nature of the direction.

- (9) Despite anything else in this Part, the date by which the small co-operative is to report to members is the date specified in the direction.

244J. Small co-operative: direction by Registrar

- (1) The Registrar may give a small co-operative a direction to comply with all or specified requirements of this Division and Divisions 4, 5, 7, 8, 9 and 10 for a financial year (including any requirement that is expressed to apply to a large co-operative).
- (2) The small co-operative must comply with the direction.
Penalty for this subsection: a fine of \$1 000.
- (3) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsection (2) that any event occurred by accident.
- (4) The direction may specify any or all of the matters referred to in section 244I(5) or (6).
- (5) The direction may be general or may specify the particular requirements that the co-operative is required to comply with.
- (6) The direction must specify the date by which the co-operative must report to members under section 244V or lodge documents with the Registrar under section 244ZC, as the case requires.
- (7) The date specified in a direction must be a reasonable one in view of the nature of the direction.
- (8) The direction must —
 - (a) be in writing; and
 - (b) specify the financial year concerned; and
 - (c) be made no later than 6 years after the end of that financial year.

- (9) Despite anything else in this Part, the date by which the small co-operative is to report to members or lodge documents with the Registrar is the date specified in the direction.

Division 4 — Annual financial reports

244K. Contents of annual financial report

- (1) The financial report for a financial year consists of —
- (a) the financial statements for the year; and
 - (b) the notes to the financial statements; and
 - (c) the directors' declaration about the statements and notes.
- (2) The financial statements for the year are —
- (a) the financial statements in relation to the entity that are required by the accounting standards; and
 - (b) if the accounting standards require financial statements in relation to a consolidated entity — the financial statements in relation to the consolidated entity required by the accounting standards.
- (3) The notes to the financial statements are —
- (a) disclosures required by the regulations; and
 - (b) notes required by the accounting standards; and
 - (c) any other information necessary to give a true and fair view (see section 244M).
- (4) The directors' declaration is a declaration by the directors —
- (a) whether, in the directors' opinion, there are reasonable grounds to believe that the

co-operative will be able to pay its debts as and when they become due and payable; and

- (b) whether, in the directors' opinion, the financial statements and notes are in accordance with this Act, including —
 - (i) section 244L; and
 - (ii) section 244M;and
- (c) if the co-operative has quoted securities — that the directors have been given the declarations required by the Corporations Act section 295A (as applying under section 244O).

- (5) The directors' declaration must —
 - (a) be made in accordance with a resolution of the directors; and
 - (b) specify the date on which the declaration is made; and
 - (c) be signed by a director.

244L. Compliance with accounting standards and regulations

- (1) The financial report for a financial year must comply with the accounting standards.
- (2) However, a small co-operative's financial report does not have to comply with particular accounting standards if —
 - (a) the report is prepared in response to a direction under section 244I or 244J; and
 - (b) the direction specifies that the report does not have to comply with those accounting standards.

- (3) The financial report must comply with any further requirements in the regulations.

244M. True and fair view

- (1) The financial statements and notes for a financial year must give a true and fair view of —
 - (a) the financial position and performance of the co-operative; and
 - (b) if consolidated financial statements are required — the financial position and performance of the consolidated entity.
- (2) This section does not affect the obligation under section 244L for a financial report to comply with accounting standards.

244N. Audit of financial report

- (1) A large co-operative must have the financial report for a financial year audited in accordance with the Corporations Act Part 2M.3 Division 3 (as applying under section 244U) and obtain an auditor's report.
- (2) A small co-operative's financial report for a financial year does not have to be audited if —
 - (a) the report is prepared in response to a direction under section 244I or 244J; and
 - (b) the direction did not ask for the financial report to be audited.
- (3) If a small co-operative's financial report for a financial year is prepared in response to a direction under section 244I or 244J and the direction asked for the financial report to be audited —
 - (a) in accordance with the Corporations Act Part 2M.3 Division 3 (as applying under section 244U); or

(b) in some other specified manner,

the co-operative must have the financial report audited as directed and obtain an auditor's report.

- (4) If a small co-operative's financial report for a financial year is prepared in response to a direction under section 244I or 244J and the direction asked for the financial report to be audited without specifying the manner in which the audit is to be conducted, the co-operative must have the financial report audited in accordance with the Corporations Act Part 2M.3 Division 3 (as applying under section 244U) and obtain an auditor's report.

244O. Application of Corporations Act to co-operatives with quoted securities: declaration about financial statements by certain officers

A co-operative with quoted securities 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 295A.

Division 5 — Annual directors' reports

244P. Annual directors' report

- (1) A co-operative must prepare a directors' report for each financial year.
- (2) The directors' report must include —
- (a) the general information required by —
 - (i) section 244Q; and

- (ii) for co-operatives with quoted securities — the Corporations Act section 299A (as applying under section 244S);
 - and
 - (b) the specific information required by —
 - (i) section 244R; and
 - (ii) for co-operatives with quoted securities — the Corporations Act section 300 and 300A (as applying under section 244S);
 - and
 - (c) a copy of the auditor's declaration under the Corporations Act section 307C (as applying under section 244U) in relation to the audit for the financial year.
- (3) If the financial report for a financial year includes additional information under section 244K(3)(c) (information included to give a true and fair view of financial position and performance), the directors' report for the financial year must also —
- (a) set out the directors' reasons for forming the opinion that the inclusion of that additional information was necessary to give the true and fair view required by section 244M; and
 - (b) specify where that additional information can be found in the financial report.
- (4) The directors' report must —
- (a) be made in accordance with a resolution of the directors; and
 - (b) specify the date on which the report is made; and
 - (c) be signed by a director.

- (5) A small co-operative does not have to comply with subsection (1) for a financial year if —
 - (a) it is preparing financial statements for that year in response to a direction under section 244I or 244J; and
 - (b) the direction specified that a directors' report need not be prepared.

244Q. Annual directors' report: general information

- (1) The directors' report for a financial year must —
 - (a) contain a review of operations during the year of the entity reported on and the results of those operations; and
 - (b) give details of any significant changes in the entity's state of affairs during the year; and
 - (c) state the entity's principal activities during the year and any significant changes in the nature of those activities during the year; and
 - (d) give details of any matter or circumstance that has arisen since the end of the year that has significantly affected, or may significantly affect —
 - (i) the entity's operations in future financial years; or
 - (ii) the results of those operations in future financial years; or
 - (iii) the entity's state of affairs in future financial years;and
 - (e) refer to likely developments in the entity's operations in future financial years and the expected results of those operations; and

- (f) if the entity's operations are subject to any particular and significant environmental regulation under a law of the Commonwealth or of a State or Territory — give details of the entity's performance in relation to environmental regulation.
- (2) The entity reported on is —
 - (a) the co-operative (if consolidated financial statements are not required); or
 - (b) the consolidated entity (if consolidated financial statements are required).
- (3) The directors' report may omit material that would otherwise be included under subsection (1)(e) if it is likely to result in unreasonable prejudice to —
 - (a) the co-operative; or
 - (b) if consolidated financial statements are required — the consolidated entity or any entity (including the co-operative) that is part of the consolidated entity.
- (4) If material is omitted, the directors' report must say so.

244R. Annual directors' report: specific information

- (1) The directors' report for a financial year must include details of —
 - (a) dividends or distributions paid to members during the year; and
 - (b) dividends or distributions recommended or declared for payment to members, but not paid, during the year; and
 - (c) the name of each person who has been a director of the co-operative at any time during or since the end of the year and the period for which they were a director; and

- (d) the name of each person who —
 - (i) is an officer of the co-operative at any time during the year; and
 - (ii) was a partner in an audit firm, or a director of an audit company, that is an auditor of the co-operative for the year; and
 - (iii) was such a partner or director at a time when the audit firm or the audit company undertook an audit of the co-operative;and
- (e) options that are —
 - (i) granted over unissued shares or unissued interests during or since the end of the year; and
 - (ii) granted to any of the directors or any of the 5 most highly remunerated officers of the co-operative (other than the directors); and
 - (iii) granted to them as part of their remuneration (see subsections (4) to (6)); and
- (f) unissued shares or interests under option as at the day the report is made (see subsections (4) and (6)); and
- (g) shares or interests issued during or since the end of the year as a result of the exercise of an option over unissued shares or interests (see subsections (4) and (7)); and
- (h) indemnities given and insurance premiums paid during or since the end of the year for a person who is or has been an officer or auditor (see subsections (8) and (9)).

- (2) Details do not have to be included in the directors' report under this section if they are included in the co-operative's financial report for the financial year.
- (3) If subsection (2) is relied on to not include in the directors' report for a financial year details that would otherwise be required to be included in that report under the Corporations Act section 300(11B) or (11C)(b) (as applying under section 244S), that report must specify, in the section headed "Non-audit services", where those details may be found in the co-operative's financial report for the financial year.
- (4) Subsections (1)(e) to (g) cover —
 - (a) options over unissued shares and interests of the co-operative; and
 - (b) if consolidated financial statements are required — options over unissued shares and interests of any entity forming part of the consolidated entity.
- (5) The details of an option granted are —
 - (a) the entity granting the option; and
 - (b) the name of the person to whom the option is granted; and
 - (c) the number and class of shares or interests over which the option is granted.
- (6) The details of unissued shares or interests under option are —
 - (a) the entity that will issue shares or interests when the options are exercised; and
 - (b) the number and classes of those shares or interests; and
 - (c) the issue price, or the method of determining the issue price, of those shares or interests; and

- (d) the expiry date of the options; and
 - (e) any rights that the option holders have under the options to participate in any share issue or interest issue of the co-operative or any other entity.
- (7) The details of shares or interests issued as a result of the exercise of an option are —
- (a) the entity issuing the shares or interests; and
 - (b) the number of shares or interests issued; and
 - (c) if the entity has different classes of shares or interests — the class to which each of those shares or interests belongs; and
 - (d) the amount unpaid on each of those shares or interests; and
 - (e) the amount paid, or agreed to be considered as paid, on each of those shares or interests.
- (8) The directors' report for a co-operative must include details of —
- (a) any indemnity that is given to a current or former officer or auditor against a liability, or any relevant agreement under which an officer or auditor may be given an indemnity of that kind; and
 - (b) any premium that is paid, or agreed to be paid, for insurance against a current or former officer's or auditor's liability for legal costs.
- (9) The details required under subsection (8) are —
- (a) for an officer — their name or the class of officer to which they belong or belonged; and
 - (b) for an auditor — their name; and
 - (c) the nature of the liability; and

- (d) for an indemnity given — the amount the co-operative paid and any other action the co-operative took to indemnify the officer or auditor; and
 - (e) for an insurance premium — the amount of the premium.
- (10) The directors' report need not give details of the nature of the liability covered by, or the amount of the premium payable under, a contract of insurance to the extent that the disclosure of those details is prohibited by the insurance contract.
- (11) The report for a co-operative must also include details of —
 - (a) each directors' qualifications, experience and special responsibilities; and
 - (b) the number of meetings of the board of directors held during the year and each director's attendance at those meetings; and
 - (c) the number of meetings of each board committee held during the year and each director's attendance at those meetings; and
 - (d) the qualifications and experience of each person who is the secretary of the co-operative as at the end of the year.
- (12) The report for a co-operative must also include the following details of any application for leave under Part 4 Division 6 made in respect of the co-operative —
 - (a) the applicant's name;
 - (b) a statement as to whether leave was granted.
- (13) The report for a co-operative must also include the following details of any proceedings that a person has

brought or intervened in on behalf of the co-operative with leave under Part 4 Division 6 —

- (a) the person's name;
- (b) the names of the parties to the proceedings;
- (c) sufficient information to enable members to understand the nature and status of the proceedings (including the cause of action and any orders made by the court).

244S. Application of Corporations Act to co-operatives with quoted securities: additional information to be provided in annual directors' report

A co-operative with quoted securities 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 299A, 300(11) to (11E) and 300A.

Division 6 — Half-year financial report and directors' report

244T. Application of Corporations Act to co-operatives that are disclosing entities: half-year financial reports and directors' reports

A co-operative that is a disclosing entity 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 Part 2M.3 Division 2.

Division 7 — Audit and auditor's report**244U. Application of Corporations Act: audit and auditor's report**

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 Part 2M.3 Division 3, subject to the following modifications —

- (a) a reference in section 308(3AA) to a company limited by guarantee is to be read as a reference to a small co-operative;
- (b) a reference in section 311(5) to section 344 is to be read as a reference to section 244ZZO of this Act.

Division 8 — Annual financial reporting to members**244V. Annual financial reporting to members**

- (1) A large co-operative must report to members for a financial year by providing either of the following in accordance with subsection (5) or (9) —
 - (a) all of the following reports —
 - (i) the financial report for the year;
 - (ii) the directors' report for the year;
 - (iii) the auditor's report on the financial report;
 - (b) a concise report for the year that complies with subsection (3).

Penalty for this subsection: a fine of \$1 000.

- (2) Subject to any direction under section 244I or 244J, a small co-operative must provide financial reports to

members for a financial year that comply with any requirements prescribed by the regulations.

Penalty for this subsection: a fine of \$1 000.

- (3) A concise report of a large co-operative for a financial year consists of —
- (a) a concise financial report for the year drawn up in accordance with accounting standards applying for the purposes of this paragraph; and
 - (b) the directors' report for the year; and
 - (c) a statement by the auditor —
 - (i) that the financial report has been audited; and
 - (ii) whether, in the auditor's opinion, the concise financial report complies with the accounting standards applying for the purposes of paragraph (a);
- and
- (d) a copy of any qualification in, and of any statements included in the emphasis of matter section of, the auditor's report on the financial report; and
 - (e) a statement that the report is a concise report and that the full financial report and auditor's report will be sent to the member free of charge if the member asks for them.
- (4) If the accounting standards applying for the purposes of subsection (3)(a) require a discussion and analysis to be included in a concise financial report —
- (a) the auditor must report on whether the discussion and analysis complies with the requirements that the accounting standards lay down for the discussion and analysis; and

- (b) the auditor does not otherwise need to audit the statements made in the discussion and analysis.
- (5) A co-operative may provide the reports, or a concise report, for a financial year by doing all of the following —
- (a) sending, to each member who has made the election referred to in subsection (6)(a) —
 - (i) a hard copy of the reports or the concise report; or
 - (ii) if the member has elected to receive the reports, or the concise report, as an electronic copy in accordance with subsection (6)(c) — an electronic copy of the reports, or the concise report;
 - (b) making a copy of the reports, or the concise report, readily accessible on a website;
 - (c) directly notifying, in writing, all members who did not make the election referred to in subsection (6)(a) that the copy is accessible on the website, and specifying the direct address on the website where the reports, or the concise report, may be accessed.
- (6) For the purposes of subsection (5)(a), a co-operative must, on at least one occasion, directly notify in writing each member that —
- (a) the member may elect to receive, free of charge, a copy of the reports for each financial year, or a copy of the concise report for each financial year; and
 - (b) if the member does not so elect — the member may access the reports, or the concise report, on a specified website; and
 - (c) if the member does so elect and the co-operative offers to send the report either as a

hard copy or an electronic copy — the member may elect to receive the copy as either a hard copy or an electronic copy.

