

As in force at 1 July 2003.

South Australia

**CO-OPERATIVES REGULATIONS 1997**

2.  
**REGULATIONS UNDER THE CO-OPERATIVES ACT 1997**

*Co-operatives Regulations 1997*

being

No. 226 of 1997: *Gaz.* 20 November 1997, p. 1365<sup>1</sup>

as varied by

No. 25 of 1999: *Gaz.* 1 April 1999, p. 1613<sup>2</sup>  
No. 70 of 1999: *Gaz.* 27 May 1999, p. 2834<sup>3</sup>  
No. 74 of 2000: *Gaz.* 25 May 2000, p. 2740<sup>4</sup>  
No. 90 of 2001: *Gaz.* 31 May 2001, p. 2039<sup>5</sup>  
No. 154 of 2001: *Gaz.* 28 June 2001, p. 2484<sup>6</sup>  
No. 76 of 2002: *Gaz.* 20 June 2002, p. 2561<sup>7</sup>  
**No. 78 of 2003: *Gaz.* 29 May 2003, p. 2208<sup>8</sup>**  
**No. 147 of 2003: *Gaz.* 12 June 2003, p. 2500<sup>9</sup>**  
**No. 149 of 2003: *Gaz.* 19 June 2003, p. 2610<sup>10</sup>**

- 1 Came into operation 1 December 1997: reg. 2.  
2 Came into operation 1 May 1999: reg. 2.  
3 Came into operation 1 July 1999: reg. 2.  
4 Came into operation 1 July 2000: reg. 2.  
5 Came into operation 1 July 2001: reg. 2.  
6 Came into operation 15 July 2001: reg. 2.  
7 Came into operation 1 July 2002: reg. 2.  
8 **Came into operation 1 July 2003: reg. 2.**  
9 **Came into operation 12 June 2003: reg. 2.**  
10 **Came into operation 1 July 2003: reg. 2.**

**NOTE:**

ùAsterisks indicate repeal or deletion of text.  
ùEntries appearing in bold type indicate the amendments incorporated since the last consolidation.

ùFor the legislative history of the regulations see Appendix.

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## Part 1-Preliminary

### Short title

1. These regulations may be cited as the *Co-operatives Regulations 1997*.

### Commencement

2. These regulations will come into operation on 1 December 1997.

### Revocation

3. All regulations previously made under the *Co-operatives Act 1983* are revoked.

### Definitions

4. In these regulations, unless the contrary intention appears-

"Act" means the *Co-operatives Act 1997*;

"financial institution" has the same meaning as in the *Financial Institutions Duty Act 1983*.

### Definition of debenture

5. The following classes of documents are prescribed as exempt documents for the purposes of paragraph (c) of the definition of "**debenture**" in section 4(1) of the Act:

- (a) a passbook or other document-
  - (i) that contains all or some of the terms and conditions pursuant to which deposits are accepted by, or withdrawn from, a co-operative; and
  - (ii) that acknowledges the receipt of a deposit with a co-operative; and
  - (iii) that enables further deposits to be made at any time adding to the balance of an existing deposit; and
  - (iv) that enables the withdrawal of the whole or part of the balance of a deposit, whether at call or on the giving of a fixed period of notice; and
  - (v) that acknowledges the amount of the withdrawal and the balance remaining;

6.

- (b) a document acknowledging a debt incurred by a co-operative-
  - (i) in the ordinary course of carrying on so much of a business as neither comprises, nor forms part of, a business of borrowing money and providing finance; and
  - (ii) in respect of money that is or may be deposited with or lent to the co-operative by a person in the ordinary course of a business carried on by the co-operative;
- (c) a document that is issued by a company and that constitutes evidence of a debt owed by the company to a co-operative that is a holding company (within the meaning of the Corporations Act) of the company;
- (d) a document that is issued by a co-operative and that constitutes evidence of a debt owed by the co-operative to a body corporate that is a subsidiary of the co-operative.

**Implied application of Part 9.4B of Corporations Act**

**5A.** A reference in Part 9.4B of the Corporations Act to a corporation is, insofar as that Part applies for the purposes of the *Co-operatives Act 1997*, taken to be a reference to a co-operative.

7.

## **Part 2-Rules**

### **Maximum fine that may be imposed on a member**

6. For the purposes of section 102(7) of the Act, the maximum fine that may be fixed by the rules of a co-operative is-

- (a) in the case of a trading co-operative-\$1 000;
- (b) in the case of a non-trading co-operative-\$100.

## 8.

### **Part 3-Active membership**

#### **Factors and considerations for determining primary activities**

7. (1) For the purposes of section 119(2)(c) of the Act, the following factors and considerations are relevant in determining the matter referred to in section 119(1)(a) of the Act:

- (a) in the case of a co-operative whose activities include the provision of a taxi radio network facility-whether the co-operative actually carries out that activity;
- (b) in the case of a co-operative whose activities include the disposal of produce or livestock on behalf of its members-whether the co-operative actually carries out that activity;
- (c) in the case of a co-operative whose activities include the acquisition of particular goods or services for its members-whether the co-operative actually carries out that activity.

(2) For the purposes of section 119 of the Act, the following matters may be taken into account in determining whether an activity makes a significant contribution to the business of the co-operative:

- (a) if the activity contributes at least 10 per cent of the co-operative's-
  - (i) turnover; or
  - (ii) income; or
  - (iii) expenses; or
  - (iv) surplus; or
  - (v) business; or
- (b) if the failure by the co-operative to conduct that activity would result in a reduction of 10 per cent or more in the business conducted by the co-operative.

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

8. For the purposes of section 136 of the Act, a register of cancelled memberships must specify the particulars set out in clause 5 of Schedule 1.

9.

#### **Part 4-Shares and voting**

##### **Notice in respect of bonus shares**

9. For the purposes of section 153(c) of the Act, a prescribed person is-

- (a) in relation to the valuation of land-a person who carries on the business of valuing land;
- (b) in relation to the valuation of any other kind of assets-a person who is in the business of valuing assets of that kind.

##### **Postal ballots**

10. For the purposes of section 194 of the Act, a postal ballot must be conducted in accordance with Schedule 2.

## Part 5-Management and administration of co-operatives

### Disqualified persons

11. For the purposes of section 209(3) of the Act, each of the following authorities is a prescribed authority:

- (a) the Governor of the prison in Victoria in which the person was detained in custody on the date of release;
- (b) the Corrective Services Commission of New South Wales;
- (c) the Manager of the prison in Queensland in which the person was detained in custody on the date of release;
- (d) the permanent head of the Department of Corrective Services of Western Australia;
- (e) the Chief Executive, Department for Correctional Services of South Australia;
- (f) the Director of Corrective Services in Tasmania;
- (g) the Director of Correctional Services of the Northern Territory.

### Application of Corporations Act concerning officers of co-operatives and related duties

12. (1) Pursuant to paragraph (c) of section 223 of the Act, section 592(1)(a) of the Corporations Act is modified in its application under that section as if "before 23 June 1993" were omitted and "before the commencement of section 52 of the *Co-operatives (Miscellaneous) Amendment Act 2002*" were substituted.

(2) Pursuant to paragraph (c) of section 333 of the Act, section 588G of the Corporations Act is modified in its application under that section as if paragraph (d) of subsection (1) were omitted and the following paragraph substituted:

- (d) that time is at or after the commencement of section 52 of the *Co-operatives (Miscellaneous) Amendment Act 2002*.

