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Co-operatives Amendment Act 2016

Co-operatives Amendment Regulations 2016

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Co-operatives Amendment Regulations 2016*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on 1 January 2017.

3. Regulations amended

These regulations amend the *Co-operatives Regulations 2010*.

4. Regulation 3A inserted

After regulation 3 insert:

3A. Small co-operative (section 4(1))

- (1) For the purposes of the definition of *small co-operative* in section 4 of the Act, a co-operative is a small co-operative for a financial year if —
 - (a) subregulation (2) does not apply to the co-operative for the financial year and it satisfies at least 2 of the following subparagraphs —
 - (i) the consolidated revenue of the co-operative and the entities it controls

Co-operatives Amendment Regulations 2016***r. 4***

(if any) is less than \$8 million for the financial year;

- (ii) the value of the consolidated gross assets and the entities it controls (if any) is less than \$4 million at the end of the financial year;
- (iii) the co-operative and the entities it controls (if any) had fewer than 30 employees at the end of the financial year;

or

- (b) it is a co-operative declared under subregulation (5) to be a small co-operative for the financial year (regardless of whether or not subregulation (2) would apply to the co-operative).

- (2) This subregulation applies to a co-operative for a financial year for the purposes of this regulation, if it issues shares to more than 20 prospective members during that year and the amount raised in that year by the issue of those shares exceeds \$2 million.
- (3) In counting employees for the purposes of this regulation, part-time employees are to be taken into account as an appropriate fraction of a full-time equivalent.
- (4) Consolidated revenue and the value of consolidated gross assets are to be calculated for the purposes of this regulation in accordance with accounting standards in force at the relevant time (even if the standard does not otherwise apply to the financial year of some or all of the entities concerned).

Co-operatives Amendment Regulations 2016

r. 5

- (5) On application by a co-operative, the Registrar may, for the purposes of a financial year, declare the co-operative to be a small co-operative, but the Registrar may make the declaration only if satisfied that unusual and non-recurring circumstances have occurred that warrant doing so.
- (6) An application by a co-operative to the Registrar for a declaration under subregulation (5) must be made within 5 months after the end of the financial year.

5. Regulation 4 replaced

Delete regulation 4 and insert:

4. Corresponding co-operatives laws (section 5A)

Under section 5A of the Act, the following laws of other jurisdictions are declared to be corresponding co-operatives laws for the purposes of the Act —

- (a) the *Co-operatives (Adoption of National Law) Act 2012* (New South Wales);
- (b) the *Co-operatives National Law Application Act 2013* (Victoria);
- (c) the *Co-operatives (National Uniform Legislation) Act* (Northern Territory);
- (d) the *Co-operatives National Law (South Australia) Act 2013* (South Australia);
- (e) the *Co-operatives National Law (Tasmania) Act 2015* (Tasmania).

Co-operatives Amendment Regulations 2016**r. 6**

6. Regulation 5 amended

- (1) Delete regulation 5(2)(a) and (b) and insert:
 - (a) a fine of \$1 000, unless the co-operative is one whose primary activity is comprised of one or more charitable purposes; or
 - (b) a fine of \$500, for a co-operative whose primary activity is comprised of one or more charitable purposes.

- (2) Delete regulation 5(3).

7. Regulation 7 amended

In regulation 7(1) delete “activities.” and insert:

activities or is likely to do so within 2 years of its formation.

8. Regulation 8 amended

- (1) In regulation 8 delete “For” and insert:
 - (1) For
- (2) At the end of regulation 8 insert:
 - (2) The particulars relating to a person need to be kept in the register for the period during which the rights referred to in that clause subsist in respect of the person.

Co-operatives Amendment Regulations 2016

r. 9**9. Regulation 9 replaced**

Delete regulation 9 and insert:

9. Who is qualified to give certificate of value of assets (section 149)

- (1) For the purposes of section 149(c) of the Act, the prescribed qualifications for the person giving the certificate of value are that the person —
 - (a) must be independent of the co-operative; and
 - (b) must also have the necessary qualifications referred to in subregulation (2) or (3) as relevant.
- (2) To the extent the assets consist of real property, the person has the necessary qualifications if —
 - (a) in any case — the person is licensed or otherwise authorised by the law of any jurisdiction to carry on the business of valuing assets consisting of or including assets of the kind that were revalued; or
 - (b) without limiting paragraph (a) — where the law of the jurisdiction in which the real property is situated does not provide a system for licensing or otherwise authorising persons to value assets, the person carries on the business of valuing assets of that kind in that jurisdiction.
- (3) To the extent the assets consist of assets other than real property, the person has the necessary qualifications if the person carries on the business in any jurisdiction of valuing assets consisting of or including assets of the kind that were revalued.

Co-operatives Amendment Regulations 2016**r. 9**

9A. Postal ballots (section 185)

- (1) For the purposes of section 185(1) of the Act, a postal ballot held as provided by the rules of a co-operative must be conducted in the following way —
 - (a) the postal ballot must be secure and must provide for the appointment of a returning officer who does not have a material personal interest in the outcome of the ballot (other than an interest arising as a member generally);
 - (b) the ballot papers must be provided to members at least 21 days prior to the closing date of the ballot, to allow members to consider, record and return their vote;
 - (c) if electronic facilities for the postal ballot are to be used —
 - (i) members who have limited or no access to electronic facilities are not to be prejudiced in their ability to be advised of the postal ballot and to consider, record and return their vote; and
 - (ii) facilities must be reasonably available for members to be advised of the postal ballot, and to consider, record and return their vote, otherwise than by the use of electronic facilities;
 - (d) if the postal ballot is required to be a secret ballot, it must be conducted so that the vote of each member can be counted without identifying the member.
- (2) Provided the requirements of subregulation (1) are met, a postal ballot is to be conducted in accordance with the rules of the co-operative.