Penalty for this subsection: a fine of \$1 000.

- (7) An election made under subsection (6) is a standing election for each financial year until the member changes the member's election.
- (8) A member may, for the purposes of subsection (5)(c) or (6), be notified by electronic means only if the member has previously nominated that means as one by which the member may be notified.
- (9) A co-operative may provide the reports, or the concise report, by sending each member —
 - (a) a hard copy of the reports or the concise report; or
 - (b) an electronic copy of the reports, or the concise report, if the member has nominated that means as one by which the member may be sent the reports or the concise report.
- (10) A co-operative is not required to provide the reports, or the concise report, to a member who has made a request under section 244X(1)(a).
- (11) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsections (1), (2) and (6) that any event occurred by accident.

244W. Deadline for reporting to members

- (1) A large co-operative that is not a disclosing entity must report to members under section 244V within 5 months after the end of the financial year.

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- (2) A large co-operative that is a disclosing entity must report to members under section 244V on or before the earlier of —
- (a) the day that is 21 days before the next annual general meeting of the co-operative; or
 - (b) 5 months after the end of the financial year.

Note for this subsection: This is a civil penalty provision (see section 482A).

- (3) A small co-operative that is required to report to members under section 244V must do so on or before the day that is 14 days before the next annual general meeting of the co-operative.

244X. Member's choices for annual financial information

- (1) A member may request the co-operative —
- (a) not to send them the material required by section 244V; or
 - (b) to send them a full financial report and the directors' report and auditor's report.
- (2) A request under subsection (1) may be a standing request or for a particular financial year.
- (3) The member is not entitled to a report for a financial year earlier than the one before the financial year in which the request is made.
- (4) The co-operative must comply with a request under subsection (1)(b) by the later of —
- (a) the day that is 7 days after the request; or
 - (b) the day by which the co-operative is required to report to members under section 244V.

Penalty for this subsection: a fine of \$1 000.

- (5) When sending a full financial report, directors' report and auditor's report, the co-operative must do so free

of charge unless the member has already received a copy of them free of charge.

Penalty for this subsection: a fine of \$1 000.

- (6) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsections (4) and (5) that any event occurred by accident.

244Y. Consideration of reports at annual general meeting

- (1) The directors of a co-operative must lay before the annual general meeting —
- (a) in the case of a large co-operative — each of the following reports for the last financial year that ended before the annual general meeting —
 - (i) the financial report;
 - (ii) the directors' report;
 - (iii) the auditor's report;
 - or
 - (b) in the case of a small co-operative — any report for the last financial year that ended before the annual general meeting that the co-operative is required to provide to members before the date of the meeting under section 244V or a direction under section 244I or 244J.

Penalty for this subsection: a fine of \$1 000.

- (2) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsection (1) that any event occurred by accident.

244ZA. Application of Corporations Act: additional reporting by debenture issuers

- (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 Corporations Act section 318, subject to the modification set out in subsection (2).

- (2) A reference in section 318(2) or (3) to a debenture holder is to be read as a reference to a debenture holder who is not a member of the co-operative.

Division 9 — Lodging reports and returns with Registrar

244ZB. Lodgment of annual returns with the Registrar

- (1) A co-operative must lodge an annual return with the Registrar for each financial year in accordance with this section.
Penalty for this subsection: a fine of \$1 000.
- (2) The contents of the annual return are to be as prescribed by the regulations.
- (3) Subject to subsection (4), the return must be lodged within 28 days after the day on which the next annual general meeting of the co-operative after the end of the financial year is held in accordance with section 190.
- (4) If, at the end of the 5-month period referred to in section 190(3)(a), a co-operative to which that section applies has not held its next annual general meeting and no further time has been allowed under section 190(3)(b) for the holding of that meeting, the return must be lodged within 28 days after the end of that 5-month period.
- (5) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsection (1) that any event occurred by accident.

244ZC. Lodgment of financial reports etc. with Registrar

- (1) A large co-operative that has to prepare or obtain a report for a financial year under Divisions 3 to 5 (including a concise report referred to in section 244V) must lodge that report with the Registrar in accordance with this section.

Penalty for this subsection: a fine of \$2 500.

- (2) Subject to subsection (3), the return must be lodged within 28 days after the day on which the next annual general meeting of the co-operative after the end of the financial year is held in accordance with section 190.
- (3) If, at the end of the 5-month period referred to in section 190(3)(a), a co-operative to which that section applies has not held its next annual general meeting and no further time has been allowed under section 190(3)(b) for the holding of that meeting, the return must be lodged within 28 days after the end of that 5-month period.
- (4) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsection (1) that any event occurred by accident.

244ZD. Lodgment of half-year reports with the Registrar

- (1) A co-operative that has to prepare or obtain a report for a half-year under Division 6 must lodge the report with the Registrar within 75 days after the end of the half-year.

Penalty for this subsection: a fine of \$2 500.

- (2) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsection (1) that any event occurred by accident.

244ZE. Registrar's power to require lodgment

- (1) The Registrar may give a co-operative a direction to lodge with the Registrar a copy of reports prepared or obtained by it under Divisions 3 to 6, and the co-operative must comply with the direction.
Penalty for this subsection: a fine of \$1 000.
- (2) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsection (1) that any event occurred by accident.
- (3) The direction must —
 - (a) be made in writing; and
 - (b) specify the period or periods concerned; and
 - (c) be made no later than 6 years after the end of the period or periods; and
 - (d) specify the date by which the documents have to be lodged.
- (4) The date specified under subsection (3)(d) must be at least 14 days after the date on which the direction is given.

244ZF. Relodgment if financial report or directors' reports amended after lodgment

- (1) If a financial report or directors' report is amended after it is lodged with the Registrar, the co-operative must —
 - (a) lodge the amended report with the Registrar within 14 days after the amendment; and
 - (b) give a copy of the amended report free of charge to any member who asks for it.

Penalty for this subsection: a fine of \$1 000.

- (2) If the amendment is a material one, the co-operative must also notify members as soon as practicable of —
 - (a) the nature of the amendment; and
 - (b) the right to obtain a copy of the amended report under subsection (1).

Penalty for this subsection: a fine of \$1 000.

- (3) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsections (1) and (2) that any event occurred by accident.

Division 10 — Special provisions about consolidated financial statements

244ZG. Application of Corporations Act: special provisions about consolidated financial statements

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 Part 2M.3 Division 6.

Division 11 — Financial years and half years

244ZH. 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 a co-operative may extend from the date of its registration to a date not more than 18 months after its 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 amending its financial year, the alteration may provide either —
- (a) that the current financial year (as at the date of the amendment) is to be extended for not more than 6 months; or
 - (b) that the next financial year is to be for a period of more than one year but not more than 18 months.
- (5) Without limitation, the regulations may make provision for or with respect to requiring the adoption by a co-operative of the same financial year for each entity that the co-operative controls.

244ZI. Half-year

A half-year for a co-operative is the first 6 months of a financial year, but the directors may determine that the half-year is to be shorter or longer (but not by more than 7 days).

Division 12 — Auditors

Subdivision 1 — General provisions relating to auditors

244ZJ. Application of Corporations Act: auditors

- (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 Corporations Act Part 2M.4 Divisions 1 to 4, subject to the following modifications —
- (a) Part 2M.4 Division 2 does not apply in relation to an auditor appointed in circumstances set out in section 244ZL(4) of this Act;

- (b) section 324BA is to be read as if the words “Subject to section 324BD” were deleted;
 - (c) section 324BD and 324BE are taken to be deleted.
- (2) A co-operative with quoted securities 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 Part 2M.4 Division 5.
 - (3) A reference in the provisions of the Corporations Act as applying under this section to a registered company auditor is taken to be a reference to a registered company auditor as defined in the Corporations Act (and accordingly a reference in that term to a company is not a reference to a co-operative).

Subdivision 2 — Appointment of auditors

244ZK. Appointment of auditor of small co-operative

- (1) The directors of a small co-operative may appoint an auditor for the co-operative if an auditor has not been appointed by the co-operative in general meeting.
- (2) An auditor appointed under subsection (1) holds office, subject to this Part, until the co-operative’s next annual general meeting.

244ZL. Initial appointment of auditor of a large co-operative

- (1) The directors of a large co-operative must appoint an auditor of the co-operative in accordance with subsection (2) within one month after the day on which it is registered as a co-operative unless the co-operative at a general meeting has appointed an auditor.

- (2) An auditor appointed under subsection (1) must be —
 - (a) a registered company auditor; or
 - (b) a firm with at least one member who is a registered company auditor and is ordinarily resident in Australia; or
 - (c) an authorised audit company.
- (3) Subject to this Part, an auditor appointed under subsection (1) holds office until the co-operative's first annual general meeting.
- (4) If a transferred co-operative, before the commencement of this Act, had appointed a person to be its auditor and the person continues to be the co-operative's auditor, the directors of the co-operative are taken to have complied with subsection (1).
- (5) Despite subsection (3) but subject to this Part, an auditor appointed in the circumstances set out in subsection (4) may continue to be the co-operative's auditor until the position is permanently vacated.
- (6) A director of a large co-operative must take all reasonable steps to comply with, or to secure compliance with, subsection (1).

Penalty for this subsection: a fine of \$2 500, or imprisonment for 6 months, or both.

244ZM. Annual appointment at annual general meeting of auditor of large co-operative to fill vacancy

- (1) A large co-operative must —
 - (a) appoint an auditor of the co-operative at its first annual general meeting; and

- (b) appoint an auditor of the co-operative to fill any vacancy in the office of auditor at each subsequent annual general meeting.

Penalty for this subsection: a fine of \$2 500.

- (2) An auditor appointed under subsection (1) holds office until the auditor —
 - (a) dies; or
 - (b) is removed, or resigns, from office in accordance with section 244ZW; or
 - (c) ceases to be capable of acting as auditor because of the Corporations Act Part 2M.4 Division 2 as applying under this Part; or
 - (d) ceases to be auditor under subsection (3), (4) or (5).
- (3) An individual auditor ceases to be auditor of a large co-operative under this subsection if —
 - (a) on a particular day (the *start day*), the individual auditor —
 - (i) informs the Registrar of a conflict of interest situation in relation to the co-operative under the Corporations Act section 324CA(1A) as applying under this Part; or
 - (ii) informs the Registrar of particular circumstances in relation to the co-operative under the Corporations Act section 324CE(1A) as applying under this Part;
 - and
 - (b) the individual auditor does not give the Registrar a notice, before the notification day (see subsection (6)), that that conflict of interest situation has, or those circumstances have,

ceased to exist before the end of the period (the *remedial period*) of 21 days, or such longer period as the Registrar approves in writing, from the start day.

- (4) An audit firm ceases to be auditor of a large co-operative under this subsection if —
- (a) on a particular day (the *start day*), the Registrar is —
 - (i) informed of a conflict of interest situation in relation to the co-operative under the Corporations Act section 324CB(1A) as applying under this Part; or
 - (ii) informed of particular circumstances in relation to the co-operative under the Corporations Act section 324CF(1A) as applying under this Part;
- and
- (b) the Registrar has not been given a notice on behalf of the audit firm, before the notification day (see subsection (6)), that that conflict of interest situation has, or those circumstances have, ceased to exist before the end of the period (the *remedial period*) of 21 days, or such longer period as the Registrar approves in writing, from the start day.
- (5) An audit company ceases to be auditor of a large co-operative under this subsection if —
- (a) on a particular day (the *start day*), the Registrar is —
 - (i) informed of a conflict of interest situation in relation to the co-operative under the Corporations Act

section 324CB(1A) or 324CC(1A), as applying under this Part; or

- (ii) informed of particular circumstances in relation to the co-operative under the Corporations Act section 324CF(1A) or 324CG(1A) or (5A), as applying under this Part;

and

- (b) the Registrar has not been given a notice on behalf of the audit company, before the notification day (see subsection (6)), that that conflict of interest situation has, or those circumstances have, ceased to exist before the end of the period (the *remedial period*) of 21 days, or such longer period as the Registrar approves in writing, from the start day.
- (6) For the purposes of subsections (3)(b), (4)(b) and (5)(b), the notification day is —
- (a) the last day of the remedial period; or
 - (b) such later day as the Registrar approves in writing (whether before or after the remedial period ends).
- (7) A director of a large co-operative must take all reasonable steps to comply with, or to secure compliance with, subsection (1).
Penalty for this subsection: a fine of \$2 500, or imprisonment for 6 months, or both.
- (8) If an audit firm ceases to be the auditor of a large co-operative under subsection (2) at a particular time, each member of the firm who —
- (a) is taken to have been appointed as an auditor of the co-operative under the Corporations Act

section 324AB(1) or 324AC(4), as applying under this Part; and

- (b) is an auditor of the co-operative immediately before that time,

ceases to be an auditor of the co-operative at that time.

244ZN. Appointment by directors or annual general meeting of auditor of large co-operative to fill casual vacancy

- (1) If —
 - (a) a vacancy occurs in the office of auditor of a large co-operative; and
 - (b) the vacancy is not caused by the removal of an auditor from office; and
 - (c) there is no surviving or continuing auditor of the co-operative,

the directors must, within one month after the vacancy occurs, appoint an auditor to fill the vacancy unless the co-operative at a general meeting has appointed an auditor to fill the vacancy.

- (2) An auditor appointed under subsection (1) holds office, subject to this Part, until the co-operative's next annual general meeting.
- (3) A director of a large co-operative must take all reasonable steps to comply with, or to secure compliance with, subsection (1).

Penalty for this subsection: a fine of \$2 500, or imprisonment for 6 months, or both.

244ZO. Appointment to replace auditor removed from office

- (1) This section deals with the situation in which an auditor of a co-operative is removed from office at a general meeting in accordance with section 244ZW.
- (2) The co-operative may, at that general meeting (without adjournment), by special resolution immediately appoint an individual, firm or company as auditor of the co-operative if a copy of the notice of nomination has been sent to the individual, firm or company under section 244ZU(4).
- (3) The general meeting of a co-operative may be adjourned if a special resolution under subsection (2) —
 - (a) is not passed; or
 - (b) could not be passed merely because a copy of the notice of nomination has not been sent to an individual, firm or company under section 244ZU(4).
- (4) At a meeting adjourned under subsection (3), the co-operative may by ordinary resolution appoint an individual, firm or company as auditor of the co-operative if —
 - (a) a member of the co-operative gives the co-operative notice of the nomination of the individual, firm or company for appointment as auditor; and
 - (b) the co-operative receives the notice at least 14 clear days before the day to which the meeting is adjourned.

- (5) The day to which the general meeting is adjourned must be —
 - (a) not earlier than 20 days after the day of the meeting; and
 - (b) not later than 30 days after the day of the meeting.
- (6) Subject to this Part, an auditor appointed under subsection (2) or (4) holds office until the co-operative's next annual general meeting.