### Requirements for financial records, statements and reports

13. (1) A co-operative is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of section 198F, Part 2F.3, sections 249K, 249V and 250T and Parts 2M.2, 2M.3, 2M.4 and 2M.7 of the Corporations Act, subject to the following modifications:

- (a) the modifications specified in the *Co-operatives Act 1997* and Schedule 2A of these regulations;
- (b) sections 247A and 300(14) and (15) of the Corporations Act are modified in their application under this regulation as if any reference to section 237 of that Act were a reference to section 95 of the *Co-operatives Act 1997*.

(2) For the purposes of section 233(1) of the Act, a co-operative must-

- (a) keep financial records and prepare financial statements and reports as required by the provisions of the Corporations Act applied by this regulation (as modified); and
- (b) ensure that those financial statements and financial reports are audited in accordance with the provisions of the Corporations Act applied by this regulation (as modified).

### Registers to be kept by co-operatives

14. (1) The registers that a co-operative is required to keep under section 239 of the Act must-

- (a) be kept in written or electronic form; and
- (b) contain the particulars specified in Schedule 1.

11.

(2) A register may include-

- (a) any document in the English language in which the required particulars are recorded; and
- (b) any disc, tape, soundtrack or other device in 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.

(3) For the purposes of section 239(1)(g) of the Act, a co-operative must keep-

- (a) a register of fixed assets containing the particulars specified in clause 6 of Schedule 1; and
- (b) a register of subordinated debt containing the particulars specified in clause 7 of Schedule 1.

**Inspection of registers etc**

15. (1) For the purposes of section 241(1)(g) of the Act, the following registers are prescribed:

- (a) the register of any loans made by or guaranteed by the co-operative, and of any securities taken by the co-operative, required to be kept under section 239(1)(d) of the Act;
- (b) the register of memberships cancelled under Part 6 of the Act required to be kept under section 239(1)(e) of the Act;
- (c) the register of subordinated debt required to be kept under section 239(1)(g) of the Act;
- (d) the register of notifiable interests required to be kept under section 280 of the Act.

(2) For the purposes of section 241(7) of the Act, the following documents are prescribed:

- (a) a copy of the Act and these regulations;
- (b) a copy of the rules of the co-operative;
- (c) a copy of the last annual report of the co-operative under section 244 of the Act.

**Notice of appointment etc of directors and officers**

16. For the purposes of section 243(2)(c) of the Act, the prescribed particulars are-

- (a) the name of the co-operative or subsidiary; and
- (b) the name and position of the person giving notice of the appointment or cessation of appointment; and
- (c) in respect of any person being appointed to act as a director, principal executive officer or secretary-
  - (i) full name (family and given names); and
  - (ii) any former names; and
  - (iii) address; and
  - (iv) date and place of birth; and
  - (v) office held and date appointed; and
- (d) in respect of any person ceasing to hold that office-
  - (i) name (family and given names); and
  - (ii) date and place of birth; and

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- (iii) office held and date appointment ceased; and
- (e) in respect of any change of name of a director, principal executive officer or secretary-
  - (i) name previously notified; and
  - (ii) new name; and
  - (iii) date of change; and
  - (iv) date of birth; and
  - (v) office held; and
- (f) in respect of any change of address of a director, principal executive officer or secretary-
  - (i) new address; and
  - (ii) date of change; and
  - (iii) date of birth; and
  - (iv) office held.

### **Annual report**

17. (1) For the purposes of section 244(1)(e) of the Act, the prescribed particulars are-

- (a) the name of the co-operative; and
- (b) the address of the registered office of the co-operative; and
- (c) the name, address and position of the person sending the annual report to the Commission; and
- (d) the date of the report; and
- (e) the number of persons employed by the co-operative-
  - (i) full-time; and
  - (ii) part-time,as at the end of the relevant financial year; and
- (f) the number of persons who performed voluntary services for the co-operative during the financial year; and
- (g) the number of members in the co-operative; and
- (h) the number of shares forfeited under Part 6 of the Act during the previous financial year; and
- (i) the number of memberships cancelled under Part 6 of the Act during the previous financial year.

(2) Pursuant to section 244(1)(e) of the Act, a co-operative that has to prepare or obtain a report for a financial year under the provisions of the Corporations Act applied by regulation 13 must include in its annual report to the Commission for that year a copy of each such report.

### **Advertising change of name of co-operative**

18. For the purposes of section 250(2) of the Act, the prescribed manner of advertising the change of name of a co-operative is for the co-operative to cause the change of name to be advertised in at least one newspaper circulating in the locality or localities in which the co-operative carries on business within 28 days after the change of name has been registered by the Commission.

13.

## **Part 6-Funds and property**

### **Fund raising to be in accordance with Act and regulations**

**19.** (1) This regulation applies to a co-operative that is a deposit taking co-operative.

(2) For the purposes of section 253 of the Act, a deposit taking co-operative is restricted from accepting money on deposit from persons other than its members and employees.

(3) Subregulation (2) does not apply to persons who had a current deposit or deposits with a deposit taking co-operative at the commencement of this regulation for as long as they continue to be a depositor with that co-operative.

(4) A deposit taking co-operative must provide a depositor with a copy of a current disclosure statement prior to the first deposit made by the depositor after the commencement of this regulation and, thereafter, at least once in each period of 12 months.

(5) A current disclosure statement is a disclosure statement that-

- (a) has been submitted to and registered by the Commission; and
- (b) has not, within 23 days after the date on which it was submitted to the Commission, been the subject of a direction by the Commission under section 256 of the Act; and
- (c) complies with any such direction given by the Commission; and
- (d) complies with any conditions imposed by the Commission under subregulation (7); and
- (e) is not more than 12 months old.

(6) A disclosure statement that is submitted to the Commission under subregulation (5) must contain-

- (a) a statement of the assets and liabilities of the co-operative; and
- (b) a statement of the financial position of the co-operative; and
- (c) a profit and loss statement for the co-operative; and

(d) such other information as the Commission directs.

(7) The Commission may register a disclosure statement submitted under this regulation with or without conditions.

(8) The Commission may require a deposit taking co-operative to give to a depositor, within such time as the Commission may determine, a document of a kind referred to in regulation 5(a).

(9) This regulation does not apply to the acceptance of money in connection with the issue by the co-operative of debentures.

(10) This regulation does not apply to the acceptance by a co-operative of a deposit of money in connection with goods or services to be supplied by the co-operative in the ordinary course of business.

### **Compulsory loan by member to co-operative**

**20.** For the purposes of section 262(2) of the Act, the prescribed term is 10 years.

### **Limited dividend**

**21.** For the purposes of section 268 of the Act, the prescribed amount is 20 cents per dollar invested in the shares of the co-operative.

## Part 7-Restrictions on the acquisitions of interests in co-operatives

### Notice of relevant interest in a member's right to vote

22. For the purposes of section 272 of the Act, the prescribed particulars to be specified when giving notice of having or ceasing to have a relevant interest in the right to vote of a member of a co-operative are-

- (a) the name of the co-operative to whom notice is being given; and
- (b) the full name and address of the person giving notice; and
- (c) the date on which the relevant interest was acquired or ceased; and
- (d) the name of the member whose right to vote was so affected; and
- (e) the date of giving notice.