Co-operatives Amendment Regulations 2016

r. 10**10. Regulation 10 amended**

- (1) At the beginning of regulation 10 insert:
 - (1) For the purposes of section 206C(3) of the Act, the Registrar for the jurisdiction against a law of which a person has been convicted of an offence, is an authority who may give a certificate about the person's conviction of the offence.
- (2) In regulation 10:
 - (a) delete "For" and insert:
 - (2) For
 - (b) delete "section 200(3)" and insert:
 - section 206C(4)

Note: The heading to amended regulation 10 is to read:

Disqualified persons (section 206C)

11. Regulations 11 and 12 replaced

Delete regulations 11 and 12 and insert:

11. Secretary to ensure these provisions are not contravened (section 207A)

For the purposes of section 207A of the Act, the following provisions of the Act are prescribed as being those that the secretary of a co-operative must take all reasonable steps to ensure that the co-operative does not contravene —

- (a) section 231(3) (*location of registers*);

Co-operatives Amendment Regulations 2016**r. 12**

- (b) section 234 (*notice of appointment etc. of directors and officers*);
- (c) section 240(2) (*name to appear on business documents etc.*);
- (d) section 243(2) (*registered office of co-operative - requirement to display notice*);
- (e) section 243(3) (*registered office of co-operative - requirement to notify new address*);
- (f) section 244C(1) (*obligation to keep financial records*);
- (g) section 244ZB(1) (*lodgment of annual returns with the Registrar*);
- (h) section 244ZC(1) (*lodgment of financial reports etc. with the Registrar*);
- (i) section 244ZD(1) (*lodgment of half-yearly reports with the Registrar*);
- (j) section 244ZF(1) (*re-lodgment if financial report or director's report is amended - requirement to re-lodge*);
- (k) section 244ZF(2) (*re-lodgment if financial report or director's report is amended - requirement to notify members*);
- (l) section 244ZP (*Registrar to be notified of appointment of auditor*).

12. Regulation 13 amended

Delete regulation 13(2) and insert:

- (2) A register may include —
 - (a) any document in the English language in which the required particulars are recorded; and

Co-operatives Amendment Regulations 2016

r. 13

- (b) any disk, tape, soundtrack or other device on which the required particulars are recorded, so long as they are capable (with or without the aid of some other equipment) of being reproduced in a document in the English language.

13. Regulation 14 replaced

Delete regulation 14 and insert:

14. Inspection of registers etc. (section 232)

- (1) For the purposes of section 232(1) of the Act, the following registers of a co-operative are registers that are available for inspection —
 - (a) the register of loans made by or guaranteed by the co-operative, and of securities taken by the co-operative;
 - (b) the register stating particulars of persons whose membership has been cancelled.
- (2) For the purposes of section 232(5) of the Act, the fee required by the rules of a co-operative for a copy of an entry in a register must not be more than the fee chargeable under these regulations for a copy of the same or a corresponding item by the Registrar.

14. Regulation 16 deleted

Delete regulation 16.

Co-operatives Amendment Regulations 2016**r. 15**

15. Regulation 17A inserted

After regulation 17 insert:

17A. Use of name by exempted entities (sections 238 and 242)

- (1) Under section 238(9) of the Act, a corporation that is formed or incorporated under an Act of another State or Territory, or under a Commonwealth Act, that is allowed under that Act to use a name that includes the word “Co-operative” or “Cooperative” or the abbreviation “Co-op” is exempt from section 238(7) of the Act.
- (2) Under sections 238(9) and 242(2) of the Act, the Registrar may exempt, in writing, from the provisions of section 238(7) or 242(1), a person or corporation, other than a co-operative, that wishes to trade or carry on a business, under a name or title containing the word “Co-operative” or “Cooperative” or the abbreviation “Co-op” or words importing a similar meaning.
- (3) An exemption under subregulation (2) may be given with or without conditions.

16. Regulations 18A to 18F inserted

After regulation 18 insert:

18A. Small co-operative: reports where no members’ direction (section 244H)

- (1) For the purposes of section 244H(3)(a) of the Act, the requirements regarding the preparation and provision of reports to members of a small co-operative that is

Co-operatives Amendment Regulations 2016

r. 16

not the subject of a direction under either section 244I or 244J are as set out in this regulation.

- (2) The small co-operative must prepare a report containing the following financial statements for a financial year —
 - (a) an income and expenditure statement that sets out the appropriately classified individual sources of income and individual expenses incurred in the operation of the co-operative and the assets and liabilities of the co-operative;
 - (b) a balance sheet (including appropriately classified individual assets and liabilities of the co-operative);
 - (c) a statement of changes in equity;
 - (d) a cash flow statement.
- (3) The small co-operative need not include in the report a cash flow statement (as referred to in subregulation (2)(d)), if —
 - (a) the consolidated revenue of the small co-operative and the entities it controls (if any) is less than \$750 000; and
 - (b) the value of the consolidated gross assets and the entities it controls (if any) is less than \$250 000.
- (4) The small co-operative is to ensure that the financial statements referred to in subregulation (2) —
 - (a) include comparative figures for the previous financial year; and
 - (b) include a statement of significant accounting policies; and

Co-operatives Amendment Regulations 2016**r. 16**

- (c) present a true and fair view of the co-operative's financial position, performance and cash flows.

18B. Small co-operative: reports where members require audit or review (section 244I)

For the purposes of section 244I of the Act, the requirements in accordance with which a small co-operative is to comply under section 244I(6)(b) of the Act if so directed by members are the standards for an audit or review as set by the Australian Auditing and Assurance Standards Board.