244ZP. Registrar to be notified of appointment of auditor

A large co-operative must notify the Registrar, in the form approved by the Registrar, of the appointment, by the co-operative or directors of the co-operative, of an auditor of the co-operative within 28 days after the date of the appointment.

Penalty: a fine of \$2 000.

244ZQ. Registrar may appoint auditor of large co-operative if auditor removed but not replaced

- (1) This section deals with the situation in which a large co-operative fails to appoint an auditor under section 244ZO(2) or (4) (the *auditor replacement failure*).
- (2) The co-operative must give the Registrar written notice of the auditor replacement failure within the period of 7 days commencing on the day of the auditor replacement failure (the *notification period*).
- (3) If the co-operative gives the Registrar the notice required by subsection (2), the Registrar must appoint an auditor of the co-operative as soon as practicable after receiving the notice.

- (4) If the co-operative does not give the Registrar the notice required by subsection (2), the Registrar may appoint an auditor of the co-operative at any time —
 - (a) after the end of the notification period; and
 - (b) before the Registrar receives notice of the auditor replacement failure from the co-operative.
- (5) If the co-operative —
 - (a) does not give the Registrar the notice required by subsection (2); and
 - (b) gives the Registrar notice of the auditor replacement failure after the end of the notification period,

the Registrar must appoint an auditor of the co-operative as soon as practicable after receiving the notice.
- (6) Subject to this Part, an auditor appointed under this section holds office until the co-operative's next annual general meeting.
- (7) Subsections (3), (4) and (5) have effect subject to section 244ZS.

244ZR. Registrar's general power to appoint auditor of large co-operative

- (1) The Registrar may appoint an auditor of a large co-operative if —
 - (a) the co-operative does not appoint an auditor when required by this Act to do so; and
 - (b) a member of the co-operative applies to the Registrar in writing for the appointment of an auditor under this section.
- (2) Subsection (1) has effect subject to section 244ZS.

- (3) An individual, firm or company appointed as auditor of a co-operative under subsection (1) holds office, subject to this Part, until the next annual general meeting of the co-operative.

244ZS. Restrictions on Registrar's powers to appoint auditor of large co-operative

- (1) The Registrar may appoint an individual, firm or company as auditor of a co-operative under section 244ZQ or 244ZR only if the individual, firm or company consents to being appointed.
- (2) The Registrar must not appoint an auditor of a co-operative under section 244ZQ or 244ZR if —
- (a) there is another auditor of the co-operative (the *continuing auditor*); and
 - (b) the Registrar is satisfied that the continuing auditor is able to carry out the responsibilities of auditor alone; and
 - (c) the continuing auditor agrees to continue as auditor.
- (3) The Registrar must not appoint an auditor of a co-operative under section 244ZQ or 244ZR if —
- (a) the co-operative does not give the Registrar the notice required by section 244ZQ(2) before the end of the notification period; and
 - (b) the Registrar has already appointed an auditor of the co-operative under section 244ZQ after the end of the notification period.

244ZT. Remaining auditors may act during vacancy

While a vacancy in the office of auditor of a co-operative continues, the surviving or continuing auditor or auditors (if any) may act as auditors of the co-operative.

244ZU. Nomination of auditor

- (1) Subject to this section, a co-operative may appoint an individual, firm or company as auditor of the co-operative at its annual general meeting only if a member of the co-operative gives the co-operative written notice of the nomination of the individual, firm or company for appointment as auditor —
 - (a) before the meeting was convened; or
 - (b) not less than 21 days before the meeting.
- (2) Subsection (1) does not apply if an auditor is removed from office at the annual general meeting.
- (3) If a co-operative purports to appoint an individual, firm or company as auditor of the co-operative in contravention of subsection (1) —
 - (a) the purported appointment is of no effect; and
 - (b) the co-operative is guilty of an offence.Penalty for this subsection: a fine of \$2 500.
- (4) If a member gives a co-operative notice of the nomination of an individual, firm or company for appointment as auditor of the co-operative, the co-operative must send a copy of the notice to —
 - (a) each individual, firm or company nominated; and
 - (b) each auditor of the co-operative; and
 - (c) each person entitled to receive notice of general meetings of the co-operative.
- (5) Subsection (4) applies whether the appointment is to be made at a meeting or an adjourned meeting referred to in section 244ZO or at an annual general meeting.
- (6) The copy of the notice of nomination must be sent —
 - (a) not less than 7 days before the meeting; or

- (b) at the time notice of the meeting is given.

244ZV. Auditor's consent to appointment

- (1) A co-operative or the directors of a co-operative must not appoint an individual, firm or company as auditor of the co-operative unless that individual, firm or company —
- (a) has consented, before the appointment, to act as auditor; and
 - (b) has not withdrawn that consent before the appointment is made.
- (2) For the purposes of this section, a consent, or the withdrawal of a consent, must be given by written notice to the co-operative or the directors.
- (3) A notice under subsection (1) given by a firm must be signed by a member of the firm who is a registered company auditor both —
- (a) in the firm name; and
 - (b) in his or her own name.
- (4) A notice under subsection (1) given by a company must be signed by a director or senior manager of the company both —
- (a) in the company's name; and
 - (b) in his or her own name.
- (5) If a co-operative or the directors of a co-operative appoint an individual, firm or company as auditor of a co-operative in contravention of subsection (1) —
- (a) the purported appointment is of no effect; and
 - (b) the co-operative is guilty of an offence.

Penalty for this subsection: a fine of \$2 500.

Subdivision 3 — Removal and resignation of auditors

244ZW. Removal and resignation of auditors

- (1) An auditor of a co-operative may be removed from office by resolution of the co-operative at a general meeting of which notice under subsection (2) has been given, but not otherwise.
- (2) Notice of intention to move the resolution must be given to the co-operative at least 2 months before the meeting is to be held.
- (3) However, if the co-operative calls a meeting after the notice of intention is given under subsection (2), the meeting may pass the resolution even though the meeting is held less than 2 months after the notice of intention is given.
- (4) Where notice under subsection (2) of a resolution to remove an auditor is received by a co-operative, it must as soon as possible send a copy of the notice to the auditor and lodge a copy of the notice with the Registrar.
- (5) Within 7 days after receiving a copy of the notice, the auditor may make representations in writing, not exceeding a reasonable length, to the co-operative and request that, before the meeting at which the resolution is to be considered, a copy of the representations be sent by the co-operative at its expense to every member of the co-operative to whom notice of the meeting is sent.
- (6) Unless the Registrar on the application of the co-operative otherwise orders, the co-operative must send a copy of the representations in accordance with the auditor's request, and the auditor may, without prejudice to his or her right to be heard orally or, where a firm is the auditor, to have a member of the firm

heard orally on its behalf, require that the representations be read out at the meeting.

- (7) An auditor of a co-operative may, by notice in writing given to the co-operative, resign as auditor of the co-operative if —
- (a) the auditor has, by notice in writing given to the Registrar, applied for consent to the resignation and stated the reasons for the application and, at or about the same time as the notice was given to the Registrar, notified the co-operative in writing of the application to the Registrar; and
 - (b) the consent of the Registrar has been given.
- (8) The Registrar must, as soon as practicable after receiving a notice from an auditor under subsection (7), notify the auditor and the co-operative whether the Registrar consents to the resignation of the auditor.
- (9) A statement made by an auditor in an application to the Registrar under subsection (7) or in answer to an inquiry by the Registrar relating to the reasons for the application —
- (a) is not admissible in evidence in any civil or criminal proceedings against the auditor; and
 - (b) may not be made the ground of a prosecution, action or suit against the auditor,

and a certificate by the Registrar that the statement was made in the application or in the answer to the inquiry by the Registrar is conclusive evidence that the statement was so made.

- (10) Subject to subsection (11), the resignation of an auditor takes effect on whichever of the following occurs last —
- (a) the day (if any) specified for the purpose in the notice of resignation;

- (b) the day on which the Registrar gives its consent to the resignation;
 - (c) the day (if any) fixed by the Registrar for the purpose.
- (11) The resignation of an auditor of a small co-operative does not require the consent of the Registrar under subsection (7), and takes effect on whichever of the following is later —
 - (a) the day (if any) specified for the purpose in the notice of resignation; or
 - (b) the day on which the notice is received by the co-operative.
- (12) Where, on the retirement or withdrawal from a firm of a member, the firm will no longer be capable, by reason of the provisions of the Corporations Act section 324BB(1)(b)(i) or (2)(b)(i) (as applying under this Part), of acting as auditor of a co-operative, the member so retiring or withdrawing is (if not disqualified from acting as auditor of the co-operative) taken to be the auditor of the co-operative until he or she obtains the consent of the Registrar to his or her retirement or withdrawal.
- (13) Within 14 days after the removal from office of an auditor of a co-operative, or the receipt of a notice of resignation from an auditor of a co-operative, the co-operative must —
 - (a) lodge with the Registrar a notice of the removal or resignation in the form approved by the Registrar; and
 - (b) where there is a trustee for the holders of debentures or CCUs of the co-operative — give to the trustee a copy of the notice lodged with the Registrar.

244ZX. Effect of winding-up on office of auditor

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

- (a) a special resolution is passed for the voluntary winding-up of the co-operative; or
- (b) a certificate winding-up the co-operative is given by the Registrar; or
- (c) if paragraph (a) or (b) does not apply — an order is made by the Supreme Court for the winding-up of the co-operative.

Subdivision 4 — Auditors' fees and expenses**244ZY. Fees and expenses of auditors**

The reasonable fees and expenses of an auditor of a co-operative are payable by the co-operative.

Subdivision 5 — Protection of auditors**244ZZA. Protection of auditors**

- (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.

Division 13 — Accounting and auditing standards

244ZZB. Accounting and auditing standards

- (1) A reference in this Part (including provisions of the Corporations Act applying under this Part) to accounting or auditing standards is a reference to —
 - (a) the accounting or auditing standards made for the purposes of the Corporations Act, except as provided by paragraphs (b) and (c); or
 - (b) the accounting or auditing standards referred to in paragraph (a) but as modified by the regulations; or
 - (c) the accounting or auditing standards prescribed by or determined under the regulations in substitution for all or any accounting or auditing standards referred to in paragraph (a).
- (2) If an accounting or auditing standard referred to in subsection (1)(a) applies for the purposes of a particular provision of the Corporations Act, the accounting or auditing standard is (subject to subsection (1)(b) and (c)) taken to apply for the purposes of the corresponding provision of this Act (if any).
- (3) The regulations may provide that an accounting or auditing standard referred to in subsection (1)(a) does not apply for the purposes of —
 - (a) this Act; or

- (b) a particular provision of this Act; or
 - (c) a particular aspect or application of this Act,
- and may do so without substituting another accounting or auditing standard.

244ZZC. Interpretation of accounting and auditing standards

In interpreting an accounting or auditing standard, unless the contrary intention appears —

- (a) expressions used in the standard have the same meanings as they have in this Part or in the Corporations Act Chapter 2M, as the case requires; and
- (b) the provisions of Part 1 Division 1 of this Act or the Corporations Act Part 1.2 apply as if the standard's provisions were provisions of this Part or the Corporations Act Chapter 2M, as the case requires.

Division 14 — Exemptions and modifications

244ZZD. Exemptions: individual co-operatives

- (1) On an application made in accordance with subsection (4) in relation to a co-operative, the Registrar may, by order published in the *Gazette*, exempt any of the following from compliance with all or specified requirements of the target provisions referred to in subsection (2) —
 - (a) the directors;
 - (b) the co-operative;
 - (c) the auditor.
- (2) For the purposes of subsection (1), the target provisions are Divisions 2 to 12 of this Part, including provisions of the Corporations Act (as applying under any of the

provisions of those Divisions), but not including the Corporations Act Part 2M.4 Division 4 as so applying.

- (3) The exemption may —
 - (a) be expressed to be subject to conditions; and
 - (b) be indefinite or limited to a specified period; and
 - (c) if indefinite, be expressed to commence on a specified date.
- (4) The application must be —
 - (a) authorised by a resolution of the directors; and
 - (b) in writing and signed by a director; and
 - (c) lodged with the Registrar.
- (5) The Registrar must give the applicant written notice of the granting, revocation or suspension of the exemption.

244ZZE. Exemptions: classes of co-operatives

- (1) The Registrar may, by order published in the *Gazette* in respect of a specified class of co-operatives, exempt any of the following from compliance with all or specified requirements of the target provisions referred to in subsection (2) —
 - (a) directors;
 - (b) the co-operatives themselves;
 - (c) auditors of the co-operatives.
- (2) For the purposes of subsection (1), the target provisions are Divisions 2 to 12 of this Part, including provisions of the Corporations Act (as applying under any of the provisions of those Divisions), but not including the Corporations Act Part 2M.4 Division 4 as so applying.

- (3) The exemption may —
- (a) be expressed to be subject to conditions; and
 - (b) be indefinite or limited to a specified period; and
 - (c) if indefinite, be expressed to commence on a specified date.

244ZZF. Exemptions: criteria for exemptions for individual co-operatives or classes of co-operatives

- (1) To grant an exemption under section 244ZZD or 244ZZE, the Registrar must be satisfied that complying with the relevant requirements of the target provisions would —
- (a) make the financial report or other reports misleading; or
 - (b) be inappropriate in the circumstances; or
 - (c) impose unreasonable burdens.
- (2) In deciding for the purposes of subsection (1) whether the audit requirements for a small co-operative, or a class of small co-operatives, would impose an unreasonable burden on the co-operative or co-operatives, the Registrar is to have regard to —
- (a) the expected costs of complying with the audit requirements; and
 - (b) the expected benefits of having the co-operative or co-operatives comply with the audit requirements; and
 - (c) any practical difficulties that the co-operative or co-operatives face in complying effectively with the audit requirements (in particular, any difficulties that arise because a financial year is the first one for which the audit requirements apply or because the co-operative or

co-operatives are likely to move frequently between the small and large co-operative categories from one financial year to another); and

- (d) any unusual aspects of the operation of the co-operative or co-operatives during the financial year concerned; and
 - (e) any other matters that the Registrar considers relevant.
- (3) In assessing expected benefits under subsection (2), the Registrar is to take account of —
- (a) the number of creditors and potential creditors; and
 - (b) the position of creditors and potential creditors (in particular, their ability to independently obtain financial information about the co-operative or co-operatives); and
 - (c) the nature and extent of the liabilities of the co-operative or co-operatives.