### Notice of substantial share interest

23. For the purposes of section 273(1) of the Act, the prescribed particulars to be specified when giving notice of a substantial share interest are-

- (a) the name of the co-operative to whom notice is being given; and
- (b) the name and address of the person giving notice; and
- (c) the date on which the relevant interest was acquired; and
- (d) in respect of each holder of a relevant interest-
  - (i) the name and address of the holder; and
  - (ii) the number and description of the shares in which each relevant interest is held; and
  - (iii) the name and address of each person registered as the holder of the shares in which the relevant interest is held; and
  - (iv) the name and address of each person entitled to become registered as the holder of the shares in which the relevant interest is held; and
  - (v) the date of each acquisition of a relevant interest within the previous 12 months and the number of shares acquired at that date (if any); and
  - (vi) the valuable consideration for each acquisition in the previous 12 months, including the nature of any part that did not consist of money; and
  - (vii) the total number of shares in which the holder has a substantial interest; and
- (e) particulars of any contract, scheme, arrangement or other circumstance by reason of which the holder of the relevant interest acquired the relevant interest (not including interests acquired more than 12 months previously) where the holder has, throughout the period of 12 months immediately preceding the date of the notice, been the registered shareholder of those shares; and
- (f) particulars of the nature of the relevant interest; and
- (g) particulars of any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers of the relevant shares; and
- (h) particulars of any additional benefit that any person from whom a relevant interest was acquired has, or may, become entitled to receive, whether on the happening of a contingency or not, in relation to that acquisition, other than the valuable consideration referred to in paragraph (d); and

16.

- (i) the date on which notice is given.

**Notice of change in substantial share interest**

**24.** For the purposes of section 273(2) of the Act, the prescribed particulars to be specified when giving notice of a change in a substantial share interest are-

- (a) the name of the co-operative to whom notice is being given; and
- (b) the full name and address of the person giving notice; and
- (c) the following particulars applicable before the change:
  - (i) the name and address of the holder of the relevant interest; and
  - (ii) the number and description of the shares in which the relevant interest was held; and
  - (iii) the name and address of the person registered as the holder of the shares; and

17.

- (iv) the name and address of the person entitled to become registered as the holder of the shares; and
  - (v) the total number of shares in which the holder of the relevant interest held the relevant interest; and
- (d) the following particulars relating to the change:
- (i) the date of the change in the relevant interest; and
  - (ii) particulars of the valuable consideration given in relation to the change, including the nature of that part that did not consist of money; and
  - (iii) particulars of any contract, scheme, arrangement or other circumstance by reason of which the change in the relevant interest occurred; and
  - (iv) particulars of any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers of those shares in which the relevant interest in which the change occurred is held; and
  - (v) particulars of any additional benefit that a person has, or may, become entitled to receive, whether upon the happening of a contingency or not, as a consequence of a change in a relevant interest; and
- (e) the following particulars applicable after the change:
- (i) the name and address of the holder of the relevant interest; and
  - (ii) the number and description of the shares in which the relevant interest is held; and
  - (iii) the name and address of the person entitled to become registered as the holder of the shares; and
- (f) the date on which notice is given.

**Notice of cessation of substantial share interest**

25. For the purposes of section 273(3) of the Act, the prescribed particulars to be specified when giving notice of a cessation of a substantial share interest in a co-operative are-

- (a) the name of the co-operative to whom notice is being given; and
- (b) the name and address of the person giving notice; and
- (c) the name and address of the person ceasing to have a substantial share interest in the co-operative; and
  - (d) the date on which the person ceased to have a substantial share interest in the co-operative; and
  - (e) details of any agreement or other circumstances because of which the person ceased to hold a substantial interest in the co-operative; and
  - (f) in relation to each change in a substantial share interest of the person since the person was last required to give notice of such a change to the co-operative-
    - (i) the date of the change; and
    - (ii) the nature of the change; and
    - (iii) the consideration given in relation to the change; and
    - (iv) the class and number of shares affected by the change; and

18.

(g) the date on which notice is given.

**Part 8-Merger, transfer of engagements, winding up**

**Application for transfer of incorporation**

26. For the purposes of section 301(b) of the Act, the *Associations Incorporation Act 1985* is prescribed.

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**Application of Corporations Act to winding up**

28. Pursuant to section 311 of the Act, the following modifications are prescribed:

- (a) a reference in any of the applied provisions of the Corporations Act to a special resolution or an extraordinary resolution is to be read as a reference to a special resolution within the meaning of the *Co-operatives Act 1997*;
- (b) a reference in any of the applied provisions of the Corporations Act to ASIC is to be read as a reference to the Commission;
- (c) section 461(1)(h) of the Corporations Act applies as if, for "ASIC has stated in a report prepared under Division 1 of Part 3 of the ASIC Act that, in its opinion:" there were substituted "the Commission has, as the result of an inquiry conducted under Part 15 of the Act, stated that-";
- (d) section 464 of the Corporations Act applies as if-
  - (i) subsection (1) was struck out and the following subsection substituted:
    - (1) Where the Commission is investigating, or has investigated, under Part 15 of the Act-
      - (a) matters being, or connected with, the affairs of a co-operative; or
      - (b) matters including such matters,the Commission may apply to the Court for the winding up of the co-operative.; and
  - (ii) subsection (3) was struck out and the following subsection substituted:
    - (3) The Commission must give a copy of an application made under subsection (1) to the co-operative.;

20.

- (e) section 513B of the Corporations Act applies as if the following paragraph were inserted after paragraph (d):
- (da) if the winding up is on the certificate of the Commission-on the date that the certificate is given; or;;
- (f) section 516 of the Corporations Act applies as if the words "together with any charges payable by him or her to a co-operative in accordance with the rules" were inserted after "past member";
- (g) section 532 of the Corporations Act applies as if-
- (i) subsection (1) was struck out and the following subsection substituted:
- (1) Subject to this section, a person must not consent to be appointed, and must not act, as liquidator of a co-operative unless he or she-
- (a) is a registered liquidator; or
- (b) is or is to be appointed or nominated for appointment as the liquidator of a co-operative under section 310 of the Act.; and
- (ii) subsection (4) was struck out;
- (h) section 542 of the Corporations Act applies as if after subsection (3)(c) there were inserted-
- and
- (d) in the case of a winding up on the certificate of the Commission under section 309 of the *Co-operatives Act 1997*-with the consent of the Commission.;
- (i) the applied provisions of the Corporations Act are to be read as if the following provision were inserted in Part 9.7 before section 1339:

**Co-operatives Liquidation Account**

**1338D.** (1) The *Co-operatives Liquidation Account* established under Division 3 of Part 6 of the *Co-operatives Act 1983* of South Australia continues in existence under this Part.

(2) The Account must continue to be kept in a separate account at the Treasury.;

21.