18C. Contents of annual financial report: disclosures required by notes to consolidated financial statements (section 244K)

- (1) In this regulation —
parent entity means a co-operative that is required by the accounting standards to prepare financial statements in relation to a consolidated entity.
- (2) For the purposes of section 244K(3)(a) of the Act, if section 244K(2)(b) applies to a parent entity, the following disclosures are required in the notes to the financial statements of the consolidated entity —
 - (a) current assets of the parent entity;
 - (b) total assets of the parent entity;
 - (c) current liabilities of the parent entity;
 - (d) total liabilities of the parent entity;
 - (e) members' equity in the parent entity separately showing issued capital and each reserve;
 - (f) profit or loss of the parent entity;
 - (g) total comprehensive income of the parent entity;

Co-operatives Amendment Regulations 2016

r. 16

- (h) details of any guarantees entered into by the parent entity in relation to the debts of its subsidiaries;
 - (i) details of any contingent liabilities of the parent entity;
 - (j) details of any contractual commitments by the parent entity for the acquisition of property, plant or equipment;
 - (k) comparative information for the previous period for each of paragraphs (a) to (j).
- (3) The disclosures in subregulation (2) must be calculated in accordance with accounting standards in force in the financial year to which the disclosure relates.

18D. Small co-operative: annual reports for members (section 244V)

For the purposes of section 244V(2) of the Act, a small co-operative must provide to members financial reports for a financial year containing the financial statements prescribed by regulation 18A for the purposes of section 244H of the Act.

18E. Annual return to Registrar (section 244ZB)

- (1) For the purposes of section 244ZB(2) of the Act, the contents of the annual return lodged with the Registrar are as follows —
 - (a) the name of the co-operative;
 - (b) the street address of each of the following places of the co-operative —
 - (i) registered office;
 - (ii) principal place of business;
 - (c) the name, address and position of the person sending the annual report to the Registrar;

Co-operatives Amendment Regulations 2016***r. 16***

- (d) the date of the report;
 - (e) the number, and the corresponding full-time equivalent number, of persons employed by the co-operative at the end of the financial year;
 - (f) the number of members in the co-operative at the end of the financial year;
 - (g) the directors and secretary at the date of the return;
 - (h) the gross consolidated revenue of the co-operative for the financial year covered by the report;
 - (i) the date of the annual general meeting.
- (2) In addition to the contents prescribed in subregulation (1), the following contents are prescribed for an annual return lodged by a small co-operative —
- (a) a statement that the board has resolved that it is satisfied that it is a small co-operative for the financial year;
 - (b) a statement certifying whether there have been any directions by the members to prepare additional financial reports under section 244I of the Act and, if so, setting out the terms of the directions;
 - (c) a statement that the board has resolved that it is satisfied that the co-operative is solvent and the date of the resolution;
 - (d) a statement as to whether the co-operative had any securities on issue to non-members during the financial year.

Co-operatives Amendment Regulations 2016

r. 17**18F. Synchronising financial years of co-operative and controlled entities (section 244ZH)**

- (1) The purpose of this regulation is to provide for the adoption by a co-operative of the same financial year for each entity that the co-operative controls, as contemplated by section 244ZH(5) of the Act.
- (2) A co-operative that has to prepare consolidated financial statements must do whatever is necessary to ensure that the financial years of the consolidated entities are synchronised with its own financial years.
- (3) The co-operative must achieve this synchronisation by the end of 12 months after the situation that calls for consolidation arises.
- (4) To facilitate this synchronisation, the financial year for a controlled entity may be extended or shortened, but the extended financial year cannot be longer than 18 months.

17. Regulation 21 deleted

Delete regulation 21.

18. Regulation 24A inserted

After regulation 24 insert:

24A. Distribution of surplus or reserves to members: minimum rate of interest for loan when rebate paid as loan to co-operative (section 271)

- (1) This regulation prescribes the rate of interest for a loan to a co-operative repayable at call, which is the minimum rate of interest the loan must bear.

Co-operatives Amendment Regulations 2016**r. 19**

- (2) For the purposes of section 271(5) of the Act, the prescribed rate of interest for a loan to a co-operative repayable at call is the cash rate published by the Reserve Bank of Australia and having effect at the commencement of the loan period.

19. Regulation 30A inserted

After regulation 30 insert:

30A. Requirements to be satisfied before offer can be made (section 290)

For the purposes of section 290(2) of the Act, an offer referred to in section 289(1)(e) of the Act can be made even if it has not been approved as referred to in section 290(1) of the Act if —

- (a) the offer is made in circumstances where it is part of a scheme of arrangement referred to in section 338(1)(a) of the Act; or
- (b) the offer is made in circumstances where —
 - (i) it is part of the normal course of a co-operative's activities in admitting new members or in dealing with membership changes while the co-operative is a going concern; and
 - (ii) the offeror's shareholding interest exceeds or would exceed 5% of the nominal value of the co-operative's issued share capital for less than 6 months; and
 - (iii) the Registrar has, on the application of the co-operative, exempted the co-operative under section 296 of the

Co-operatives Amendment Regulations 2016

r. 20

Act from compliance with
section 290(1) of the Act in relation to
the offer.

20. Regulation 33 deleted

Delete regulation 33.

21. Regulation 35 amended

In regulation 35 delete “a form approved by the Registrar.” and
insert:

Form 1 in Schedule 7A.

22. Regulation 36 amended

In regulation 36 delete “a form approved by the Registrar.” and
insert:

Form 2 in Schedule 7A.

23. Regulations 37 and 38 replaced

Delete regulations 37 and 38 and insert:

**37. Restrictions on advertising and publicity: shares
(section 380C)**

- (1) The purpose of this regulation is to specify
requirements, as contemplated by section 380C(1)(b)
of the Act, that are to be complied with in connection
with —
- (a) an advertisement for; or

Co-operatives Amendment Regulations 2016**r. 23**

- (b) the publication of 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.