244ZZG. Exemptions: non-auditor members and former members of audit firms, and former employees of audit companies

- (1) On an application made in accordance with subsection (4) by any of the following, the Registrar may, by order published in the *Gazette*, exempt the applicant from all or specified requirements of the target provisions referred to in subsection (2) —
- (a) a member of the firm who is not a registered company auditor;
 - (b) a person who has ceased to be —
 - (i) a member of an audit firm; or
 - (ii) a director of an audit company; or

- (iii) a professional employee of an audit company.
- (2) For the purposes of subsection (1), the target provisions are the provisions of the Corporations Act Part 2M.4 Division 3 (as applying under Division 12 of this Part).
- (3) The exemption may —
 - (a) be expressed to be subject to conditions; and
 - (b) be indefinite or limited to a specified period; and
 - (c) if indefinite, be expressed to commence on a specified date.
- (4) The application must be —
 - (a) in writing and signed by the applicant; and
 - (b) lodged with the Registrar.
- (5) The Registrar must give the applicant written notice of the granting, revocation or suspension of the exemption.

244ZZH. Exemptions: classes of non-auditor members

- (1) The Registrar may, by order published in the *Gazette* in respect of a specified class of audit firms or audit companies, exempt any of the following from all or specified requirements of the target provisions referred to in subsection (2) —
 - (a) members of firms who are not registered company auditors;
 - (b) persons who have ceased to be —
 - (i) members of audit firms; or
 - (ii) directors of audit companies; or
 - (iii) professional employees of audit companies.

- (2) For the purposes of subsection (1), the target provisions are the provisions of the Corporations Act Part 2M.4 Division 3 (as applying under Division 12 of this Part).
- (3) The exemption may —
 - (a) be expressed to be subject to conditions; and
 - (b) be indefinite or limited to a specified period; and
 - (c) if indefinite, be expressed to commence on a specified date.

244ZZI. Exemptions: criteria for exemptions for non-auditor members etc.

To grant an exemption under section 244ZZG or 244ZZH, the Registrar must be satisfied that complying with the relevant requirements of the target provisions would —

- (a) make the financial report or other reports misleading; or
- (b) be inappropriate in the circumstances; or
- (c) impose unreasonable burdens.

244ZZJ. Exemptions from regulations

- (1) The Registrar may, by order published in the *Gazette*, exempt —
 - (a) a specified co-operative, a specified person or firm proposed to be appointed as an auditor, or a specified director or auditor of a co-operative; or
 - (b) a specified class of co-operatives, a specified class of persons or firms proposed to be appointed as auditors, or a specified class of directors or auditors of co-operatives,

from compliance with a provision of regulations made for the purposes of this Part.

- (2) The exemption may —
- (a) be expressed to be subject to conditions; and
 - (b) be indefinite or limited to a specified period; and
 - (c) if indefinite, be expressed to commence on a specified date.

244ZZK. Registrar's power to modify the operation of section 324DA of Corporations Act

- (1) On an application made in accordance with this section, the Registrar may —
- (a) declare that the Corporations Act section 324DA(1) (as applying under Division 12 of this Part) applies to a registered company auditor, in relation to the audit of an audited body or a class of audited bodies, as if the references in that subsection to 5 successive financial years were references to —
 - (i) 6 successive financial years; or
 - (ii) 7 successive financial years;or
 - (b) declare that the Corporations Act section 324DA(2) (as applying under Division 12 of this Part) applies to a registered company auditor, in relation to the audit of an audited body or a class of audited bodies during a particular period of 7 successive financial years, as if the reference in that subsection to 5 out of 7 successive financial years were a reference to 6 out of 7 successive financial years.
- (2) The following persons may apply for the declaration —
- (a) the registered company auditor;

- (b) a firm or company on whose behalf the registered company auditor acts or would act in relation to the audit or audits,

and if the application is made by a firm or company, the declaration has effect only in relation to activities undertaken by the registered company auditor on behalf of that firm or company.

- (3) The application must be —
 - (a) in writing; and
 - (b) signed by the applicant; and
 - (c) lodged with the Registrar.
- (4) If the application is made by a registered company auditor who engages, or is to engage, in audit activities on behalf of a firm or company, the application must include the firm's or company's written consent to the application.
- (5) If the application is made by a firm or company in relation to a registered company auditor, the application must include the registered company auditor's written consent to the application.
- (6) To make a declaration under subsection (1), the Registrar must be satisfied that, without the modification, the Corporations Act Part 2M.4 Division 4 (as applying under Division 12 of this Part) would impose an unreasonable burden on —
 - (a) a registered company auditor; or
 - (b) a firm or company that is applying for the declaration; or
 - (c) the audited body or bodies in relation to which the application was made.
- (7) In deciding for the purposes of subsection (6) whether, without the modification, the Corporations Act

Part 2M.4 Division 4 (as applying under Division 12 of this Part) would impose an unreasonable burden on a person referred to in that subsection, the Registrar is to have regard to —

- (a) the nature of the audited body or bodies, including whether the activity in which the audited body or bodies engage is such that specialist knowledge about that activity is necessary to carry out the audit properly; and
 - (b) the availability of other registered company auditors capable of providing satisfactory audit services for the audited body or bodies; and
 - (c) any other matters which the Registrar considers relevant.
- (8) The Registrar must give the applicant written notice of the making, revocation or suspension of the declaration.

244ZZL. Auditor to notify co-operative of declaration

- (1) If a registered company auditor plays a significant role in the audit of a co-operative in reliance on a declaration by the Registrar under section 244ZZK, the auditor must give the co-operative written notice of the declaration.

Penalty for this subsection: a fine of \$500.

- (2) The notice must specify —
- (a) the name of the registered company auditor; and
 - (b) the additional financial years for which the registered company auditor is, because of the declaration under section 244ZZK, eligible to play a significant role in the audit of the co-operative.

- (3) The notice must be given —
 - (a) as soon as practicable after the declaration is made if the auditor has been appointed before the declaration is made; or
 - (b) before the auditor is appointed if the declaration is made before the auditor is appointed.

244ZZM. Amendment, suspension or revocation of exemption

- (1) The Registrar may, by order published in the *Gazette*, amend, suspend or revoke an exemption granted under this Division.
- (2) The power to suspend or revoke an exemption granted under section 244ZZD, 244ZZE, 244ZZG or 244ZZH can be exercised if the Registrar is satisfied that the criteria for the grant of the exemption are no longer satisfied.

Division 15 — Miscellaneous

244ZZN. Disclosure by directors

The directors of a co-operative must make the disclosures about the affairs of the co-operative and of an entity that the co-operative controls that are required by the regulations.

Penalty: a fine of \$2 000.

244ZZO. Contravention by directors of a provision of this Part

- (1) A director of a co-operative contravenes this subsection if they fail to take all reasonable steps to comply with or to secure compliance with —
 - (a) section 244I, 244J, 244V(1) or (2), 244W(2), 244ZB, 244ZC, 244ZD, 244ZE or 244ZF; or

- (b) the Corporations Act section 318 as applying under section 244ZA of this Act.

Note for this subsection: This is a civil penalty provision (see section 482A).

- (2) A person commits an offence if they contravene subsection (1) and the contravention is dishonest.

Penalty for this subsection: a fine of \$200 000, or imprisonment for 5 years, or both.

86. Section 250 amended

- (1) Delete section 250(1)(a) to (c) and insert:

- (a) sections 111AS and 283I are taken to be deleted;

- (2) After section 250(2) insert:

- (3A) The following provisions of the Corporations Act, as they apply under this section, are civil penalty provisions under this Act and are not civil penalty provisions under that Act —

- (a) section 674(2) and (2A);
- (b) section 675(2) and (2A);
- (c) section 1041A;
- (d) section 1041B(1);
- (e) section 1041C(1);
- (f) section 1041D;
- (g) section 1043A(1) and (2).

87. Section 251 deleted

Delete section 251.

88. Section 252 amended

- (1) In section 252(2) delete “73(2) or 127(1).” and insert:

73(2), 127(2) or 164(1).
- (2) After section 252(2) insert:
 - (3A) Before issuing to a person debentures to which this section applies, a co-operative must —
 - (a) inform the person in writing that the person is entitled to receive a disclosure statement on request to the co-operative; and
 - (b) give the person a disclosure statement if the person requests it.
- (3) In section 252(3) delete “Before issuing to a person debentures to which this section applies, that person may request a disclosure statement,” and insert:

For the purposes of subsection (3A), the disclosure statement is a statement,
- (4) After section 252(4) insert:
 - (5) The Registrar may, by order published in the *Gazette*, exempt a co-operative or class of co-operatives from complying with this section.
 - (6) An exemption may be granted unconditionally or subject to conditions.

89. Sections 253A and 253B inserted

After section 252 insert:

253A. Restrictions on advertising and publicity

- (1) A person must not —
- (a) advertise; or
 - (b) publish a statement that directly or indirectly refers to,

an offer, or intended offer, of debentures in a co-operative unless a disclosure statement relating to the debentures is approved by the Registrar under section 252.

Penalty for this subsection: a fine of \$1 000.

- (2) A person does not contravene subsection (1) by publishing an advertisement or statement if they publish it in the ordinary course of business of —
- (a) publishing a newspaper or a magazine; or
 - (b) broadcasting by radio or television,

and the person did not know and had no reason to suspect that its publication would amount to a contravention of that subsection.

- (3) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsection (1) that any event occurred by accident.

253B. Application money to be held on trust

- (1) If a person offers debentures for issue under a disclosure statement, the person must hold —
- (a) all application money received from people applying for debentures under the disclosure statement; and

- (b) all other money paid by them on account of the debentures before they are issued,

in trust under this section for the applicants until the debentures are issued or the money is returned to the applicants.

Penalty for this subsection: a fine of \$2 500, or imprisonment for 6 months, or both.

- (2) If the application money needs to be returned to an applicant, the person must return the money as soon as practicable.

Penalty for this subsection: a fine of \$2 500, or imprisonment for 6 months, or both.

- (3) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsections (1) and (2) that any event occurred by accident.

90. Section 254 amended

In section 254 delete “section 124(1)(b) or” and insert:

section

91. Section 255 amended

- (1) In section 255(1) delete “the co-operative.” and insert:

the co-operative passed by a special postal ballot.

- (2) In section 255(3)(c) delete “special resolution,” and insert:

special resolution by a special postal ballot,

92. Section 257 amended

In section 257(1) delete “co-operative capital unit (*CCU*) is” and insert:

co-operative capital unit is

93. Section 261 amended

Delete section 261(a) and insert:

- (a) either (as specified in the rules) —
 - (i) each holder of a CCU is entitled to one vote only at a meeting of the holders of CCUs; or
 - (ii) each holder of a CCU is entitled to one vote per CCU held at a meeting of the holders of CCUs;

94. Section 271 amended

Delete section 271(3) and insert:

- (3) The amount of a rebate payable to a member under subsection (2)(a) may be applied —
 - (a) in payment for the issue to the member of bonus shares, with the consent of the member; or
 - (b) as a loan to the co-operative —
 - (i) with the consent of the member; or
 - (ii) if the rules of the co-operative authorise the amount of a rebate payable to a member under subsection (2)(a) to be applied as a loan to the co-operative.

- (4) The amount of a dividend payable to a member under subsection (2)(c) may be applied —
 - (a) in payment for the issue to the member of bonus shares, with the consent of the member; or
 - (b) as a loan to the co-operative —
 - (i) with the consent of the member; or
 - (ii) if the rules of the co-operative authorise the amount of a dividend payable to a member under subsection (2)(c) to be applied as a loan to the co-operative.
- (5) A loan to the co-operative authorised by the rules (as referred to in subsection (3)(b)(ii) or (4)(b)(ii)) is repayable at call and must bear interest at a rate not lower than the rate prescribed by the regulations.

95. Section 273 amended

- (1) In section 273(2):
 - (a) delete “Unless otherwise provided by the rules, a” and insert:

A
 - (b) in paragraph (c) delete “activities.” and insert:

activities;

(c) after paragraph (c) insert:

- (d) dispose of an asset, if the disposal would result —
 - (i) in the co-operative ceasing to carry on an activity referred to in subsection (3A); or
 - (ii) in the ability of the co-operative to carry on an activity referred to in subsection (3A) being substantially impaired.

(2) After section 273(2) insert:

- (3A) Subsection (2)(d) applies to an activity of a co-operative if —
 - (a) the activity is a primary activity of the co-operative; and
 - (b) under rules of the co-operative referred to in section 111(a) or regulations made for the purposes of section 111(b), the use or support of the activity, or the maintenance of a relationship or an arrangement with the co-operative for carrying on the activity, can be sufficient to establish active membership of the co-operative.

- (3) In section 273(3) delete “an offence unless the person satisfies the court that he or she used all due diligence to prevent the contravention by the co-operative.” and insert:

an offence, if the person —

- (a) was in a position to influence the conduct of the co-operative in relation to the commission of the offence by it; and
 - (b) did not use all due diligence to prevent the commission of the offence by it.
- (4) After section 273(4) insert:
- (5) An exemption may be granted unconditionally or subject to conditions.

96. Section 284 amended

Delete section 284(3) and insert:

- (3) The register must be open for inspection by a member of the co-operative in accordance with section 232.

97. Section 288 amended

- (1) In section 288 delete “The Registrar” and insert:

- (1) The Registrar

(2) At the end of section 288 insert:

(2) An exemption may be granted unconditionally or subject to conditions.

98. Section 289 amended

(1) In section 289:

(a) delete “This Division” and insert:

(1) This Division

(b) in paragraph (d) delete “offer.” and insert:

offer;

(c) after paragraph (d) insert:

(e) an offer that would lead to the offeror having a substantial share interest in the co-operative, or to a substantial change taking place in a substantial share interest the offeror has in the co-operative, were the offeror to be registered (immediately after the offer is made) as the holder of the shares that are the subject of the offer.

(2) At the end of section 289 insert:

(2) In subsection (1)(e), *substantial share interest* and *substantial change* have the same meanings as they have in section 276.

99. Section 290 replaced

Delete section 290 and insert:

290. Requirements to be satisfied before offer can be made

- (1) A person must not make an offer to which this Division applies unless the making of the offer has been approved —
 - (a) by special resolution passed by a special postal ballot; and
 - (b) by the Registrar.
- (2) Despite subsection (1), an offer referred to in section 289(1)(e) can be made even if it has not been approved as referred to in subsection (1) if it is made in circumstances stated in, and in accordance with the requirements of, the regulations.

100. Section 291 amended

In section 291 delete “289(a) to (d)” and insert:

289(1)(a) to (e)

101. Section 293 amended

- (1) In section 293(2) delete the Penalty and insert:

Penalty for this subsection: a fine of \$20 000, or imprisonment for 5 years, or both.

- (2) In section 293(3) delete the Penalty and insert:

Penalty for this subsection: a fine of \$10 000, or imprisonment for 2 years, or both.

102. Section 296 amended

- (1) In section 296 delete “The Registrar” and insert:

(1) The Registrar

- (2) At the end of section 296 insert:

(2) An exemption may be granted unconditionally or subject to conditions.

103. Section 300 amended

Delete section 300(5) and insert:

(5) The Registrar may grant an approval or an exemption under this section unconditionally or subject to conditions.