- (j) the applied provisions of the Corporations Act are to be read as if a reference to an unclaimed money account were a reference to the Co-operatives Liquidation Account;
- (k) section 1339 of the Corporations Act applies as if-
  - (i) for "as permitted by subsection 142(2) of the ASIC Act" in subsection (2) there were substituted "under subsection (4)"; and
  - (ii) subsections (3) and (4) were struck out and the following subsections substituted:
    - (3) Money in the Co-operatives Liquidation Account that is not immediately required for the payment of claims under section 1341 may be invested by the Treasurer on such terms and conditions as the Treasurer thinks fit with a prescribed person or body.
    - (4) The Treasurer must pay income derived from the investment of money in the Co-operatives Liquidation Account into the Consolidated Account.;
- (l) section 1341 of the Corporations Act applies as if-
  - (i) the words "or subsection 1339(3)" were struck out; and
  - (ii) a reference to the Consolidated Revenue Fund of the Commonwealth were a reference to the Consolidated Account of the State; and
  - (iii) a reference to the Court were a reference to the District Court;
- (m) a reference in any of the applied provisions of the Corporations Act to a registered liquidator includes a reference to a person approved by the Commission as a liquidator of a co-operative;
- (n) a reference in any of the applied provisions of the Corporations Act to section 233 of that Act is to be read as a reference to Part 2F.1 of that Act;
- (o) for the purposes of the application of the applied provisions of the Corporations Act to winding up on the certificate of the Commission, such a winding up is to be considered to be a voluntary winding up (but section 490 of the Corporations Act does not apply);

22.

- (p) the applied provisions of the Corporations Act are to be read subject to sections 71 and 317 of the *Co-operatives Act 1997* for the purposes of determining the liability of members and past members to contribute on a winding up of a co-operative.

## **Part 9-Arrangements and reconstructions**

### **Commission to be given notice and opportunity to make submissions**

**29.** For the purposes of sections 336(2)(b)(i) and 344(3)(b)(i) of the Act, the prescribed information which must be included in a draft explanatory statement or explanatory statement (as the case may be) is set out in Schedule 3.

### **Compulsory acquisition notice**

**30.** For the purposes of section 350(1) of the Act, a compulsory acquisition notice must be in the form set out in form 1 of Schedule 4.

### **Notice to remaining shareholders**

**31.** For the purposes of section 352(1)(a) of the Act, a notice to a remaining shareholder must be in the form set out in form 2 of Schedule 4.

## **Part 10-Foreign co-operatives**

### **Application for registration of participating co-operative as a foreign co-operative**

**32.** (1) An application under section 364 of the Act by a participating co-operative for registration as a foreign co-operative must be made in writing to the Commission.

(2) For the purposes of section 364(2)(d) of the Act, the statement must be verified by a statement by a director or the secretary of the applicant co-operative.

### **Application for registration of non-participating co-operative as a foreign co-operative**

**33.** (1) An application under section 365 of the Act by a non-participating co-operative for registration as a foreign co-operative must be made in writing to the Commission.

(2) For the purposes of section 365(2)(b) of the Act, the statement must be verified by a statement by a director or the secretary of the applicant co-operative.

### **Registration of foreign co-operative**

**34.** For the purposes of section 368 of the Act, if the Commission has registered a foreign co-operative under that section, the Commission must send to the co-operative a certificate of registration at the address notified under section 364(2)(d)(ii) or section 365(2)(b)(ii) of the Act (as the case may be).

### **Application of Act and regulations to foreign co-operatives**

**35.** (1) For the purposes of section 369 of the Act-

- (a) the following provisions of the Act and these regulations are prescribed in relation to a participating co-operative:
- (i) Division 4 of Part 1;
  - (ii) section 249;
  - (iii) section 256;
  - (iv) section 311 in relation to an insolvent participating co-operative (but only to the extent that it applies Parts 5.4, 5.4B and 5.6 of the Corporations Act);
  - (v) section 420;
  - (vi) section 451;
  - (vii) regulation 46;

25.

- (b) the following provisions of the Act and these regulations are prescribed in relation to a non-participating co-operative:
- (i) Divisions 3 and 4 of Part 1;
  - (ii) sections 13(2), 14 and 15;
  - (iii) Part 3 except Division 5;
  - (iv) Division 5 of Part 4;
  - (v) sections 101, 103 and 109;
  - (vi) sections 245, 246 and 249;
  - (vii) Division 1 of Part 10;
  - (viii) Part 12 except Divisions 1 and 2;
  - (ix) Part 13;
  - (x) Part 17;
  - (xi) section 451;
  - (xii) regulation 46.

(2) For the purposes of section 369 of the Act, section 249 of the Act is modified in its application to a foreign co-operative to require the name of the foreign co-operative, when appearing as required by section 249(1)(b) or (c) of the Act, to indicate the State, Territory or country in which the foreign co-operative was originally registered or incorporated.

**Notification by foreign co-operative of certain changes**

**36.** When a foreign co-operative lodges with the Commission particulars of an alteration under section 370 of the Act, the particulars must be accompanied by the following documents:

- (a) in the case of a change of name resulting in the issue of a new or amended certificate of registration in the participating State—a copy of the new or amended certificate, certified by the Registrar of the participating State;
- (b) in the case of an alteration or change affecting the rules of the foreign co-operative—
  - (i) if the foreign co-operative is a participating co-operative—a copy of the new or amended rules, certified by the Registrar of the participating State; or

26.

- (ii) if the foreign co-operative is a non-participating co-operative-a copy of the new or amended rules.

**Co-operative proposing to register as a foreign co-operative**

37. (1) For the purposes of section 373(1) of the Act, the following provisions of the Act are prescribed:

- (a) Part 5;
- (b) Part 6;
- (c) Divisions 5, 6 and 7 of Part 9;
- (d) Division 1 of Part 10.

(2) For the purposes of section 373(3) of the Act, the prescribed documents are-

- (a) a copy, certified by the Commission, of the co-operative's certificate of registration; and
- (b) a copy, certified by the Commission, of the co-operative's rules; and
- (c) a copy, certified by the Commission, of the last audited balance sheet of the co-operative lodged with the Commission; and
- (d) a list containing the full name, date and place of birth, and residential address of each director of the co-operative.

## **Part 11-Supervision and protection of co-operatives**

### **Inspectors may require certain persons to appear, answer questions and produce documents**

**38.** For the purposes of section 388(1) of the Act, a notice must be in the form set out in form 3 of Schedule 4.

### **Investigator's notice to involved person**

**39.** For the purposes of section 400(1) of the Act, a notice must be in the form set out in form 4 of Schedule 4.

### **Examination of involved person-allowance and expenses**

**40.** For the purposes of section 401(4) of the Act, the prescribed expenses to which an involved person is entitled are-

- (a) for persons ordinarily receiving wages, salary, remuneration or fees-for each hour, or part of an hour, of attendance-the amount of wages, salary, remuneration or fees actually lost because of the person's attendance, but not exceeding \$217 for any one day;
- (b) in any other case-the actual expenditure incurred (other than expenses under paragraphs (c) and (d)), but not exceeding \$59 for any one day;
- (c) for travelling expenses to and from a person's usual place of residence or business and the place of attendance-
  - (i) the amount actually paid; or
  - (ii) an amount calculated at 18 cents per kilometre travelled,whichever is the lesser;
- (d) for accommodation and meals, if a person is required to be absent over night from the person's usual place of residence-
  - (i) the amount actually paid; or
  - (ii) an amount not exceeding \$150 for any one night,whichever is the lesser.

## **Part 12-The Schedules of the Act**

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

**41.** For the purposes of clause 2(9) of Schedule 1 of the Act, the rules of a co-operative with a share capital must make provision for-

- (a) the minimum number of shares to which a member of the co-operative must subscribe; and
- (b) the manner in which the minimum number may be determined, which may be by reference to the use made by the member of the co-operative.