- (2) For the purposes of section 380C of the Act, the requirements are that, if the advertisement or statement is intended or likely to attract new members from a participating jurisdiction, the advertisement or statement must be accompanied by information about —
 - (a) any application to ASIC for relief under section 741 of the Corporations Act; or
 - (b) any intention to lodge the advertisement or statement under Chapter 6D of the Corporations Act.

38. Restrictions on advertising and publicity: debentures or CCUs (section 380D)

- (1) The purpose of this regulation is to specify requirements, as contemplated by section 380D(1)(b) of the Act, that are to be complied with in connection with —
 - (a) an advertisement for; or
 - (b) the publication of a statement that directly or indirectly refers to,

an offer, or intended offer, of debentures or CCUs in a participating co-operative.
- (2) For the purposes of section 380D of the Act, the requirements are that, if the advertisement or statement is intended or likely to attract investors from a participating jurisdiction, the advertisement or

Co-operatives Amendment Regulations 2016

r. 24

statement must be accompanied by information about —

- (a) any application to ASIC for relief under section 741 of the Corporations Act; or
- (b) any intention to lodge the advertisement or statement under Chapter 6D of the Corporations Act.

38A. Information to appear on business and other documents (section 380)

- (1) This regulation applies to a participating co-operative that maintains a place of business in this jurisdiction or acts through an agent in this jurisdiction.
- (2) For the purposes of section 380(2) of the Act, the following (so far as relevant) is prescribed as other information that is to appear in legible characters in all its business documents —
 - (a) a statement that the participating co-operative maintains a place of business in this jurisdiction and that specifies the location of the place of business;
 - (b) a statement that the participating co-operative acts through an agent in this jurisdiction and that specifies the name and contact details of the agent.

24. Regulation 40 replaced

Delete regulation 40 and insert:

40. Documents relating to a co-operative (section 457)

For the purposes of section 457(1)(b) of the Act, the documents kept by the Registrar relating to a

Co-operatives Amendment Regulations 2016**r. 25**

co-operative that a person may inspect are as follows —

- (a) the annual returns or annual financial statements of the co-operative;
- (b) the rules of the co-operative and any rule changes;
- (c) any disclosure statements made in relation to the co-operative and approved by the Registrar;
- (d) the application for registration of the co-operative and any attachments to the application;
- (e) a copy of the certificate of registration of the co-operative issued under the Act (or any previous Act);
- (f) any registered special resolutions of the co-operative;
- (g) any exemptions, orders in writing or other documents evidencing approval by the Registrar in relation to the co-operative;
- (h) any enforceable undertaking in relation to the co-operative or its officers (subject to any claim for confidentiality as determined by the Registrar).

25. Regulation 41 amended

- (1) At the beginning of regulation 41 insert:

- (1) In Schedule 9 —

judicial officer, of a court, means a Judge or Master of the court or another officer of the court who may exercise judicial functions.

Co-operatives Amendment Regulations 2016

r. 26

- (2) In regulation 41 delete “For” and insert:

- (2) For

26. Schedule 1 amended

- (1) In Schedule 1 clause 1 in the definition of *special resolution* delete “clause 38.” and insert:

clause 38(1), (2) and (3).

- (2) Delete Schedule 1 clause 2(4) and insert:

- (4) If alteration to these rules under section 28(3A) of the Act requires prior approval of the Registrar following an order made under section 103(1B), the proposed alteration cannot be put to a resolution unless it is approved by the Registrar.
[s. 103]

- (4A) If alteration to these rules under section 103 of the Act requires prior approval of the Registrar following an order made under section 103(1B), the proposed alteration cannot be put to a resolution unless it is approved by the Registrar.
[s. 103]

- (3) Delete Schedule 1 clause 7(1)(a) and insert:

- (a) a copy of the documents required to be given under section 68(1) of the Act, whether or not the person requests a copy of any or all of those documents;
and

- (4) In Schedule 1 clause 9(5) delete “[s. 73]”.

Co-operatives Amendment Regulations 2016***r. 26***

(5) Delete Schedule 1 clause 14(1) and insert:

- (1) The board may impose on a member a maximum fine of \$ (not more than \$1 000, unless the primary activities of the co-operative are charitable — in that case not more than \$500) for a contravention of the rules.

(6) Delete Schedule 1 clause 16(5) and insert:

- (5) The co-operative must keep a register of cancelled memberships under subclause (1), that must include the particulars in Schedule 4 clause 5 of the regulations.

(7) In Schedule 1 clause 21(2) after “liabilities” insert:

as those to which

(8) In Schedule 1 clause 22(1) delete “transferee.” and insert:

receiver.

(9) In Schedule 1 clause 27(1) delete “Subject to clause 28, at” and insert:

At

(10) Delete Schedule 1 clause 28.

(11) In Schedule 1 clause 37(2) delete “Act” and insert:

Act, regulation 9A of the regulations

Co-operatives Amendment Regulations 2016

r. 26

- (12) In Schedule 1 clause 39(2) before “member directors” insert:
- (at least 3)
- (13) In Schedule 1 clause 44:
- (a) delete “special” and insert:
- ordinary
- (b) delete “[s. 205(2)]” and insert:
- [s. 206A]
- (14) In Schedule 1 clause 45:
- (a) in paragraph (b) delete “section 200” and insert:
- Part 9 Division 2A
- (b) in paragraph (e) delete “special” and insert:
- ordinary
- (c) in paragraph (g) delete “Division 5” and insert:
- Division 4
- (15) In Schedule 1 clause 57(1) delete paragraph (c) and insert:
- (c) a copy of the most recent annual return of the co-operative under section 244ZB of the Act;
- (ca) a copy of the most recent financial information reported to members under Part 10A of the Act;

Co-operatives Amendment Regulations 2016**r. 26**

- (16) In Schedule 1 clause 57(2) delete “(maximum \$11.60 for the first page and \$1.50 for each additional page, up to a maximum of \$86.60)].” and insert:

(see Schedule 10 of the regulations for the fee that may be charged)].