104. Section 306 amended

- (1) After section 306(1) insert:

(2A) An application cannot be made under section 305 in respect of a co-operative without share capital unless —

(a) the application is made at least 2 weeks after a notice has been published in a newspaper circulating generally in the district in which the

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registered office of the co-operative is situated
advising of the proposal to submit the proposed
special resolution to members of the
co-operative; and

- (b) either —
 - (i) in the case where the new body will have share capital — all the members of the co-operative will have an equal shareholding; or
 - (ii) in any case — the Registrar approves in writing the making of the application.

(2) Delete section 306(3) and insert:

- (3) The Registrar may, by order published in the *Gazette*, exempt a co-operative from compliance with a provision of this section or section 186 in relation to a matter to which this section applies.
- (4) An exemption may be granted unconditionally or subject to conditions.

105. Section 309 amended

After section 309(4) insert:

- (5) If —
 - (a) section 131(2) applies to rules of a co-operative; and
 - (b) those rules provide for a period shorter than 2 years to apply for the purposes of each of section 132(1)(a), (b) and (c) and section 133(1),

subsection (2) of this section applies in relation to the co-operative as if the reference in that subsection to

2 years were a reference to the shorter period that applies for the purposes of each of section 132(1)(a), (b) and (c) and section 133(1) under those rules.

106. Section 315 amended

In section 315 delete “in the same way and in the same circumstances as a company under the Corporations Act may be deregistered.” and insert:

under —

- (a) the Corporations Act as applying under section 316; or
- (b) section 482.

107. Section 316 replaced

Delete section 316 and insert:

316. Application of Corporations Act to winding-up and deregistration

- (1) This section does not apply to the winding-up of a co-operative on the certificate of the Registrar under section 314.
- (2) 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 and 5A.1, subject to the modifications set out in Schedule 6 Division 1.

- (3) Despite any other provisions of this Act —
- (a) a copy of the special resolution for the voluntary winding-up of a co-operative referred to in the Corporations Act section 491(2)(a) as applying under this section is to be filed with the Registrar —
 - (i) within the period referred to in that paragraph (and not the period of 28 days referred to in section 181(2) of this Act); or
 - (ii) within a longer period approved by the Registrar;
- and
- (b) the form of a notice or account required to be given or lodged by a liquidator under the Corporations Act section 496, 497, 537 or 539 as applying under this section is the form required under the section concerned but with any necessary modifications (and not a form approved under this Act); and
 - (c) the quorum for the meeting referred to in the Corporations Act section 509 as applying under this section is the quorum referred to in that section (and not a quorum determined under section 193 of this Act); and
 - (d) the time when a voluntary winding-up is taken to commence is to be determined under the Corporations Act section 513B as applying under this section and is not affected by section 180 of this Act.
- (4) The provisions of the Corporations Act applying under this section have effect subject to any other sections of this Part.

108. Section 317 amended

Delete section 317(2) and (3) and insert:

- (2) 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.
- (3) The Registrar may, by order published in the *Gazette*, exempt a co-operative or class of co-operatives from compliance with a provision of this section or section 186.
- (4) An exemption may be granted unconditionally or subject to conditions.

109. Section 322 amended

After section 322(4) insert:

- (5) If —
 - (a) section 131(2) applies to rules of a co-operative; and
 - (b) those rules provide for a period shorter than 2 years to apply for the purposes of each of section 132(1)(a), (b) and (c) and section 133(1),subsections (1) and (2) of this section apply in relation to the co-operative as if a reference in those subsections to 2 years were a reference to the shorter period that applies for the purposes of each of

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section 132(1)(a), (b) and (c) and section 133(1) under those rules.

110. Part 12 Division 4 heading replaced

Delete the heading to Part 12 Division 4 and insert:

Division 4 — Administration

111. Part 12 Division 4 Subdivision 1 inserted

At the beginning of Part 12 Division 4 insert:

Subdivision 1 — Introductory

323A. Operation of this Division

This Division provides 2 methods for the administration of a co-operative, as follows —

- (a) administration under the Corporations Act as applying under Subdivision 2;
- (b) administration under Subdivision 3.

112. Part 12 Division 4 Subdivision 2 heading inserted

Before section 323 insert:

Subdivision 2 — Administration under Corporations Act

113. Section 323 amended

In section 323:

- (a) delete paragraph (a);

- (b) delete paragraph (c) and insert:
 - (ca) a reference in section 436D to “section 436A, 436B or 436C” is to be read as including a reference to section 324 of this Act;
 - (cb) a reference in section 436E(4)(a) or 448B to an administrator is to be read as not including a reference to an administrator appointed under section 324 of this Act;
 - (cc) a reference in section 440D(2)(b) to prescribed proceedings is to be read as a reference to proceedings prescribed by regulations under this Act;
 - (cd) section 444GA is taken to include a provision to the effect that the section has effect subject to Part 7 Division 5 of this Act;
 - (ce) section 446B is taken to be deleted;
 - (c) the reference in section 600H(2) to a compromise or arrangement under Part 5.1 is to be read as a reference to a compromise or arrangement under Part 13 of this Act;

114. Section 324A inserted

After section 323 insert:

324A. Appointment of administrator by Registrar in case of insolvency

- (1) The Registrar may appoint a person as an administrator for the purposes of the Corporations Act Part 5.3A (as applying under this Subdivision) if the Registrar is of the opinion that the co-operative is insolvent or likely to become insolvent at some future time.

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- (2) The person appointed by the Registrar must be a registered liquidator (as defined in the Corporations Act section 9), but the Registrar may appoint a person who is not a registered liquidator if the Registrar forms the view that the likely costs of administration by a registered liquidator are excessive taking into account the known assets of the co-operative and the expected extent of debt of the co-operative.

115. Part 12 Division 5 heading replaced

Delete the heading to Part 12 Division 5 and insert:

Subdivision 3 — Administration: alternative procedure

116. Section 324B inserted

Before section 324 insert:

324B. Operation of this Division

- (1) The provisions of the Corporations Act applying under Subdivision 2 do not apply to the appointment of an administrator under this Subdivision or to an administrator so appointed.
- (2) This Subdivision does not apply to the appointment of an administrator under section 324A or to an administrator so appointed.

117. Section 325 amended

In section 325(3) delete “Division.” and insert:

Subdivision.

118. Section 326 amended

In section 326(4) delete “ records.” and insert:

books.

119. Section 336 amended

In section 336(1)(b) delete “co-operative under Division 5;” and insert:

co-operative by the Registrar under Division 4 Subdivision 3;

120. Section 337 amended

(1) In section 337(1):

- (a) delete paragraph (a);
- (b) in paragraph (b) delete “290, as applied under section 225 of this Act, is to be read with any modifications prescribed by the regulations;” and insert:

290 is to be read as a reference to the appropriate provision of Part 10A Division 2 of this Act;

(c) after paragraph (b) insert:

- (ca) section 588G is to be read as if item 2 of the table to section 588G(1A) were deleted;

(cb) section 588G is to be read as if item 3 of the table to section 588G(1A) read as follows —

repaying share capital	when the obligation to repay share capital is effective
------------------------	---

receiving the resignation of a member under the rules of the co-operative	when the resignation is effective
---	-----------------------------------

expelling a member	when the expulsion occurs
--------------------	---------------------------

(cc) section 588G is to be read as if a reference (however expressed) in item 4 or 5 of the table to section 588G(1A) to redeemable preference shares were a reference to CCUs;

(cd) a reference (however expressed) in section 588V or 588W to a corporation that is the holding company of a company is to be read as if —

- (i) the reference to a corporation were a reference to a co-operative; and
- (ii) the reference to “the holding company” were a reference to that co-operative; and
- (iii) the reference to “a company” were a reference to a company that is a subsidiary of that co-operative (and accordingly that reference to a company

is not to be read as a reference to a
co-operative);

- (ce) a reference in section 588Z(b) to 23 June 1993
is to be read as a reference to
1 September 2010;

(2) Delete section 337(2) and insert:

- (2) The Corporations Act section 588G(2) as applying
under this section is a civil penalty provision under this
Act and is not a civil penalty provision under that Act.

121. Section 344 amended

In section 344:

- (a) in paragraph (b) delete “person; and” and insert:

person.

- (b) delete paragraph (c).

122. Section 346 amended

After section 346(2) insert:

- (3) Despite *The Criminal Code* section 23B(2), it is
immaterial for the purposes of subsection (2) that any
event occurred by accident.

123. Section 359 amended

Delete section 359(3)(b) and (c).

124. Part 14 heading replaced

Delete the heading to Part 14 and insert:

Part 14 — Participating co-operatives

125. Section 365 deleted

Delete section 365.

126. Section 366 amended

(1) In section 366(1):

(a) delete “Part, a foreign co-operative” and insert:

Part and without limiting the definition of *carry on business* in section 4 in its application to a participating co-operative, a participating co-operative

(b) in paragraph (b) delete “State; or” and insert:

State.

(c) delete paragraph (c).

(2) Delete section 366(2).

127. Section 367 deleted

Delete section 367.

128. Section 368 amended

- (1) In section 368(1) delete “foreign co-operative authorised under this Part to carry on business in this State” and insert:

participating co-operative

- (2) In section 368(2):

- (a) delete “foreign co-operatives” and insert:

participating co-operatives

- (b) in paragraph (g) delete “co-operative capital units” and insert:

CCUs

- (3) In section 368(3) delete “foreign” and insert:

participating

129. Part 14 Division 2 heading replaced

Delete the heading to Part 14 Division 2 and insert:

**Division 2 — Participating co-operatives carrying on
business in this State**

130. Section 370 amended

- (1) In section 370(1) delete “after notifying the Registrar in accordance with section 372 that the participating co-operative intends to carry on business in this State.” and insert:

unless it ceases to be so authorised under section 376.

- (2) In section 370(2) delete “State.” and insert:

jurisdiction.

- (3) Delete section 370(3).

131. Sections 372 to 374 replaced

Delete sections 372 to 374 and insert:

372. Existing foreign co-operatives

- (1) This section applies to a body that —
- (a) immediately before the commencement of the *Co-operatives Amendment Act 2016* section 130 is, or is taken under section 371 to be, a foreign co-operative authorised under this Part to carry on business in this State; and
 - (b) is not registered or incorporated under a corresponding co-operatives law.
- (2) The co-operative is taken to be a participating co-operative authorised under this Part to carry on business in this State, and this Part applies with all necessary modifications.

132. Section 376 amended

In section 376:

- (a) delete “foreign co-operative” and insert:

participating co-operative

- (b) in paragraph (b) delete “section 377; or” and insert:

section 377.

- (c) delete paragraphs (c) and (d).

Note: The heading to amended section 376 is to read:

When participating co-operative not authorised to carry on business

133. Section 377 amended

- (1) In section 377(1):

- (a) delete “foreign co-operative” and insert:

participating co-operative

- (b) delete paragraphs (b) to (d) and insert:

- (b) that the co-operative has, after notice from the Registrar, failed to comply with —

(i) provisions of this Act or of a corresponding co-operatives law applicable to the co-operative; or

(ii) provisions of the rules of the co-operative;

- (c) that the co-operative has contravened a direction given to it under section 380E.

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- (2) In section 377(4) delete “foreign co-operative” and insert:

participating co-operative
- (3) In section 377(5) delete “foreign co-operative,” and insert:

participating co-operative,
- (4) After section 377(6) insert:
 - (7) The Registrar may, on application or otherwise, by notice given to a participating co-operative, revoke a decision of the Registrar to give a written notice to the co-operative under subsection (5) withdrawing its authority to carry on business in this State.
 - (8) If a notice is given to a participating co-operative under subsection (7), the co-operative is taken to be authorised to carry on business in this State on and from the date the notice is given to the co-operative or a later date specified in the notice.

134. Sections 378 and 379 replaced

Delete sections 378 and 379 and insert:

378. Appeal against Registrar’s decision under s. 377(5)

A participating co-operative may appeal to the Supreme Court against a decision of the Registrar to give a written notice to the co-operative under section 377(5) withdrawing its authority to carry on business in this State.

379. Application of Act and regulations to participating co-operatives

- (1) A participating co-operative that is authorised under this Part to carry on business in this State must comply with the provisions of this Act that are prescribed by the regulations.
- (2) The provisions prescribed for the purposes of subsection (1) —
 - (a) apply with all necessary modifications and any modifications prescribed by the regulations; and
 - (b) are in addition to the provisions of this Part and any other provisions of this Act that are expressed to apply to participating co-operatives.

135. Section 380 replaced

Delete section 380 and insert:

380A. False copies of rules of participating co-operative

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

Penalty for this subsection: a fine of \$1 000.

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

Penalty for this subsection: a fine of \$1 000.

380B. False copies of documents of participating co-operatives

- (1) A person who, in purported compliance with a provision of the relevant corresponding co-operatives law that corresponds to section 68 —
- (a) gives a person intending or applying to become a member of a participating co-operative a document as a copy of —
 - (i) a special resolution of the co-operative; or
 - (ii) the most recent financial information reported to members of the co-operative under Part 10A;
- and
- (b) knows or ought to know that, in a material respect, it is not a true copy of the resolution or information; and
 - (c) does not indicate to that person that it is not a true copy,

is guilty of an offence.

Penalty for this subsection: a fine of \$1 000.

- (2) A person who, in purported compliance with a provision of the relevant corresponding co-operatives law that corresponds to section 68 —
- (a) makes available for inspection by a person intending or applying to become a member of a

participating co-operative a document as a copy of —

- (i) a special resolution of the co-operative; or
- (ii) the most recent financial information reported to members of the co-operative under Part 10A;

and

- (b) knows or ought to know that, in a material respect, it is not a true copy of the resolution or information; and
- (c) does not indicate to that person that it is not a true copy,

is guilty of an offence.

Penalty for this subsection: a fine of \$1 000.

380C. Restrictions on advertising and publicity: shares in participating co-operatives

- (1) A person must not advertise, or publish a statement that directly or indirectly refers to, an offer, or intended offer, of shares in a participating co-operative that is a distributing co-operative (within the meaning of the relevant corresponding co-operatives law of another jurisdiction) unless —
 - (a) a current disclosure statement relating to the shares is registered with the Registrar for the other jurisdiction under a provision of that corresponding co-operatives law that substantially corresponds to section 137A; and
 - (b) any other applicable requirements specified in regulations for the purposes of this section are complied with.

Penalty for this subsection: a fine of \$1 000.

- (2) Subsection (1) applies in relation to shares in a distributing co-operative only if the shares are offered, or intended to be offered, to persons who are not shareholders in the co-operative.
- (3) A person does not contravene subsection (1) by publishing an advertisement or statement if they publish it in the ordinary course of a business of —
 - (a) publishing a newspaper or magazine; or
 - (b) broadcasting by radio or television,and the person did not know and had no reason to suspect that its publication would amount to a contravention of that subsection.
- (4) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsection (1) that any event occurred by accident.