### **Charges required to be registered**

**42.** For the purposes of clause 8 of Schedule 3 of the Act, each of the following laws is a prescribed law of a State or Territory:

- (a) Parts 2 and 3 of the *Liens on Crops and Wool and Stock Mortgages Act 1898* of New South Wales;
- (b) Parts 7 and 8 of the *Instruments Act 1958* of Victoria;
- (c) Part 2 (to the extent to which it relates to the registration of stock mortgages, liens on crops and liens on wool) and Part 4 (excluding section 24) of the *Bills of Sale and Other Instruments Act 1955* of Queensland;
- (d) the *Liens on Crops of Sugar Cane Act 1931* of Queensland;
- (e) sections 7 and 8 and Parts 9, 10 and 11 of the *Bills of Sale Act 1899* of Western Australia;
- (f) the *Liens on Fruit Act 1923* of South Australia;
- (g) the *Stock Mortgages and Wool Liens Act 1924* of South Australia;
- (h) section 36 of the *Bills of Sale Act 1900* of Tasmania;
- (i) the *Stock, Wool and Crop Mortgages Act 1930* of Tasmania;
- (j) Parts 4 and 5 of the *Instruments Act 1933* of the Australian Capital Territory;
- (k) the *Instruments Act 1966* of the Northern Territory.

### **Inspection of register of charges**

**43.** For the purposes of clause 41(3)(b) of Schedule 3 of the Act, the prescribed amount is \$10.

### **Copies of register of charges**

**44.** For the purposes of clause 41(5)(a) of Schedule 3 of the Act, the prescribed amount is \$1 per page, to a maximum of \$20.

## **Part 13-Fees**

### **Fees**

**45.** The fees set out in Schedule 5 are prescribed for the purposes of the Act.

### **Waiver of fees**

**46.** The Commission may waive, reduce or refund any fee payable under the Act or the regulations by-

- (a) a co-operative that, in the opinion of the Commission, is constituted primarily for a charitable purpose; or
- (b) a co-operative that, in the opinion of the Commission, is constituted primarily for the purpose of advancing the welfare of a class of disadvantaged persons,

if, in the opinion of the Commission, there are special circumstances that justify payment being waived, reduced or refunded.

**Part 14-Miscellaneous**

**General requirements for documents lodged with Commission**

47. (1) A document lodged with the Commission must-

- (a) be on paper of international sheet size A4; and
- (b) be clearly printed or typewritten in a manner that is permanent and is capable of reproduction by photographic means; and
- (c) be an original or a photocopy; and
- (d) if it consists of two or more sheets, be fastened together securely in the top left-hand corner; and
- (e) have written on the first sheet-
  - (i) the registered number of the co-operative to which the document relates; and
  - (ii) the name of that co-operative; and
  - (iii) the title of the document (being, if the document is a form prescribed by these regulations, the same as the heading to the form); and
  - (iv) the name, address and telephone number of the person by whom or on whose behalf the document is lodged; and
  - (v) the words "Lodged with the Commission on....." (the date of lodgement to be filled in by the Commission).

(2) If the address of a person is required in a document to be lodged with the Commission, the person-

- (a) must specify his or her residential address; and
- (b) may specify a postal address.

**Director or secretary to swear and lodge documents**

48. Unless otherwise provided in the Act or these regulations-

- (a) an affidavit or statutory declaration of a co-operative that is required under the Act or these regulations must be sworn or made by a director or secretary of the co-operative; and

31.

- (b) a document relating to a co-operative that is required to be lodged by or on behalf of the co-operative must be signed by a director or secretary of the co-operative.

## Schedule 1-Particulars to be included in registers

### Register of members, directors and shares

1. (1) The register of members, directors and shares of a co-operative must contain the following particulars for each member:

- (a) the name and address of each member; and
- (b) the date on which each member was admitted to the co-operative; and
- (c) if the co-operative has share capital, a statement in respect of each member by whom shares are held of-
  - (i) the number of shares held beneficially and non-beneficially; and
  - (ii) the identifying number of each share held (if applicable); and
  - (iii) the date on which the shares were allotted; and
  - (iv) the amount paid or agreed to be considered as having been paid on the shares; and
- (d) if applicable, the date of and circumstances under which the member's membership ceased; and
- (e) if shares are purchased pursuant to section 171(1) of the Act-a statement of the number of shares purchased and the date on which the shares were purchased; and
- (f) if shares are forfeited pursuant to section 276 of the Act-a statement of the number of shares forfeited and the date on which forfeiture was effected; and
- (g) if there is a conversion to a co-operative without share capital-the date of the repayment of the share capital or the date of disposal and the name and address of the person or body to whom the share capital was repaid.

(2) The register of members, directors and shares of a co-operative must contain the following particulars for each director:

- (a) the name, any former names, date and place of birth, and address of each director; and
- (b) the date of that person's election or appointment as a director; and
- (c) whether the director is a non-member director; and
- (d) the date of termination of office (if applicable); and
- (e) the mode of termination of office (if applicable).

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

2. (1) The register of loans to, securities given by, debentures issued by and deposits received by a co-operative is required to contain the following particulars for each loan:

- (a) the name of the person by whom the loan is made; and
- (b) the amount of the loan; and
- (c) the date on which the loan was received by the co-operative; and
- (d) a reference identifying the account created for the loan; and
- (e) the date of each payment made in relation to the loan and the amount of each payment so made; and
- (f) if the loan is secured by way of mortgage of real property-the address and particulars of title of the property and a reference identifying the mortgage agreement; and
- (g) if the loan is secured otherwise than by way of a mortgage of real property-particulars of the security given and a reference identifying the agreement that evidences that security; and
- (h) the location of the documents relating to the security given in respect of the loan; and
- (i) particulars of any movement of those documents from that location; and
- (j) the date of the final repayment made in relation to the loan.

(2) The register of loans to, securities given by, debentures issued by and deposits received by a co-operative must contain the following particulars for each debenture issued:

- (a) the name and address of each person to whom a debenture is payable; and
- (b) the number and series of the debenture; and
- (c) the date of its issue; and
- (d) the amount of the debenture; and

## 33.

- (e) the rate of interest; and
- (f) the dates of payment of principal; and
- (g) the place of payment; and
- (h) the name of the trustee (if applicable); and
- (i) the name, address and occupation of any transferor; and
- (j) the date of any transfer.

(3) The register of loans to, securities given by, debentures issued by and deposits received by a co-operative must contain the following particulars for each deposit received by the co-operative:

- (a) the name and address of the depositor; and
- (b) the date of receipt; and
- (c) the amount deposited; and
- (d) the rate of interest (if any); and
- (e) the amount repaid; and
- (f) the date of conversion to shares or debentures (if applicable); and
- (g) the due date for repayment; and
- (h) the balance.

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

3. The register of names of persons who have given loans or deposits to or hold securities or debentures given or issued by a co-operative must contain the following particulars for each person:

- (a) the full name and any former names of the person; and
- (b) the address of the person; and
- (c) whether the person-
  - (i) has given a loan or deposit to the co-operative; or
  - (ii) holds securities given by the co-operative; or
  - (iii) holds debentures issued by the co-operative; and
- (d) a reference to the relevant entry in the register of loans to, securities given by, debentures issued by and deposits received by the co-operative.