- (17) In Schedule 1 clause 60(1) delete “co-operative or otherwise exempt from requiring an auditor [s. 226])” and insert:

co-operative)

- (18) In Schedule 1 clause 61(3) delete “section 293 or 294 of the Corporations Act.” and insert:

section 244I or 244J of the Act.

- (19) In Schedule 1 clause 62(1) delete “those provisions of the Corporations Act that apply under section 225 of the Act.” and insert:

Part 10A Division 12 of the Act.

- (20) In Schedule 1 clause 62(2)(b) delete “section 329 of the Corporations Act; or” and insert:

section 244ZW of the Act; or

- (21) In Schedule 1 clause 62(4) delete “[s. 225],” and insert:

[s. 244ZW],

Co-operatives Amendment Regulations 2016

r. 27

- (22) In Schedule 1 clause 62(11) and (12) delete “section 329 of the Corporations Act,” and insert:

section 244ZW of the Act,

- (23) In Schedule 1 clause 66(1) after “Part 12” insert:

Division 3

- (24) In Schedule 1 clause 66(3)(d) delete “subsection of section 50” and insert:

provision of Division 50

27. Schedule 2 amended

- (1) In Schedule 2 clause 1 in the definition of *special resolution* delete “clause 47.” and insert:

clause 47(1), (2) and (3).

- (2) Delete Schedule 2 clause 2(4) and insert:

(4) If alteration to these rules under section 28(3A) of the Act requires prior approval of the Registrar following an order made under section 103(1B), the proposed alteration cannot be put to a resolution unless it is approved by the Registrar.
[s. 103]

- (4A) If alteration to these rules under section 103 of the Act requires prior approval of the Registrar following an order made under section 103(1B), the proposed alteration cannot

Co-operatives Amendment Regulations 2016**r. 27**

be put to a resolution unless it is approved by the Registrar.
[s. 103]

(3) Delete Schedule 2 clause 7(1)(a) and insert:

- (a) a copy of the documents required to be given under section 68(1) of the Act, whether or not the person requests a copy of any or all of those documents; and

(4) Delete Schedule 2 clause 14(1) and insert:

- (1) The board may impose on a member a maximum fine of \$ (not more than \$1 000, unless the primary activities of the co-operative are charitable — in that case not more than \$500) for a contravention of the rules.

(5) In Schedule 2 clause 15(6) delete “co-operative.” and insert:

co-operative passed by special postal ballot.

(6) Delete Schedule 2 clause 21(6) and insert:

- (6) The co-operative must keep a register of cancelled memberships under subclause (1), that must include the particulars in Schedule 4 clause 5 of the regulations.

(7) In Schedule 2 clause 31(1) delete “transferee.” and insert:

receiver.

Co-operatives Amendment Regulations 2016

r. 27

- (8) In Schedule 2 clause 36(1) delete “Subject to clause 37, at” and insert:

At

- (9) Delete Schedule 2 clause 37.
- (10) In Schedule 2 clause 46(2) delete “Act” and insert:

Act, regulation 9A of the regulations

- (11) In Schedule 2 clause 48(2) before “member directors” insert:

(at least 3)

- (12) In Schedule 2 clause 53:

- (a) delete “special” and insert:

ordinary

- (b) delete “[s. 205(2)]” and insert:

[s. 206A]

- (13) In Schedule 2 clause 54:

- (a) in paragraph (b) delete “section 200” and insert:

Part 9 Division 2A

Co-operatives Amendment Regulations 2016**r. 27**

- (b) in paragraph (e) delete “special” and insert:

ordinary

- (c) in paragraph (g) delete “Division 5” and insert:

Division 4

- (14) In Schedule 2 clause 60(2) delete “5 minutes” and insert:

15 minutes

- (15) Delete Schedule 2 clause 66(1)(c) and insert:

- (c) a copy of the most recent annual return of the co-operative under section 244ZB of the Act;
- (ca) a copy of the most recent financial information reported to members under Part 10A of the Act;

- (16) In Schedule 2 clause 66(2) delete “(maximum \$11.60 for the first page and \$1.50 for each additional page, up to a maximum of \$86.60)].” and insert:

(see Schedule 10 of the regulations for the fee that may be charged)].

- (17) In Schedule 2 clause 69(1) delete “co-operative or otherwise exempt from requiring an auditor [s. 226])” and insert:

co-operative)

Co-operatives Amendment Regulations 2016

r. 27

- (18) In Schedule 2 clause 70(3) delete “section 293 or 294 of the Corporations Act.” and insert:

section 244I or 244J of the Act.

- (19) In Schedule 2 clause 71(1) delete “those provisions of the Corporations Act that apply under section 225 of the Act.” and insert:

Part 10A Division 12 of the Act.

- (20) In Schedule 2 clause 71(2)(b) delete “section 329 of the Corporations Act; or” and insert:

section 244ZW of the Act; or

- (21) In Schedule 2 clause 71(4) delete “[s. 225],” and insert:

[s. 244ZW],

- (22) In Schedule 2 clause 71(11) and (12) delete “section 329 of the Corporations Act,” and insert:

section 244ZW of the Act,

- (23) In Schedule 2 clause 75(1) after “Part 12” insert:

Division 3

Co-operatives Amendment Regulations 2016**r. 28**

- (24) In Schedule 2 clause 75(3)(d) delete “subsection of section 50” and insert:

provision of Division 50

28. Schedule 3 amended

- (1) In Schedule 3 clause 1 in the definition of *special resolution* delete “clause 47.” and insert:

clause 47(1), (2) and (3).