**380D. Restrictions on advertising and publicity:
debentures or CCUs in participating co-operatives**

- (1) A person must not advertise, or publish a statement that directly or indirectly refers to, an offer, or intended offer, of debentures or CCUs in a participating co-operative unless —
 - (a) a disclosure statement relating to the debentures or CCUs is approved under a provision of the relevant corresponding co-operatives law of another jurisdiction that corresponds to section 252 by the Registrar for the other jurisdiction; and
 - (b) any other applicable requirements specified in regulations for the purposes of this section are complied with.

Penalty for this subsection: a fine of \$1 000.

- (2) A person does not contravene subsection (1) by publishing an advertisement or statement if they publish it in the ordinary course of a business of —
- (a) publishing a newspaper or magazine; or
 - (b) broadcasting by radio or television,
- and the person did not know and had no reason to suspect that its publication would amount to a contravention of that subsection.
- (3) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsection (1) that any event occurred by accident.

380E. Registrar's directions about participating co-operative obtaining financial accommodation

- (1) The Registrar may, if the Registrar considers it is in the interests of a participating co-operative's members, by written notice served on the 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 in this State.
- (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) The Registrar must give the co-operative written notice of the reasons for making the direction.
- (4) Within 28 days of receiving the direction, the co-operative may apply to the Supreme Court for a review of that decision.

380. Name and place of origin to appear on business and other documents of participating co-operative

- (1) In this section —
business document, of a participating co-operative, means a document that is issued, signed or endorsed by or on behalf of the co-operative and is —
 - (a) a business letter, statement of account, invoice or order for goods or services; or
 - (b) a bill of exchange, promissory note, cheque or other negotiable instrument; or
 - (c) a receipt or letter of credit issued by the co-operative; or
 - (d) a document belonging to a class prescribed by the regulations as a class of business document.
- (2) A participating co-operative must ensure its name, the jurisdiction of its registration and any other information prescribed by the regulations appear in legible characters —
 - (a) on each seal of the co-operative; and
 - (b) in all notices, advertisements and other official publications of the co-operative; and
 - (c) in all its business documents.

Penalty for this subsection: a fine of \$2 000.

- (3) An officer of a participating co-operative or a person on its behalf must not —
- (a) use any seal of the co-operative; or
 - (b) issue or authorise the issue of a notice, advertisement or other official publication of the co-operative; or
 - (c) sign or authorise to be signed on behalf of the co-operative any business document of the co-operative,

in or on which the co-operative's name or place of origin does not appear in legible characters.

Penalty for this subsection: a fine of \$2 000.

- (4) A director of a participating co-operative must not knowingly authorise or permit a contravention of this section.

Penalty for this subsection: a fine of \$2 000.

- (5) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsection (2) that any event occurred by accident.

136. Section 381 amended

- (1) In section 381:
- (a) delete “The Registrar” and insert:
- (1) The Registrar

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- (b) delete “public documents, held by the Registrar relating to a co-operative, including a foreign co-operative.” and insert:

documents, held by the Registrar relating to a co-operative or a participating co-operative.

- (2) At the end of section 381 insert:

- (2) Subsection (1) applies regardless of whether a reciprocal arrangement referred to in section 485 exists and regardless of the terms of such an arrangement.

137. Sections 382 and 383 deleted

Delete sections 382 and 383.

138. Section 384 amended

In section 384 delete “registrar by or under a co-operatives law.” and insert:

Registrar by or under a corresponding co-operatives law.

Note: The heading to amended section 384 is to read:

Functions conferred on Registrar under corresponding co-operatives law

139. Section 385A inserted

At the end of Part 14 Division 3 insert:

385A. Registrar may exempt participating co-operatives

- (1) The Registrar may, by order published in the *Gazette*, exempt a participating co-operative or a class of

participating co-operatives from any requirement of this Act.

- (2) An exemption under subsection (1) may be given only if the Registrar considers that it is appropriate to do so having regard to the corresponding co-operatives law of each jurisdiction in which a participating co-operative to which the exemption will apply is registered.
- (3) An exemption may be granted unconditionally or subject to conditions.

140. Section 386 amended

- (1) In section 386(1):
 - (a) delete “foreign co-operative” and insert:

participating co-operative
 - (b) delete paragraph (a).
- (2) In section 386(2) and (3) delete “foreign co-operative” and insert:

participating co-operative

141. Section 387 amended

- (1) In section 387(1) delete “foreign co-operative” and insert:

participating co-operative

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- (2) In section 387(2) delete “Schedule 6.” and insert:

Schedule 6 Division 2.

- (3) In section 387(4) delete “foreign co-operative” and insert:

participating co-operative

Note: The heading to amended section 387 is to read:

Application of Corporations Act to winding-up of participating co-operatives

142. Section 388 amended

- (1) In section 388(1) delete “foreign co-operative” and insert:

participating co-operative

- (2) In section 388(2) delete “the co-operative or” and insert:

the participating co-operative or

Note: The heading to amended section 388 is to read:

Outstanding property of participating co-operatives

143. Part 14 Division 5 heading replaced

Delete the heading to Part 14 Division 5 and insert:

Division 5 — Mergers and transfers of engagements affecting participating co-operatives

144. Section 389 amended

- (1) In section 389 insert in alphabetical order:

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;

liabilities means liabilities, debts and obligations (whether present or future and whether vested or contingent);

- (2) In section 389 in the definition of *appropriate Registrar* paragraph (b) delete “co-operatives law of the participating State” and insert:

corresponding co-operatives law of the participating jurisdiction

- (3) In section 389 in the definition of *State co-operative* delete “State, other than a foreign co-operative;” and insert:

State;

145. Section 390 amended

Delete section 390(2).

146. Section 391 amended

- (1) Delete section 391(2).

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- (2) In section 391(3)(b) delete “in the case of a merger or transfer affecting a participating co-operative, the participating” and insert:

the participating

147. Section 392 amended

- (1) In section 392(1) delete “foreign co-operative” and insert:

participating co-operative

- (2) In section 392(3):

- (a) in paragraphs (a), (b) and (c) delete “foreign co-operative” and insert:

participating co-operative

- (b) in paragraph (f) delete “co-operatives law of the participating State” and insert:

corresponding co-operatives law of the participating jurisdiction

- (3) In section 392(4) and (5) delete “foreign co-operative” and insert:

participating co-operative

148. Section 393 amended

- (1) In section 393(1) delete “Registrar for the participating State concerned” and insert:

participating Registrar

- (2) Delete section 393(2)(b).

149. Section 394 amended

- (1) Delete section 394(1)(d) and (e) and insert:

(d) the certificate of registration of the participating co-operative has been surrendered to the Registrar for the participating jurisdiction concerned; and

- (2) In section 394(2) and (4) delete “co-operatives law of the participating State” and insert:

corresponding co-operatives law of the participating jurisdiction

150. Section 395 amended

- (1) Delete section 395(1)(d) and (e).

- (2) In section 395(2) delete “co-operatives law of the participating State” and insert:

corresponding co-operatives law of the participating jurisdiction

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151. Section 396 amended

In section 396(1) delete the definitions of:

assets

liabilities

152. Part 15 Division 1A inserted

At the beginning of Part 15 insert:

**Division 1A — Examining a person about a
co-operative**

**398A. Application of Corporations Act: court-directed
examinations**

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 Part 5.9 Division 1.

153. Part 15 Division 1 heading replaced

Delete the heading to Part 15 Division 1 and insert:

Division 1 — Supervision and inspection

154. Section 398 amended

(1) In section 398 delete “this Part — ” and insert:

this Division —

- (2) In section 398 delete the definition of *chief executive officer (DOCEP)*.
- (3) In section 398 in the definition of *relevant document* delete “records” and insert:

books

155. Section 399 amended

In section 399:

- (a) delete “Part” and insert:

Division

- (b) in paragraphs (a) and (b) delete “foreign co-operative;” and insert:

participating co-operative;

- (c) in paragraph (d) delete “foreign co-operative;” and insert

participating co-operative,

Note: The heading to amended section 399 is to read:

**Co-operative includes subsidiaries, participating co-operatives
and co-operative ventures**

156. Section 400 amended

In section 400:

- (a) in paragraph (a) delete “(DOCEP)” and insert:

of the department

- (b) in paragraph (b) delete “(DOCEP).” and insert:
- of the department.

157. Section 412 amended

- (1) Delete section 412(4) and insert:
- (4) The magistrate may issue the warrant only if satisfied there are reasonable grounds —
- (a) for suspecting the affairs or activities of a co-operative are being managed or conducted at the place; or
 - (b) for suspecting there are relevant documents at the place; or
 - (c) for suspecting —
 - (i) there is a particular thing or activity that may provide evidence of an offence against this Act; and
 - (ii) that thing or activity is at the place, or may be at the place, within the next 7 days.

- (2) In section 412(5)(b) delete “the offence” and insert:
- the suspected offence (if any)

158. Section 415 amended

In section 415(3) delete the Penalty and insert:

Penalty for this subsection: a fine of \$2 000.

159. Section 419 amended

In section 419(5) delete the Penalty and insert:

Penalty for this subsection: a fine of \$2 000.

160. Section 420 amended

In section 420(1) delete the Penalty and insert:

Penalty for this subsection: a fine of \$12 000, or imprisonment for one year, or both.

161. Section 421 amended

In section 421(2) delete the Penalty and insert:

Penalty for this subsection: a fine of \$12 000, or imprisonment for one year, or both.

162. Section 422 amended

In section 422(1) delete the Penalty and insert:

Penalty for this subsection: a fine of \$12 000, or imprisonment for one year, or both.

163. Section 423 amended

In section 423(2) delete the Penalty and insert:

Penalty for this subsection: a fine of \$12 000, or imprisonment for one year, or both.

164. Section 427 amended

- (1) In section 427(1):
- (a) delete “(DOCEP)” (1st occurrence) and insert:

of the department
 - (b) delete “(DOCEP)” (2nd occurrence).
- (2) In section 427(2) delete “(DOCEP)” and insert:

of the department

165. Section 431 amended

In section 431(1) delete the Penalty and insert:

Penalty for this subsection: a fine of \$24 000, or imprisonment for 2 years, or both.

166. Section 432 amended

In section 432 delete the Penalty and insert:

Penalty: a fine of \$12 000, or imprisonment for one year, or both.

167. Section 438 replaced

Delete section 438 and insert:

438. Falsification of books

- (1) An officer, former officer, employee, former employee, member or former member of a co-operative who

engages in conduct that results in the concealment, destruction, mutilation or falsification of —

- (a) any securities of or belonging to the co-operative; or
- (b) any books affecting or relating to the affairs of the co-operative; or
- (c) any record required to be sent, kept or delivered under this Act,

is guilty of an offence.

Penalty for this subsection: a fine of \$10 000, or imprisonment for 2 years, or both.

- (2) Where matter that is used or intended to be used in connection with the keeping of any books affecting or relating to affairs of a co-operative is recorded or stored in an illegible form by means of a mechanical device, an electronic device or any other device, a person who —
 - (a) records or stores by means of that device matter that the person knows to be false or misleading in a material particular; or
 - (b) engages in conduct that results in the destruction, removal or falsification of matter that is recorded or stored by means of that device, or has been prepared for the purpose of being recorded or stored, or for use in compiling or recovering other matter to be recorded or stored by means of that device; or
 - (c) having a duty to record or store matter by means of that device, fails to record or store matter by means of that device —
 - (i) with intent to falsify any entry made or intended to be compiled, wholly or in

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part, from matter so recorded or stored;
or

- (ii) knowing that the failure so to record or store the matter will render false or misleading in a material particular other matter so recorded or stored,

is guilty of an offence.

Penalty for this subsection: a fine of \$10 000, or imprisonment for 2 years, or both.

- (3) It is a defence to a charge arising under subsection (1) or (2)(b) if the defendant proves that the defendant acted honestly and that in all the circumstances the act or omission constituting the offence should be excused.

168. Section 449 amended

In section 449(1) delete “co-operative by this Act, or” and insert:

co-operative or a participating co-operative by this Act or by a co-operative by

169. Section 452 amended

In section 452(1) delete the definition of *department*.

170. Section 454 amended

Delete section 454(1) and insert:

- (1) The Registrar is to keep a register of co-operatives, in addition to the Register of Co-operatives Charges established under Schedule 3 clause 18.

171. Part 16 Division 4 deleted

Delete Part 16 Division 4.

172. Part 17 heading replaced

Delete the heading to Part 17 and insert:

Part 17 — Legal proceedings and other matters

Division 1 — Offences, enforcement and remedies

173. Section 474 deleted

Delete section 474.

174. Section 476 amended

(1) In section 476(4):

(a) delete paragraph (b) and insert:

(b) for the purposes of any proceedings under this Act or a corresponding co-operatives law or of an inquiry authorised by legislation of this State or of another jurisdiction; or

(b) after paragraph (c) insert:

(da) under a requirement imposed under legislation of this State or of another jurisdiction; or

(2) In section 476(5):

(a) after paragraph (a) insert:

(ba) the Registrar or a participating Registrar; or

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- (b) in paragraph (g) delete “State, or of a Territory, administers a law of the State or Territory” and insert:

jurisdiction, administers a law of the jurisdiction

175. Section 478 amended

Delete section 478(5) and insert:

- (5) The maximum penalty for the further offence is the penalty worked out by multiplying \$50 by the number of days in the further offence period.

176. Section 480A inserted

After section 479 insert:

480A. Order against person concerned with co-operative

- (1) In this section —
eligible applicant, in relation to a co-operative, means —
- (a) the Registrar; or
 - (b) a liquidator or provisional liquidator of the co-operative; or
 - (c) an administrator of the co-operative; or
 - (d) an administrator of a deed executed by the co-operative under the Corporations Act as applying under section 323; or
 - (e) a person authorised in writing by the Registrar to make an application under this section in relation to the co-operative.

- (2) Subject to subsection (3), where, on application by an eligible applicant, the Supreme Court is satisfied that —
- (a) a person is guilty of fraud, negligence, default, breach of trust or breach of duty in relation to a co-operative; and
 - (b) the co-operative has suffered, or is likely to suffer, loss or damage as a result of the fraud, negligence, default, breach of trust or breach of duty,

the court may make such order or orders as it thinks appropriate against or in relation to the person (including either or both of the orders specified in subsection (4)) and may so make an order against or in relation to a person even though the person may have committed an offence in respect of the matter to which the order relates.

- (3) The Supreme Court must not make an order against a person under subsection (2) unless the court has given the person the opportunity —
- (a) to give evidence; and
 - (b) to call witnesses to give evidence; and
 - (c) to bring other evidence in relation to the matters to which the application relates; and
 - (d) to employ, at the person's own expense, a legal practitioner to put to the person, or to any other witness, such questions as the court considers just for the purpose of enabling the person to explain or qualify any answers or evidence given by the person.

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- (4) The orders that may be made under subsection (2) against a person include —
 - (a) an order directing the person to pay money or transfer property to the co-operative; and
 - (b) an order directing the person to pay to the co-operative the amount of the loss or damage.
- (5) Nothing in this section prevents any person from instituting any other proceedings in relation to matters in respect of which an application may be made under this section.