### **Register of loans made by or guaranteed by a co-operative and of any securities taken by a co-operative**

4. (1) The register of loans made by or guaranteed by a co-operative and of any securities taken by a co-operative must contain the following details for each loan made:

- (a) the name of each person to whom a loan is made; and
- (b) the amount of the loan; and
- (c) the date on which the loan was approved; and
- (d) a reference identifying the account created for the loan; and
- (e) the date of each advance made in relation to the loan and the amount of each advance so made; and
- (f) if the loan is secured by way of mortgage of real property the address and particulars of title of the property and a reference identifying the mortgage agreement; and
- (g) if the loan is secured otherwise than by way of a mortgage of real property particulars of the security taken and a reference identifying the agreement that evidences that security; and
- (h) the location of the documents relating to the security taken in respect of the loan; and
- (i) particulars of any movement of those documents from that location; and
- (j) the date of the final repayment made in relation to the loan.

(2) The register of loans made by or guaranteed by a co-operative and of any securities taken by a co-operative must contain the following particulars for each loan guaranteed by the co-operative:

## 34.

- (a) the name of the member; and
- (b) the name of the lender; and
- (c) the amount of the loan; and
- (d) the date of the guarantee; and
- (e) if the loan is secured by way of mortgage of real property-the address and particulars of title of the property and a reference identifying the mortgage agreement; and
- (f) if the loan is secured otherwise than by way of a mortgage of real property-particulars of the security taken and a reference identifying the agreement that evidences that security; and
- (g) the location of the documents relating to the security taken in respect of the loan; and
- (h) particulars of any movement of those documents from that location; and
- (i) the due date for repayment.

### **Register of memberships cancelled under Part 6 of the Act**

5. (1) The register of memberships cancelled under Part 6 of the Act must contain the following particulars for each member whose membership is cancelled:

- (a) the name of the member; and
- (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; and
- (c) the date of the board's resolution cancelling membership.

(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; and
- (b) if the whereabouts of the member are unknown-
  - (i) the date when the required period of the member's whereabouts being unknown commenced; and
  - (ii) if the amount required to be repaid to the member in respect of the cancelled membership exceeds \$50-the date of publication of the required notice in a newspaper and the name of the newspaper; and
- (c) the date of the board's resolution forfeiting the shares; and
- (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 133(2) of the Act; and
- (e) if the amount due is to be transferred to a debenture or deposit account-
  - (i) the date of repayment; and
  - (ii) the date of transfer to such an account.

### **Register of fixed assets**

6. The register of fixed assets of a co-operative must contain the following particulars in respect of each fixed asset:

- (a) a short description of the fixed asset; and
- (b) the method of financing any fixed asset that is leased; and
- (c) the physical location of the asset; and
- (d) the date of its purchase or installation; and
- (e) the manner in which depreciation is calculated; and
- (f) the annual percentage at which depreciation is calculated; and
- (g) the annual amount of depreciation or amortisation; and

35.

- (h) the total amount of depreciation or amortisation; and
- (i) the revaluation increment; and
- (j) the sale price; and
- (k) the date sold.

**Register of subordinated debt**

7. The register of subordinated debt must contain for each subordinated debt incurred-

- (a) the name and address of the person to whom the debt is owed; and
- (b) the amount of the debt; and
- (c) the date on which the debt was incurred; and
- (d) a reference identifying the account created for the debt; and
- (e) the date of each payment made in relation to the debt and the amount of each payment made; and
- (f) the date of the final repayment made in relation to the debt.

## Schedule 2-Postal ballots

### Ballots

1. (1) The board must-
  - (a) cause the details of the proposal upon which the ballot is to be held to be set out in a statement; and
  - (b) fix the dates for-
    - (i) the forwarding of ballots to members; and
    - (ii) the closing of the ballot; and
  - (c) appoint a returning officer for the ballot.
- (2) Every ballot must be conducted by the returning officer appointed by the board.

### Returning officers

2. (1) A director of the co-operative may not be appointed as a returning officer.
- (2) The returning officer may be assisted in the performance of his or her duties by any person (who would be eligible to be a returning officer) appointed by the returning officer.

### Preparation of the voting roll and the ballot papers

3. (1) The returning officer must prepare a roll of the full names and addresses of the members of the co-operative, as disclosed by the register of members, directors and shares, together with particulars of the number of votes each member would be entitled to exercise upon a poll.

- (2) A person whose name is on the roll is entitled to vote in the ballot, and no person is otherwise so entitled.
- (3) The returning officer must cause ballot papers to be prepared in or to the effect of form 1 of this Schedule.
- (4) Each ballot paper must be initialled by the returning officer or an appointed assistant.
- (5) The returning officer must, at least 21 days prior to the date fixed for the closing of the ballot, send by post or otherwise deliver to every member entitled to vote in the ballot one set of the following material:
  - (a) one ballot paper; and
  - (b) an envelope (the "**outer envelope**") addressed to the returning officer; and
  - (c) a smaller envelope (the "**middle envelope**"), the reverse side of which must be printed in or to the effect of form 2 of this Schedule; and
  - (d) a small envelope (the "**inner envelope**") into which the ballot paper is to be enclosed; and
  - (e) a copy of the statement prepared by the board setting out the details of the proposal upon which the decision of the members is to be sought.

## 37.

### **Duplicate ballot papers**

4. The returning officer may send a duplicate ballot paper to any voter if the returning officer is satisfied-

- (a) that the voter has not received a ballot paper; or
- (b) that the ballot paper received by the voter has been lost, spoiled or destroyed and that the voter has not already voted.

### **Voting**

5. A member casts a vote in the ballot by-

- (a) completing the details on the reverse side of the middle envelope; and
- (b) marking his or her vote on the ballot paper according to the instructions on the ballot paper; and
- (c) sending the ballot paper, in the envelopes provided, to the returning officer.

### **Safe keeping of ballot papers**

6. (1) The returning officer must provide a ballot box which must be locked immediately before the ballot papers are delivered to members in accordance with clause 3(5) and must remain locked until the close of the ballot.

(2) The returning officer must place the outer envelopes in the ballot box not later than noon on the date fixed for the closing of the ballot.

### **Counting of the votes**

7. (1) Ballot papers received after noon on the date fixed for the closing of the ballot must not be taken into account at the ballot.

(2) As soon as practicable after noon on the date fixed for the closing of the ballot, the returning officer must, in the presence of such scrutineers as may be appointed by the board, open the ballot box and deal with the contents in accordance with subclause (3).

(3) The returning officer must-

- (a) remove the middle envelope from the outer envelope; and
- (b) where a duplicate outer envelope has been issued and the original outer envelope is received, reject the original envelope and mark it "rejected"; and
- (c) according to the information on the middle envelope, for each set of voting papers returned, mark the voter's name on the roll by drawing a line through the name; and
- (d) where a member's name has already been crossed out on the roll, reject the postal vote and mark it "rejected"; and
- (e) if the middle envelope has not been signed, or if the details shown on the envelope are not sufficient to disclose by whom the vote is being exercised, reject the envelope and mark it "rejected"; and
- (f) extract the inner envelopes containing the ballot papers from all unrejected middle envelopes, separating the contents from the middle envelopes in such a way that no inner envelope could subsequently be identified with any particular voter; and
- (g) when all the middle envelopes have been dealt with in the above manner, open all unrejected inner envelopes and take the ballot papers from them.