- (2) Delete Schedule 3 clause 2(4) and insert:

- (4) If alteration to these rules under section 28(3A) of the Act requires prior approval of the Registrar following an order made under section 103(1B), the proposed alteration cannot be put to a resolution unless it is approved by the Registrar.
[s. 103]

- (4A) If alteration to these rules under section 103 of the Act requires prior approval of the Registrar following an order made under section 103(1B), the proposed alteration cannot be put to a resolution unless it is approved by the Registrar.
[s. 103]

- (3) Delete Schedule 3 clause 7(1)(a) and insert:

- (a) a copy of the documents required to be given under section 68(1) of the Act, whether or not the person requests a copy of any or all of those documents;
and

Co-operatives Amendment Regulations 2016

r. 28

- (4) In Schedule 3 clause 15(9) delete “co-operative.” and insert:

co-operative passed by special postal ballot.

- (5) Delete Schedule 3 clause 21(6) and insert:

- (6) The co-operative must keep a register of cancelled memberships under subclause (1), that must include the particulars in Schedule 4 clause 5 of the regulations.

- (6) In Schedule 3 clause 36(1) delete “Subject to clause 37, at” and insert:

At

- (7) Delete Schedule 3 clause 37.

- (8) In Schedule 3 clause 46(2) delete “Act” and insert:

Act, regulation 9A of the regulations

- (9) In Schedule 3 clause 48(2) before “member directors” insert:

(at least 3)

- (10) In Schedule 3 clause 53:

- (a) delete “special” and insert:

ordinary

Co-operatives Amendment Regulations 2016**r. 28**

- (b) delete “[s. 205(2)]” and insert:

[s. 206A]

- (11) In Schedule 3 clause 54:

- (a) in paragraph (b) delete “section 200” and insert:

Part 9 Division 2A

- (b) in paragraph (e) delete “special” and insert:

ordinary

- (c) in paragraph (g) delete “Division 5” and insert:

Division 4

- (12) In Schedule 3 clause 61(6) delete “15 minutes” and insert:

5 minutes

- (13) Delete Schedule 3 clause 66(1)(c) and insert:

- (c) a copy of the most recent annual return of the co-operative under section 244ZB of the Act;
- (ca) a copy of the most recent financial information reported to members under Part 10A of the Act;

Co-operatives Amendment Regulations 2016

r. 28

- (14) In Schedule 3 clause 66(2) delete “(maximum \$11.60 for the first page and \$1.50 for each additional page, up to a maximum of \$86.60)].” and insert:

(see Schedule 10 of the regulations for the fee that may be charged)].

- (15) In Schedule 3 clause 69(1) delete “co-operative or otherwise exempt from requiring an auditor [s. 226])” and insert:

co-operative)

- (16) In Schedule 3 clause 70(3) delete “section 293 or 294 of the Corporations Act.” and insert:

section 244I or 244J of the Act.

- (17) In Schedule 3 clause 71(1) delete “those provisions of the Corporations Act that apply under section 225 of the Act.” and insert:

Part 10A Division 12 of the Act.

- (18) In Schedule 3 clause 71(2)(b) delete “section 329 of the Corporations Act; or” and insert:

section 244ZW of the Act; or

- (19) In Schedule 3 clause 71(4) delete “[s. 225],” and insert:

[s. 244ZW],

Co-operatives Amendment Regulations 2016**r. 29**

- (20) In Schedule 3 clause 71(11) and (12) delete “section 329 of the Corporations Act,” and insert:

section 244ZW of the Act,

- (21) In Schedule 3 clause 74(7) and (8)(b) delete “an interest” and insert:

a share

- (22) In Schedule 3 clause 75(1) after “Part 12” insert:

Division 3

29. Schedule 4 amended

- (1) In Schedule 4 clause 2(1):
- (a) delete “and CCUs”;
 - (b) after paragraph (c) insert:
 - (ca) a reference identifying the account created for the loan;
 - (cb) the date of each payment made in relation to the loan and the amount of each payment so made;
 - (c) after paragraph (e) insert:
 - (ea) the location of the documents relating to the security given in respect of the loan;
 - (eb) particulars of any movement of those documents from that location;

Co-operatives Amendment Regulations 2016

r. 29**(2) In Schedule 4 clause 2(2):**

- (a) delete “and CCUs”;
- (b) delete “or CCU”;
- (c) in paragraph (a) delete “or CCU”;
- (d) in paragraph (b) delete “debenture or details of the CCU;” and insert:

debenture;

- (e) in paragraph (d) delete “debenture or the nominal value of the CCU;” and insert:

debenture;

- (f) after paragraph (h) insert:

- (ha) the ledger folio;
- (hb) the name and address of any transferor;

- (g) in paragraph (i) delete “transfer of the debenture or the CCU.” and insert:

transfer;

- (h) after paragraph (i) insert:

- (j) the redemption value.

(3) In Schedule 4 clause 2(3):

- (a) delete “and CCUs”;

Co-operatives Amendment Regulations 2016**r. 29**

(b) delete paragraph (h) and insert:

(h) the balance owing (if any).

Note: The heading to amended clause 2 is to read:

Register of loans, securities given by, debentures issued by and deposits received by a co-operative

(4) In Schedule 4 clause 3:

(a) delete “The” and insert:

(1) The

(b) delete “or CCUs”;

(c) in paragraph (b) delete subparagraphs (iii) and (iv) and insert:

(iii) holds debentures issued by the co-operative;

(d) in paragraph (c) delete “or CCUs”;

(5) At the end of Schedule 4 clause 3 insert:

(2) The details required by subregulation (1) for a person are not required to be included in the register to the extent another register kept by the co-operative includes the details referred to in subregulation (1)(b) and (c) and includes the person’s name and the address of the person in relation to those details.