177. Section 481 replaced

Delete section 481 and insert:

481A. Undertakings

- (1) The Registrar may accept a written undertaking given by a person in connection with a matter relating to a contravention of this Act or where the Registrar has reasonable grounds to believe there may be a contravention of this Act.
- (2) Without limiting subsection (1), the Registrar may accept a written undertaking given by the person that the person will do either or both of the following —
 - (a) refrain from conduct that constitutes a contravention of this Act;
 - (b) take action to prevent or remedy a contravention of this Act.
- (3) The person may withdraw or vary an undertaking at any time, if the person has first obtained the consent of the Registrar.

- (4) The consent of the Registrar is required for the purposes of subsection (3) even if the undertaking purports to authorise a withdrawal or variation of the undertaking without that consent.
- (5) If the Registrar accepts an undertaking given by a person, the Registrar must not proceed against the person in respect of the conduct specified in the undertaking, unless it appears to the Registrar that the person has contravened the undertaking.
- (6) Subsection (5) does not apply to an application by the Registrar for an order under section 481C.

481B. Offence of contravention of undertaking

A person who contravenes an undertaking accepted by the Registrar commits an offence.

Penalty: a fine of \$6 000.

481C. Enforcement order on application with consent of person giving undertaking

- (1) The Registrar, with the consent of the person who gave an undertaking, may apply, at any time, to the Supreme Court for an order directing the person to comply with the undertaking.
- (2) On an application under subsection (1), the Supreme Court may by order direct the person to comply with the undertaking.
- (3) This section does not limit section 481D.

481D. Enforcement orders after contravention of undertaking

- (1) If the Supreme Court is satisfied, on the application of the Registrar, that a person has contravened an

undertaking accepted by the Registrar, the court may make any or all of the following orders —

- (a) an order prohibiting the person from engaging in specified conduct;
 - (b) an order directing the person to take specified action to comply with the undertaking;
 - (c) an order directing the person to pay to the Registrar 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 contravention of the undertaking;
 - (d) any order that the court considers appropriate directing the person to compensate any other person who has suffered loss, injury or damage as a result of the contravention of the undertaking;
 - (e) any other order that the court considers appropriate.
- (2) The Supreme Court may make an interim order under subsection (1)(a) pending final determination of the application.
 - (3) The Supreme Court may, on the application of the Registrar or the person in respect of whom the order was made, vary or discharge an order under subsection (1)(a).
 - (4) An order under subsection (1)(a) may be made subject to such conditions as the Supreme Court thinks appropriate.
 - (5) The Supreme Court must not make an order under this section (other than an interim order) unless satisfied on the balance of probabilities that proper grounds for the order have been established.

- (6) If a co-operative or other corporation is found to have contravened an undertaking, each officer of the co-operative or other corporation is taken to have so breached the undertaking if the officer knowingly authorised or permitted the breach, and the Supreme Court may make, against the officer, all or any of the orders specified in subsection (1) that the court thinks appropriate.

481E. Copy of undertaking

The Registrar must give a copy of an undertaking under section 481A to the person who gave the undertaking.

481F. Registration of undertakings

- (1) The Registrar must register each undertaking in the register of co-operatives.
- (2) The register of co-operatives must include the following —
- (a) the name and address of the person who gave the undertaking;
 - (b) the date of the undertaking;
 - (c) a copy of the undertaking.
- (3) The Registrar may withhold information relating to an undertaking from inclusion in the register of co-operatives if the Registrar is satisfied that —
- (a) the information consists of personal details of an individual not involved in a contravention or possible contravention to which the undertaking relates; or
 - (b) the information is commercial-in-confidence; or

- (c) disclosure of the information would be against the public interest.
- (4) If information is withheld under this section from inclusion in the register of co-operatives, the register must include a statement that information has been withheld in relation to the undertaking concerned and of the grounds on which it has been withheld.
- (5) For the purposes of this section, information is *commercial-in-confidence* if —
 - (a) its disclosure would place a person at a substantial commercial disadvantage in relation to present or potential contractual negotiations or arrangements; or
 - (b) it is of a kind prescribed by the regulations as being commercial-in-confidence.

481G. Double jeopardy

If —

- (a) an act or omission constitutes an offence under this Act and under a corresponding co-operatives law of a participating jurisdiction; and
- (b) the offender has been punished for that offence under the corresponding co-operatives law of the participating jurisdiction,

the offender is not liable to be punished for the offence under this Act.

481H. Time limit for starting proceedings for offence

- (1) In this section —
relevant day means the day on which the *Co-operatives Amendment Act 2016* section 177 comes into operation.

- (2) Proceedings for an offence under this Act that is alleged to have been committed on or after the relevant day can be instituted no later than 5 years after the alleged commission of the offence.
- (3) Proceedings for an offence under this Act that is alleged to have been committed before the relevant day can be instituted no later than 3 years after the alleged commission of the offence.

481I. Authorisation to start proceedings for offence

Proceedings for an offence under this Act may be started only by the Registrar or a person authorised in writing by the Registrar to start the proceedings.

481. Proceedings for recovery of fine or penalty imposed by rules

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.

178. Part 17 Divisions 2 and 3 inserted

At the end of Part 17 insert:

Division 2 — Civil consequences of contravening civil penalty provisions

482A. Terms used

In this Division —

civil penalty provision means a provision referred to in section 482B;

compensation order means an order under section 482E;

pecuniary penalty order means an order under section 482D.

482B. Declarations of contravention

- (1) If the Supreme Court is satisfied that a person has contravened one of the following provisions, it must make a declaration of contravention —
 - (a) section 207(2);
 - (b) section 208(1);
 - (c) section 208(2);
 - (d) section 209(1);
 - (e) section 209(2);
 - (f) section 210(1);
 - (g) section 210(3);
 - (h) section 244ZZO(1);
 - (i) without limiting paragraph (h) —
 - (i) section 244W(2);
 - (ii) the Corporations Act section 318 as applying under section 244ZA of this Act;
 - (j) any of the following provisions of the Corporations Act relating to debentures as applying under section 250 of this Act —
 - (i) section 674(2);
 - (ii) section 674(2A);
 - (iii) section 675(2);
 - (iv) section 675(2A);
 - (v) section 1041A;
 - (vi) section 1041B(1);
 - (vii) section 1041C(1);
 - (viii) section 1041D;

- (ix) section 1043A(1);
 - (x) section 1043A(2);
 - (k) the Corporations Act section 588G(2) as applying under section 337 of this Act.
- (2) A declaration of contravention must specify the following —
- (a) the court that made the declaration;
 - (b) the civil penalty provision that was contravened;
 - (c) the person who contravened the provision;
 - (d) the conduct that constituted the contravention.

482C. Declaration of contravention is conclusive evidence

A declaration of contravention is conclusive evidence of the matters referred to in section 482B(2).

482D. Pecuniary penalty orders

- (1) The Supreme Court may order a person to pay a pecuniary penalty of up to \$200 000 if —
- (a) a declaration of contravention by the person has been made under section 482B; and
 - (b) the contravention —
 - (i) materially prejudices the interests of the co-operative or its members; or
 - (ii) materially prejudices the co-operative's ability to pay its creditors; or
 - (iii) is serious.
- (2) The penalty is a civil debt payable to the Registrar on behalf of the State.

- (3) The Registrar and the State may enforce the order as if it were an order made in civil proceedings against the person to recover a debt due from the person.
- (4) The debt arising from the order is taken to be a judgment debt.

482E. Compensation orders

- (1) The Supreme Court may order a person to compensate a co-operative for damage suffered by the co-operative if —
 - (a) the person has contravened a civil penalty provision in relation to the co-operative; and
 - (b) the damage resulted from the contravention.
- (2) The order must specify the amount of the compensation.
- (3) A compensation order may be made under this section —
 - (a) whether or not a declaration of contravention has been made under section 482B; and
 - (b) whether or not the person has been convicted of an offence for contravening the civil penalty provision.
- (4) In determining the damage suffered by the co-operative for the purposes of making a compensation order, profits made by any person resulting from the contravention are to be included.
- (5) A compensation order may be enforced as if it were a judgment of the Supreme Court.

482F. Who may apply for a declaration or order

- (1) The Registrar may apply for a declaration of contravention, a pecuniary penalty order or a compensation order.
- (2) The co-operative may apply for a compensation order.
- (3) The co-operative may intervene in an application for a declaration of contravention or a pecuniary penalty order in relation to the co-operative.
- (4) If a co-operative intervenes under subsection (3), the co-operative is entitled to be heard on all matters other than whether the declaration or order should be made.
- (5) No person may apply for a declaration of contravention, a pecuniary penalty order or a compensation order unless permitted by this section.
- (6) An application for a compensation order may be made whether or not a declaration of contravention has been made under section 482B.

482G. Time limit for application for a declaration or order

Proceedings for a declaration of contravention, a pecuniary penalty order, or a compensation order, may be started no later than 6 years after the contravention.

482H. Civil evidence and procedural rules for declarations and civil penalty orders

The Supreme Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for —

- (a) a declaration of contravention; or
- (b) a pecuniary penalty order.

482I. Civil proceedings after criminal proceedings

The Supreme Court must not make a declaration of contravention or a pecuniary penalty order against a person for a contravention if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

482J. Criminal proceedings during civil proceedings

- (1) Proceedings for a declaration of contravention or pecuniary penalty order against a person are stayed if —
 - (a) criminal proceedings are started or have already been started against the person for an offence; and
 - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.
- (2) The proceedings for the declaration or order may be resumed if the person is not convicted of the offence.
- (3) If the person is convicted of the offence, the proceedings for the declaration or order are dismissed.

482K. Criminal proceedings after civil proceedings

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether —

- (a) a declaration of contravention has been made against the person; or
- (b) a pecuniary penalty order has been made against the person; or

- (c) a compensation order has been made against the person; or
- (d) the person has been disqualified from managing co-operatives under Part 9 Division 2A.

482L. Evidence given in proceedings for penalty not admissible in criminal proceedings

- (1) Evidence of information given or evidence of production of documents by an individual is not admissible in criminal proceedings against the individual if —
 - (a) the individual previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and
 - (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.
- (2) Subsection (1) does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.

482M. Relief from liability for contravention of civil penalty provision

- (1) In this section —
 - eligible proceedings* —
 - (a) means proceedings for a contravention of a civil penalty provision, including —
 - (i) proceedings under section 482E; and

- (ii) proceedings under the Corporations Act section 588M or 588W as applying under section 337 of this Act;

and

- (b) does not include proceedings for an offence, except so far as the proceedings relate to the question of whether the Supreme Court should make an order under —
 - (i) section 482E; or
 - (ii) the Corporations Act section 588K as applying under section 337 of this Act.

(2) If —

- (a) eligible proceedings are brought against a person; and
- (b) in the proceedings it appears to the Supreme Court that the person has, or may have, contravened a civil penalty provision but that —
 - (i) the person has acted honestly; and
 - (ii) having regard to all the circumstances of the case (including, where applicable, those connected with the person's appointment as an officer, or employment as an employee, of a co-operative), the person ought fairly to be excused for the contravention,

the Supreme Court may relieve the person either wholly or partly from a liability to which the person would otherwise be subject, or that might otherwise be imposed on the person, because of the contravention.

- (3) In determining under subsection (2) whether a person ought fairly to be excused for a contravention of the

Corporations Act section 588G as applying under section 337 of this Act, the matters to which regard is to be had include, but are not limited to —

- (a) any action the person took with a view to appointing an administrator of the co-operative; and
 - (b) when that action was taken; and
 - (c) the results of that action.
- (4) If a person thinks that eligible proceedings will or may be begun against them, they may apply to the Supreme Court for relief.
- (5) On an application under subsection (4), the court may grant relief under subsection (2) as if the eligible proceedings had been begun in the court.
- (6) For the purposes of subsection (2) as applying for the purposes of a case tried by a judge with a jury —
- (a) a reference in that subsection to the Supreme Court is a reference to the judge; and
 - (b) the relief that may be granted includes withdrawing the case in whole or in part from the jury and directing judgment to be entered for the defendant on such terms as to costs as the judge thinks appropriate.
- (7) Nothing in this section limits, or is limited by, section 482N.

Division 3 — Miscellaneous

482N. Power to grant relief

- (1) If, in any civil proceeding against a person to whom this section applies for negligence, default, breach of

trust or breach of duty in a capacity as such a person, it appears to the Supreme Court —

- (a) that the person is or may be liable in respect of the negligence, default or breach but that the person has acted honestly; and
- (b) that, having regard to all the circumstances of the case, including those connected with the person's appointment, the person ought fairly to be excused for the negligence, default or breach,

the Supreme Court may relieve the person either wholly or partly from liability on such terms as the court thinks fit.

- (2) Where a person to whom this section applies has reason to apprehend that any claim will or might be made against the person in respect of any negligence, default, breach of trust or breach of duty in a capacity as such a person —
 - (a) the person may apply to the Supreme Court for relief; and
 - (b) the Supreme Court has the same power to relieve the person as it would have had under subsection (1) if it had been a court before which proceedings against the person for negligence, default, breach of trust or breach of duty had been brought.
- (3) Where a case to which subsection (1) applies is being tried by a judge with a jury, the judge after hearing the evidence may —
 - (a) if he or she is satisfied that the defendant ought pursuant to that subsection to be relieved either wholly or partly from the liability sought to be enforced against the person, withdraw the case in whole or in part from the jury; and

- (b) forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge thinks proper.
- (4) This section applies to a person who is —
- (a) an officer or employee of a co-operative; or
 - (b) an auditor of a co-operative, whether or not the person is an officer or employee of the co-operative; or
 - (c) an expert in relation to a matter —
 - (i) relating to a co-operative; and
 - (ii) in relation to which the civil proceeding has been taken or the claim will or might arise;
- or
- (d) a receiver, receiver and manager, liquidator or other person appointed or directed by the Supreme Court to carry out any duty under this Act in relation to a co-operative.

482O. Irregularities

- (1) In this section, unless the contrary intention appears —
- (a) a reference to a proceeding under this Act is a reference to any proceeding whether a legal proceeding or not; and
 - (b) a reference to a procedural irregularity includes a reference to —
 - (i) the absence of a quorum at a meeting of a co-operative, at a meeting of directors or creditors of a co-operative, or at a joint meeting of creditors and members of a co-operative; and
 - (ii) a defect, irregularity or deficiency of notice or time.