(4) The ballot papers must be scrutinised by the returning officer who must reject as informal any ballot paper that-

- (a) is not duly initialled by the returning officer; or
- (b) is so imperfectly marked that the intention of the voter cannot be ascertained by the returning officer; or
- (c) has any mark or writing not authorised by this Schedule which, in the opinion of the returning officer, will enable the voter to be identified; or
- (d) has not been marked as prescribed on the ballot paper itself.

### **Statement by returning officer**

8. (1) The returning officer must count all votes cast and make out and sign a statement of-

- (a) the number of formal votes cast in favour of the proposal; and
- (b) the number of formal votes cast against the proposal; and
- (c) the number of informal votes cast; and
- (d) the number of middle envelopes marked "rejected"; and
- (e) the proportion of the formal votes polled which were in the affirmative.

(2) On the declaration of the returning officer of the result of the postal ballot, the board of the co-operative must cause an entry to be made in the minute book showing the particulars referred to in clause 8(1)(a) to (c).

## 38.

(3) The returning officer must forward a copy of the statement to the chairperson of the board of the co-operative who must announce the result of the ballot at the next general meeting.

### **Notification of the result of the ballot**

9. (1) A co-operative must give notification of the result of a ballot (other than a ballot conducted to alter the rules of a co-operative) by displaying the result on the notice board at the registered office of the co-operative.

(2) In the case of a postal ballot conducted to alter the rules of a co-operative, the co-operative must cause the result of the ballot to be notified in writing to its members as soon as practicable after the alteration takes effect and, in any event, not later than the date on which notice is given to the members of the next annual general meeting of the co-operative following the date on which the alteration takes effect.

### **Retention of ballot papers etc**

10. The returning officer must retain all ballot papers and outer envelopes used for a postal ballot until the board authorises their destruction (and the board must not authorise their destruction earlier than 12 months after the day on which notification of the result of the ballot is given under clause 9).

**POSTAL BALLOT**

Ballot of members to determine the following proposal:

**Do you support the above proposal?** (Please mark YES or NO)

The ballot will close at noon on

**How to Vote**

1. Read these directions and the ballot paper carefully.
2. Complete and sign the details on the reverse side of the middle envelope.
3. Mark the ballot paper in the space provided above to indicate your intention regarding the proposal.
4. After marking the ballot paper, fold it and place it in the small envelope provided and seal the envelope. Then place the small envelope in the completed middle envelope and place the middle envelope in the envelope addressed to the returning officer. Forward this envelope either by post or personal delivery so as to reach the returning officer not later than noon on
5. Unless the ballot paper is marked as indicated in 3 above and the details referred to in 2 above are completed in full and the middle envelope signed, your vote may be rejected as informal.

Initials of returning officer

40.  
Form 2

**MEMBER DETAILS**

(Full Name)

(Address)

(Signature)

1. Please use capital letters for your name and address.
2. If the vote is being cast on behalf of a co-operative or other body corporate also indicate the name of such co-operative or body corporate.

## 41.

### Schedule 2A-Modification of applied provisions

(Regulation 13)

#### Interpretation of modified provisions

1. (1) The following definitions replace the corresponding definitions under the Corporations Act for the purposes of interpreting provisions of that Act applied or modified by these regulations, as modified by the Act and this Schedule:

"**Act**" means the *Co-operatives Act 1997*;

"**Commission**" means the Corporate Affairs Commission;

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

"**Court**" means the Supreme Court of South Australia;

"**debenture**", in relation to a co-operative, has the same meaning as in section 4 of the Act;

"**director**", in relation to a co-operative, has the same meaning as in section 4 of the Act;

"**disclosing entity**"-see section 258 of the Act (which applies Part 1.2A of the Corporations Act);

"**financial year**" means a financial year of a co-operative as determined in accordance with section 238 of the Act;

"**member**" of a co-operative-see Part 4 of the Act;

"**officer**", in relation to a co-operative, has the same meaning as in section 4 of the Act;

"**related**", in the context of related bodies corporate, has the meaning given by Part 3 of Schedule 2 of the Act.

(2) Expressions used in the applied provisions of the Corporations Act, as modified, that are not defined in the Corporations Act have the same meaning as in the Act.

(3) For the purposes of the applied provisions of the Corporations Act, as modified, the accounting standards in force under the Corporations Act are to apply with any modifications that may be necessary or appropriate for the effectual application of the standards to co-operatives.

#### Specific modifications

2. The applied provisions of the Corporations Act apply as if all notes were struck out and they were further amended as set out in the table below.

Provision of Corporations Act Amended	How Amended
<i>Part 2F.3 (Inspection of books)</i>	
section 247A(1)	Strike out "company or registered managed investment scheme" and substitute "co-operative".
section 247A(1)(a)	Strike out "company or scheme" and substitute "co-operative".
section 247A(1)(b)	Strike out "company or scheme" and substitute "co-operative".
section 247C(a)	Strike out "ASIC" and substitute "the Commission or an officer of the Commission".
section 247D	Strike out this section.
<i>Part 2M.2 (Financial records)</i>	
section 286(1)	Strike out "company, registered scheme or disclosing entity" and substitute "co-operative".

## 42.

section 287(3)	<p>Insert after subsection (2) the following subsection:</p> <p>(3) An inspector may, by notice in writing, specify a period within which the translation must be made available to the inspector.</p>
section 288(2)	<p>Insert after the present contents of section 288 (now to be designated as subsection (1)) the following subsection:</p> <p>(2) An inspector may, by notice in writing, specify a period within which the hard copy must be made available to the inspector.</p>
section 289	<p>Strike out this section and substitute:</p> <p><b>289 Place where records are kept</b> The financial records must be kept within South Australia but the co-operative may decide where within South Australia to keep them.</p>
section 290(1)	<p>Strike out "company, registered scheme or disclosing entity" and substitute "co-operative".</p>
section 291	<p>Strike out this section.</p>
<i>Part 2M.3 (Financial reporting)</i>	
section 292	<p>Strike out this section and substitute:</p> <p><b>292 Who has to prepare annual financial reports and directors' reports</b> A financial report and a directors' report must be prepared for each financial year by all co-operatives.</p>
sections 293 and 294	<p>Strike out these sections.</p>
section 295(4)(c)	<p>Strike out "company, registered scheme or disclosing entity" and substitute "co-operative".</p>
section 296(1)	<p>Strike out the sentence commencing "However".</p>
section 297(a)	<p>Strike out "company, registered scheme or disclosing entity" and substitute "co-operative".</p>
section 298(1)	<p>Strike out "company, registered scheme or disclosing entity" and substitute "co-operative".</p>
section 298(3)	<p>Strike out this subsection.</p>
section 299(2)(a)	<p>Strike out "company, registered scheme or disclosing entity" and substitute "co-operative".</p>
section 299(3)(a)	<p>Strike out "company, registered scheme or disclosing entity" and substitute "co-operative".</p>