Note: The heading to amended clause 3 is to read:

Register of names of persons who have given loans or deposits to or hold securities or debentures given or issued by a co-operative

Co-operatives Amendment Regulations 2016

r. 29

(6) After Schedule 4 clause 4 insert:

4A. Register of CCUs

- (1) The register of CCUs issued by a co-operative must contain the following particulars —
- (a) the date of the resolution approving the terms of issue of each CCU;
 - (b) the name and address of the holder of each CCU;
 - (c) the name or code that identifies each CCU or, if a CCU is part of a series, the name or code that identifies the series;
 - (d) the terms of issue of each CCU, including but not limited to —
 - (i) the face value (if any) of the CCU;
 - (ii) the issue value of the CCU;
 - (iii) details of entitlement to repayment of capital in relation to the CCU;
 - (iv) details of entitlement to interest on capital (whether cumulative or non-cumulative interest);
 - (v) details of entitlement (if any) to participate in surplus assets and profits on a winding up of the co-operative;
 - (vi) details of how capital and interest on capital are to rank on a winding up of the co-operative;
 - (vii) the date and manner of redemption, including the redemption value (if known);
 - (e) if a CCU is transferred — the name and address of the transferee;
 - (f) whether there is a limit on the total holdings of CCUs that may be acquired by persons who are not members of the co-operative and, if there is a limit, what the limit is.

Co-operatives Amendment Regulations 2016***r. 29***

(7) Delete Schedule 4 clause 5(1)(a) to (e) and insert:

- (a) the name and address of the member;
- (b) if the whereabouts of the member are known —
 - (i) the date of the member's last active dealing with the co-operative; and
 - (ii) the date of giving the required notice to the member;
- (c) if the whereabouts of the member are unknown, the date when the required period of the member's whereabouts being unknown commenced;
- (d) the date of the board's resolution cancelling membership.

(8) Delete Schedule 4 clause 5(2) and (3) and insert:

- (2) The register of memberships cancelled under Part 6 of the Act must, if the co-operative has a share capital, contain the following additional particulars for each member whose membership is cancelled —
 - (a) the amount subscribed in respect of the shares forfeited;
 - (b) if the whereabouts of the member are unknown and the amount required to be repaid to the member in respect of the cancelled membership exceeds \$100 —
 - (i) the date of publication of the required notice in a newspaper; and
 - (ii) the name of the newspaper;
 - (c) the date of the board's resolution forfeiting the shares;

Co-operatives Amendment Regulations 2016

r. 30

- (d) if the date fixed by the board resolution for repayment of the amount paid up on shares is within 12 months of forfeiture —
 - (i) the date of repayment; or
 - (ii) the date and nature of the application of the amount under section 127 of the Act;
- (e) if the amount due is to be transferred to a debenture, CCU or deposit account —
 - (i) the date of repayment; and
 - (ii) the date of transfer to such an account.

30. Schedule 5 deleted

Delete Schedule 5.

31. Schedule 7A inserted

- (1) After Schedule 7 insert:

Schedule 7A — Forms: notices about acquisition of shares

[r. 35 and 36]

Form 1 — Compulsory acquisition notice (s. 355(1))

1. To: *(name of dissenting shareholder)*
of: *(address of dissenting shareholder)*
- A. The transferee *(insert name of person giving notice)* on *(insert date)* made an offer to the holders of *shares in *(insert name of co-operative)* Co-operative Limited/*shares included in a class of shares in *(insert name of co-operative)* Co-operative Limited for the transfer of those shares to the transferee, not being an offer made under a scheme or contract to which Part 11 Division 2 of the Act applies; and
- B. The scheme or contract involving the transfer of those shares to the transferee was on or before *(insert date)* approved by the

Co-operatives Amendment Regulations 2016**r. 31**

holders of at least 90% in nominal value of all the shares concerned, other than excluded shares; and

C. You are a dissenting shareholder.

2. The transferee gives you notice under section 355(1) of the Act that the transferee desires to acquire those shares held by you.
3. You are entitled under section 355(2) of the Act to ask the transferee, by written notice given to the transferee within one month after the day on which this notice is given, to give you a statement in writing of the names and addresses of all other dissenting shareholders as shown in the register of members.
- *4. You are entitled not later than the expiration of 28 days after the date on which this notice is given or 14 days after the date on which a statement is supplied to you under section 355(2) of the Act, whichever is the later, to elect, by notice to the transferee, which of the alternative terms offered to the approving shareholders under the scheme or contract you prefer. The alternative terms are as follows:

(insert details)
5. Unless, on application made by you within 28 days after the date on which this notice is given or within 14 days after a statement is supplied to you under section 355(2) of the Act, the Supreme Court otherwise orders, the transferee will be entitled and bound, subject to section 355(2), to acquire your shares —
 - (a) on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee; or
 - (b) if alternative terms were offered —
 - (i) on the terms for which you have elected; or
 - (ii) if you have not so elected, on whichever of those terms the transferee determines unless the Supreme Court otherwise orders.