- (2) A proceeding under this Act is not invalidated because of any procedural irregularity unless the Supreme Court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the court and by order declares the proceeding to be invalid.
- (3) A meeting held for the purposes of this Act, or a meeting notice of which is required to be given in accordance with the provisions of this Act, or any proceeding at such a meeting, is not invalidated only because of the accidental omission to give notice of the meeting or the non-receipt by any person of notice of the meeting, unless the Supreme Court, on the application of the person concerned, a person entitled to attend the meeting or the Registrar, declares proceedings at the meeting to be void.
- (4) A meeting held for the purposes of this Act, or a meeting notice of which is required to be given in accordance with the provisions of this Act, or any proceeding at such a meeting, is not invalidated only because of the inability of a person to access the notice of meeting, unless the Supreme Court, on the application of the person concerned, a person entitled to attend the meeting or the Registrar, declares proceedings at the meeting to be void.
- (5) If a member does not have a reasonable opportunity to participate in a meeting of members, or part of a meeting of members, held at 2 or more venues, the meeting will only be invalid on that ground if —
 - (a) the Supreme Court is of the opinion that —
 - (i) a substantial injustice has been caused or may be caused; and
 - (ii) the injustice cannot be remedied by any order of the Supreme Court;and

- (b) the Supreme Court declares the meeting or proceeding (or that part of it) invalid.
- (6) Subject to the following provisions of this section but without limiting the generality of any other provision of this Act, the Supreme Court may, on application by any interested person, make all or any of the following orders, either unconditionally or subject to such conditions as the court imposes —
- (a) an order declaring that any act, matter or thing purporting to have been done, or any proceeding purporting to have been instituted or taken, under this Act or in relation to a co-operative is not invalid by reason of any contravention of a provision of this Act or a provision of the constitution of a co-operative;
 - (b) an order directing the rectification of any register kept by the Registrar under this Act;
 - (c) an order relieving a person in whole or in part from any civil liability in respect of a contravention of a kind referred to in paragraph (a);
 - (d) an order extending the period for doing any act, matter or thing or instituting or taking any proceeding under this Act or in relation to a co-operative (including an order extending a period where the period concerned ended before the application for the order was made) or abridging the period for doing such an act, matter or thing or instituting or taking such a proceeding,

and may make such consequential or ancillary orders as the court thinks fit.

- (7) An order may be made under subsection (6)(a) or (c) notwithstanding that the contravention referred to in

the paragraph concerned resulted in the commission of an offence.

- (8) The Supreme Court must not make an order under this section unless it is satisfied —
- (a) in the case of an order referred to in subsection (6)(a) —
 - (i) that the act, matter or thing, or the proceeding, referred to in that paragraph is essentially of a procedural nature; or
 - (ii) that the person or persons concerned in or party to the contravention acted honestly; or
 - (iii) that it is just and equitable that the order be made;
- and
- (b) in the case of an order referred to in subsection (6)(c) — that the person subject to the civil liability concerned acted honestly; and
 - (c) in every case — that no substantial injustice has been or is likely to be caused to any person.

482P. Civil proceedings not to be stayed

No civil proceedings under this Act are to be stayed merely because the proceeding discloses, or arises out of, the commission of an offence.

482Q. Standard of proof

Where, in proceedings other than proceedings for an offence, it is necessary to establish, or for the court to be satisfied, for any purpose relating to a matter arising under this Act, that —

- (a) a person has contravened a provision of this Act; or

- (b) default has been made in complying with a provision of this Act; or
- (c) an act or omission was unlawful by virtue of a provision of this Act; or
- (d) a person has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to a contravention of, or a default in complying with, a provision of this Act,

it is sufficient if the matter referred to in paragraph (a), (b), (c) or (d) is established, or the court is so satisfied, as the case may be, on the balance of probabilities.

179. Section 482 amended

In section 482(1) delete “section 315,” and insert:

the provisions of the Corporations Act as applying under section 316,

180. Section 483 amended

(1) Delete section 483(1) to (3) and insert:

- (1) A document may be served on a co-operative or a participating co-operative —
 - (a) by posting it to the registered office of the co-operative or participating co-operative; or
 - (b) by leaving it at the registered office of the co-operative or participating co-operative with a person who appears to have reached 16 years of age; or

- (c) if a liquidator or administrator of the co-operative or participating co-operative has been appointed — by post; or
 - (d) if a liquidator or administrator of the co-operative or participating co-operative has been appointed by the Registrar —
 - (i) if the liquidator or administrator (as the case may be) is registered with ASIC — by leaving it at the address of the office of the liquidator or administrator (as the case may be) in the most recent notice of that address lodged with ASIC; or
 - (ii) if the liquidator or administrator (as the case may be) is not registered with ASIC — by leaving it at the address of the office of the liquidator or administrator (as the case may be) in the most recent notice of that address lodged with the Registrar;
- or
- (e) if a liquidator or administrator of the co-operative or participating co-operative has been appointed by someone else — by leaving it at the address of the office of the liquidator or administrator (as the case may be) in the most recent notice of that address lodged with ASIC.
- (2) For the purpose of serving a document under this section by post, it is properly addressed if it is addressed to the registered office of the co-operative or the participating co-operative.

- (2) In section 483(4) delete “foreign co-operative” and insert:

participating co-operative

181. Section 484 amended

After section 484(2) insert:

- (3) Subsection (2) does not apply in relation to reports provided to members under section 244V.

182. Section 485 amended

- (1) Delete section 485(1) and insert:

- (1) If a reciprocal arrangement with another jurisdiction or country is in force, the Registrar —
- (a) may, at the request of the appropriate official of the other jurisdiction or country, give the official information or documents relating to a co-operative or a participating co-operative; and
 - (b) may ask the appropriate official of the other jurisdiction or country to give the Registrar documents or information relating to an organisation that, under the arrangement, is an organisation corresponding to a co-operative or a participating co-operative.

- (2) In section 485(2):

- (a) delete “State or a Territory” and insert:

jurisdiction or country

(b) delete “State or the Territory” and insert:

jurisdiction or country

183. Section 487 replaced

Delete section 487 and insert:

487. Disclosure statements

A disclosure statement under this Act may only include a statement by a person, or a statement said in the disclosure statement to be based on a statement by a person, if —

- (a) the person has consented to the statement being included in the disclosure statement in the form and context in which it is included; and
- (b) the disclosure statement states that the person has given this consent; and
- (c) the person has not withdrawn this consent before the disclosure statement is approved by, or registered with, the Registrar.

184. Section 489A inserted

After section 488 insert:

489A. Approvals to be in writing

Unless otherwise provided, an approval by the Registrar under this Act is to be given in writing.

185. Schedule 3 clause 1 amended

In Schedule 3 clause 1 in the definition of *co-operative* delete “registered under Part 14;” and insert:

authorised to carry on business in this State under Part 14 before the commencement of the *Co-operatives Amendment Act 2016* section 130;

186. Schedule 3 clause 32 amended

In Schedule 3 clause 32 in the definition of *officer* delete “of a foreign co-operative,” and insert:

of a foreign co-operative authorised to carry on business in this State under Part 14 before the commencement of the *Co-operatives Amendment Act 2016* section 130,

187. Schedule 3 clause 39 amended

In Schedule 3 clause 39(1) and (2) delete “Penalty:” and insert:

Penalty for this subclause:

188. Schedule 3 clause 41 amended

In Schedule 3 clause 41(7) delete “Penalty:” and insert:

Penalty for this subclause:

189. Schedule 4 clause 1 amended

- (1) In Schedule 4 clause 1 delete the definition of *property* and insert:

property, of a co-operative, means —

- (a) in the case of a co-operative to which section 372 applies — property within Australia or an external Territory; or
- (b) otherwise — property within or outside Australia;
- (2) In Schedule 4 clause 1 in the definition of *co-operative* delete “foreign co-operative registered under Part 14;” and insert:

participating co-operative;

- (3) In Schedule 4 clause 1 in the definition of *officer*:

- (a) delete “foreign co-operative,” and insert:

participating co-operative,

- (b) delete “foreign co-operative;” and insert:

participating co-operative;

190. Schedule 4 clause 20 amended

In Schedule 4 clause 20 in the definition of *reporting officer* delete paragraphs (a) and (b) and insert:

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

- (b) in the case of a participating co-operative — a local agent of the participating co-operative.

191. Schedule 4 clause 22 amended

In Schedule 4 clause 22 delete “records” and insert:

books

Note: The heading to amended Schedule 4 clause 22 is to read:

Controller may inspect books

192. Schedule 4 clause 23 amended

In Schedule 4 clause 23(5) delete “records” and insert:

books

193. Schedule 5 deleted

Delete Schedule 5.

194. Schedule 6 amended

Delete the reference after the heading to Schedule 6 and insert:

[s. 316 and 387]

195. Schedule 6 Division 1 inserted

At the beginning of Schedule 6 insert:

Division 1 — Modifications to Corporations Act provisions applying under section 316

1A. Modifications to winding-up and deregistration provisions: co-operatives

The Corporations Act Parts 5.4, 5.4A, 5.4B, 5.5, 5.6 and 5A.1 apply with the following modifications —

- (a) section 461(h) is to be read as if the words “ASIC has stated in a report prepared under Division 1 of Part 3 of the ASIC Act that, in its opinion:” were deleted and the words “the Registrar has, because of an inquiry held under the *Co-operatives Act 2009* (Western Australia) Part 15 Division 2 or 4, stated that:” were inserted;
- (b) section 462(2)(h) does not apply;
- (c) a reference in section 464 to an investigation under the ASIC Act Part 3 Division 1 is to be read as a reference to an investigation or inquiry under this Act;
- (d) section 470(3) is to be read as if the words “order, and subsection 1274(2) applies in relation to the document containing those particulars and to the office copy as if they were documents lodged with ASIC.” were deleted and the word “order.” were inserted;
- (e) section 495 is to be read as being subject to section 317 of this Act;
- (f) section 513B is to be read as if the following paragraph were inserted after paragraph (d) —
 - (da) if, when the resolution was passed, a winding-up of the co-operative on the certificate of the Registrar was already in

progress — on the date that certificate was given; or

- (g) 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”;
- (h) section 521 is to be read as being subject to section 322 of this Act;
- (i) section 542(3) is to be read as if —
 - (i) in paragraph (c) the word “direct.” were deleted and the words “direct; and” inserted; and
 - (ii) the following paragraph were inserted after paragraph (c) —
 - (d) for a winding-up on a certificate of the Registrar under the *Co-operatives Act 2009* (Western Australia) section 314 — with the consent of the Registrar.
- (j) a reference in section 544 to dealing with money under Part 9.7 is to be read as a reference to dealing with money under the Corporations Act Part 9.7 as applying under section 359 of this Act;
- (k) a reference in section 565, 566 or 567 to 23 June 1993 is to be read as a reference to 1 September 2010;
- (l) section 580 is to be read as if the definition of external administration matter were deleted and the following definition inserted —

external administration matter means a matter relating to a winding-up of a co-operative under the *Co-operatives Act 2009* (Western Australia) Part 12 Division 3 of or a participating co-operative under Part 14 Division 4 of that Act.
- (m) a reference in those Parts 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;
- (n) a reference in those Parts to any provision of Part 2F.1 is to be read as a reference to the appropriate provision of Part 4 Division 5 of this Act;
 - (o) those Parts 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;
 - (p) a reference in section 601AA or 601AB to ASIC database is to be read as a reference to the register of co-operatives kept under section 454 of this Act;
 - (q) section 601AB(1A) does not apply;
 - (r) a reference in section 601AC(1)(a) to section 413(1)(d) is to be read as a reference to section 352(3)(d) of this Act;
 - (s) a reference in section 601AE to crediting an amount to a special account (within the meaning of the *Public Governance, Performance and Accountability Act 2013* (Commonwealth)) is to be read as a reference to crediting an amount to a special purpose account (as defined in the *Financial Management Act 2006* section 3);
 - (t) any other modifications, within the meaning of the *Corporations (Ancillary Provisions) Act 2001* Part 3, that are prescribed by the regulations.

196. Schedule 6 Division 2 heading inserted

Before Schedule 6 clause 1 insert:

Division 2 — Modifications to Corporations Act provisions applying under section 387

197. Schedule 6 clause 1 amended

In Schedule 6 clause 1:

- (a) delete paragraph (a);
- (b) in paragraph (e) delete “foreign co-operative,” and insert:

participating co-operative,

- (c) in paragraph (h) delete “523 and 524” and insert:

523, 524 and 544

- (d) after paragraph (k) insert:

- (la) a reference in section 565, 566 or 567 to 23 June 1993 is to be read as a reference to 1 September 2010;

- (lb) section 580 is to be read as if the definition of external administration matter were deleted and the following definition inserted —

external administration matter means a matter relating to a winding-up of a co-operative under the *Co-operatives Act 2009* (Western Australia) Part 12 Division 3 of or a participating co-operative under Part 14 Division 4 of that Act.

- (e) in paragraph (m) delete “76 and 331” and insert:

67 and 322

Note: The heading to amended Schedule 6 clause 1 is to read:

Modifications to winding-up provisions: participating co-operatives

198. Various references to “co-operative capital unit” amended

In the provisions listed in the Table:

- (a) delete “co-operative capital unit” and insert:

CCU

- (b) delete “co-operative capital units” and insert:

CCUs

Table

s. 9(2)(h) and (3)	s. 39(2)(b)
s. 73(2)(c)	s. 127(2)(b)
s. 128(1)(b), (2) and (4)	s. 129(1) and (2)
s. 134(1)(b)	s. 144(4)(e)
s. 164(1)(b), (3), (4) and (5)	s. 352(3)(b)

Notes:

1. The heading to amended section 128 is to read:
Interest on deposits, debentures and CCUs
2. The heading to amended section 129 is to read:
Repayment of deposits and redemption of debentures and CCUs
3. The heading to amended section 164 is to read:
Deposit, debentures or CCUs instead of payment when share repurchased

199. Various references to “foreign co-operative” amended

In the provisions listed in the Table:

- (a) delete “foreign co-operative” (each occurrence) and insert:

participating co-operative

- (b) delete “foreign co-operatives” and insert:

participating co-operatives

Table

s. 352(1) def. of <i>co-operative</i>	s. 362(1)
s. 369	s. 375
Heading to Part 14 Division 4	s. 385(1) and (2)
s. 397(1) and (2)	

Note:

- The heading to amended section 369 is to read:
Operation of participating co-operatives in this State
- The heading to amended section 375 is to read:
Name of participating co-operative

s. 200

200. Various penalties amended

In the provisions listed in the Table delete “Penalty:” and insert:

Penalty for this subsection:

Table

s. 33(2)	s. 65(1)
s. 66(2)	s. 100(1) and (2)
s. 181(3)	s. 216(3)
s. 217(3)	s. 230(1)
s. 232(6) and (7)	s. 236
s. 237(2)	s. 238(5) and (7)
s. 242(1)	s. 243(1), (2) and (3)
s. 273(2) and (3)	s. 275(1) and (2)
s. 276(1), (2) and (3)	s. 304(8)
s. 345(1)	s. 346(2)
s. 351(1)	s. 402(3)
s. 425(4)	s. 430(3)
s. 433(4)	s. 439(1) and (2)

s. 441(1)	s. 442(1)
s. 476(2)	s. 477(1), (2), (3) and (4)



Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
CCU	92
co-operative capital unit.....	92