Dated
Signature of transferee

* *Strike out words not applicable.*

Co-operatives Amendment Regulations 2016

r. 31

Form 2 — Notice to remaining shareholders (s. 357(1)(a))

1. To: *(name of remaining shareholder)*
of: *(address of remaining shareholder)*
 - A. The transferee *(insert name of person giving notice)* on *(insert date)* made offers to the holders of *shares in *(insert name of co-operative)* Co-operative Limited/*shares included in a class of shares in *(insert name of co-operative)* Co-operative Limited for the transfer of those shares to the transferee, not being offers made under a scheme or contract to which Part 11 Division 2 of the Act applies; and
 - B. Under the scheme or contract the transferee became on *(insert date)* beneficially entitled to shares in that co-operative which together with any other shares in that co-operative to which the transferee, or the transferee and any body corporate related to the transferee, is beneficially entitled, comprise or include 90% in nominal value of the shares concerned; and
 - C. You are the holder of remaining shares *in that co-operative/*included in that class of shares in that co-operative and have not assented to the scheme or contract or been given notice in respect of those shares by the transferee under section 355(1) of the Act.
2. The transferee gives you notice under section 357(1)(a) of the Act that under that scheme or contract the transferee on *(insert date)* became beneficially entitled to shares in *(insert name of co-operative)* Co-operative Limited and those shares together with any other shares in that co-operative to which the transferee, or the transferee and any body corporate related to the transferee, is beneficially entitled, comprise or include 90% in nominal value of the shares *in that co-operative/*included in that class of shares in that co-operative.
3. You are entitled under section 357(1)(b) of the Act within 3 months after being given this notice, by notice to the transferee to require the transferee to acquire your shares.

Co-operatives Amendment Regulations 2016**r. 32**

- *4. You are entitled under section 357(1)(b) of the Act, within 3 months after being given this notice to elect by notice to the transferee which of the alternative terms offered to the approving shareholders under the scheme or contract you will accept. The alternative terms are as follows:

(insert details)

5. If you require the transferee to acquire the shares held by you, the transferee will be entitled and bound to acquire those shares —
- (a) on the terms on which the scheme or contract were offered to the approving shareholders; or
 - (b) if alternative terms were offered —
 - (i) on the terms for which you have elected; or
 - (ii) if you have not so elected, on whichever of those terms the transferee determines;
- or
- (c) on such other terms as are agreed or as the Supreme Court on the application of the transferee or of yourself orders.

Dated Signature of transferee

* *Strike out words not applicable.*

32. Schedule 8 deleted

Delete Schedule 8.

Co-operatives Amendment Regulations 2016

r. 33**33. Schedule 9 replaced**

Delete Schedule 9 and insert:

Schedule 9 — Holders of prescribed offices

[r. 41]

Commonwealth

1. The Treasurer
2. A trustee under the *Bankruptcy Act 1966* (Commonwealth) Part IV, X or XI
3. Each of the following officers of the Australian Securities and Investments Commission under the *Australian Securities and Investments Commission Act 2001* (Commonwealth) —
 - (a) the chairperson, deputy chairperson or member of the commission;
 - (b) president or member of the takeovers panel

Australian Capital Territory

4. Registrar or judicial officer of the Australian Capital Territory Supreme Court
5. Treasurer
6. The public trustee under the *Public Trustee Act 1985* (Australian Capital Territory)

New South Wales

7. Treasurer
8. The New South Wales trustee and guardian
9. A registrar or judicial officer of the Supreme Court of New South Wales
10. The supervisor of loan fund companies under the *Loan Fund Companies Act 1976* (New South Wales)

Co-operatives Amendment Regulations 2016**r. 33**

Northern Territory

- 11. Treasurer
- 12. Public trustee
- 13. A registrar or judicial officer of the Supreme Court of the Northern Territory

Queensland

- 14. Treasurer
- 15. Public trustee
- 16. A registrar or judicial officer of the Supreme Court of Queensland

South Australia

- 17. Treasurer
- 18. Public trustee
- 19. A registrar or judicial officer of the Supreme Court of South Australia

Tasmania

- 20. Treasurer
- 21. Public trustee
- 22. A registrar or judicial officer of the Supreme Court of Tasmania

Victoria

- 23. Treasurer
- 24. State Trustees within the meaning of the *State Trustees (State Owned Company) Act 1994* (Victoria)
- 25. A registrar or judicial officer of the Supreme Court of Victoria

Western Australia

- 26. Treasurer
- 27. Public trustee

Co-operatives Amendment Regulations 2016

r. 34

28. A registrar or judicial officer of the Supreme Court of Western Australia

34. Schedule 10 amended

In Schedule 10 clause 1 Table of Fees:

- (a) in item 1 delete “251,”;
- (b) in item 6 delete “99(2)” and insert:

99(3)

- (c) delete item 13;
- (d) after item 15 insert:

15A	Lodgment of annual return under section 244ZB of the Act	38.50*
15B	Lodgment of financial reports under section 244ZC of the Act	Nil*
15C	Lodging of half year reports under section 244ZD of the Act	Nil*

- (e) delete items 23, 24 and 25;
- (f) in item 26 delete “or hold, or appoint an inspector to hold, an inquiry”;
- (g) delete items 31, 32, 33 and 46;

Co-operatives Amendment Regulations 2016**r. 35**

35. Various references to “transferee” amended

In the provisions listed in the Table delete “transferee” (each occurrence) and insert:

receiver

Table

Sch. 1 cl. 22(2), (3) and (5)	Sch. 2 cl. 19(2), (3) and (5)
Sch. 2 cl. 31(1), (2), (3) and (5)	Sch. 3 cl. 19(2), (3) and (5)
Sch. 3 cl. 31(2), (3) and (5)	

36. Various references to “transferor” amended

In the provisions listed in the Table delete “transferor” (each occurrence) and insert:

giver

Table

Sch. 1 cl. 22(3), (4) and (5)	Sch. 2 cl. 19(2), (3) and (7)(b)
Sch. 2 cl. 31(3), (4)(b) and (5)	Sch. 3 cl. 19(2), (3) and (7)(b)
Sch. 3 cl. 31(3), (4)(b) and (5)	

R. KENNEDY, Clerk of the Executive Council.