### 43.

section 299(3)(b)	Strike out "company, registered scheme or disclosing entity" and substitute "co-operative, company or registered scheme".
section 300(1)(c)	Strike out "company, registered scheme or disclosing entity" and substitute "co-operative".
section 300(1)(d)(ii)	Strike out "company" and substitute "co-operative".
section 300(1)	Strike out the sentence commencing "Public companies".
section 300(2)	Strike out "company's" and substitute "co-operative's".
section 300(3)(a)	Strike out "company, registered scheme or disclosing entity" and substitute "co-operative".
section 300(3)(b)	Strike out "company, registered scheme or disclosing entity" and substitute "co-operative, company or registered scheme".
section 300(5)(a)	Strike out "company, registered scheme or disclosing entity" and substitute "entity".
section 300(6)(a)	Strike out "company, registered scheme or disclosing entity" and substitute "entity".
section 300(6)(e)	Strike out "company, registered scheme or disclosing entity" and substitute "entity".
section 300(7)(a)	Strike out "company, registered scheme or disclosing entity" and substitute "entity".
section 300(7)(c)	Strike out "company, registered scheme or disclosing entity" and substitute "entity".
section 300(8)	Strike out "company" and substitute "co-operative".
section 300(8)(a)	Strike out "and that is covered by subsection 241(2) or (3)". Strike out "of that kind".
section 300(8)(b)	Strike out "and that is covered by subsection 241A(3)".
section 300(8)	Strike out "section 241" and substitute "section 222 of the Act".
section 300(9)	Strike out "company" wherever occurring and substitute, in each case, "co-operative".
section 300(10)	Strike out "public company that is not a wholly-owned subsidiary of another company or of a recognised company" and substitute "co-operative that is not a wholly-owned subsidiary of another co-operative".
section 300(11)	Strike out "company" wherever occurring and substitute, in each case, "co-operative".
section 300(12) and (13)	Strike out these subsections.

#### 44.

section 300A(1)	Strike out "company" first occurring and substitute "co-operative that is included in an official list of the Exchange".
section 300A(1)(a)	Strike out "company" and substitute "co-operative".
section 300A(1)(b)	Strike out "company's" and substitute "co-operative's".
section 300A(1)(c)	Strike out "company" and substitute "co-operative".
section 300A(2)	Strike out this subsection.
section 300A(3)	Strike out "company's constitution" and substitute "co-operative's rules".
section 301(1)	Strike out "company, registered scheme or disclosing entity" and substitute "co-operative".
section 301(2)	Strike out this subsection.
section 302	Insert "co-operative that is a" after "A".
section 302(c)	Strike out "ASIC" and substitute "the Commission".
section 307(c)	Strike out "company, registered scheme or disclosing entity" and substitute "co-operative".
section 307(d)	Strike out this paragraph and substitute:  (d) whether the co-operative has kept registers as required by section 239 of the Act and other records as required by the Act (including provisions of this Law adopted by or under the Act).
section 310(a)	Strike out "company, registered scheme or disclosing entity" and substitute "co-operative".
section 311	Strike out "ASIC" and substitute "the Commission".
section 311(a)	Strike out "this Law" and substitute "the Act (including provisions of this Law adopted by or under the Act)".
section 312	Strike out "company, registered scheme or disclosing entity" and substitute "co-operative".
section 312(a)	Strike out "company, scheme or entity" and substitute "co-operative".
section 314(1)	Strike out "either".  Strike out "company, registered scheme or disclosing entity" and substitute "co-operative".

## 45.

section 314(1)(c)

Insert after paragraph (b) the following word and paragraph:

or

- (c) in the case of a non-trading co-operative-
- (i) giving members notice-
  - that the reports referred to in paragraph (a) may be inspected at the registered office of the co-operative; or
  - that a concise report of the kind referred to in paragraph (b) may be inspected at the registered office of the co-operative; and
- (ii) making the report or reports (as the case requires) available for inspection.

section 315

Strike out this section and substitute:

### **315 Deadline for reporting to members**

A co-operative must report to members under section 314 by the earlier of-

- (a) 21 days before the next AGM after the end of the financial year; or
- (b) 21 days less than 5 months after the end of the financial year.

section 316(1)

Strike out "company, registered scheme or disclosing entity" and substitute "co-operative".

section 316(1A)

Insert after subsection (1) the following subsection:

(1A) Paragraph (1)(b) does not apply to a member of a non-trading co-operative.

section 317

Strike out "public company" and substitute "co-operative".

section 318(1)

Strike out "company or disclosing entity" and substitute "co-operative".

Insert "prescribed" before "debenture holders".

section 318(2)

Strike out "company or disclosing entity" and substitute "co-operative".

Insert "prescribed" before "debenture holder".

section 318(2)(a)

Insert "or made available" after "sent".

## 46.

- section 318(3) Strike out this subsection and substitute:
- (3) The co-operative must, as soon as practicable after the request-
- (a) if the terms of the debenture issue so provide-make the copies available for inspection free of charge at the registered office of the co-operative;
- (b) in any other case-give the prescribed debenture holder the copies free of charge.
- section 318(4) Insert "prescribed" before "debenture holders".
- section 318(5) Insert after subsection (4) the following subsection:
- (5) In this section-
- prescribed debenture holder** means a person who holds debentures of a co-operative but is not a member of the co-operative.
- Division 5 heading Strike out "ASIC" and substitute "Commission".
- section 319 Strike out this section and substitute:
- 319 Lodgment of annual reports with Commission**
- Under the regulations made under the Act, a co-operative that has to prepare or obtain a report for a financial year under this Law (as adopted by or under the Act) must include in its annual report to the Commission for that year a copy of each such report.
- section 320 Insert "co-operative that is a" after "A".
- Strike out "ASIC" and substitute "the Commission".
- section 321(1) Strike out this subsection and substitute:
- (1) The Commission may give a co-operative a direction to lodge with the Commission a copy of reports prepared or obtained by it under Division 1 or 2.
- section 322(1) Strike out "ASIC, the company, registered scheme or disclosing entity" and substitute "the Commission, the co-operative".
- section 322(1)(a) Strike out "ASIC" and substitute "the Commission".

## 47.

section 322(1)(b)	Strike out this paragraph and substitute the following paragraphs:  (b) in the case of a non-trading co-operative-make a copy of the amended report available for inspection at the registered office of the co-operative and inform any member who asks of its availability; and (c) in any other case-give a copy of the amended report free of charge to any member who asks for it.
section 322(2)	Strike out "company, registered scheme or disclosing entity" and substitute "co-operative".
section 322(2)(b)	Insert "or inspect" after "obtain".
section 323	Strike out "company, registered scheme or disclosing entity" twice occurring and substitute, in each case, "co-operative".
section 323A(2)	Strike out "company, registered scheme or disclosing entity" and substitute "co-operative".
section 323B	Strike out "company, registered scheme or disclosing entity" and substitute "co-operative".
section 323B(a)	Strike out "company, scheme or entity" and substitute "co-operative".
section 323C	Strike out "company, registered scheme or disclosing entity" and substitute "co-operative".
section 323D(1) and (2)	Strike out these subsections.
section 323D(3)	Strike out "company, registered scheme or disclosing entity" and substitute "co-operative".
section 323D(5)	Strike out "company, registered scheme or disclosing entity" and substitute "co-operative".
Division 8 (section 323DA)	Strike out this Division.
<i>Part 2M.4 (Auditor)</i>	
section 324(1)(a) to (c)	Strike out "a company" wherever occurring and substitute, in each case, "a co-operative".
section 324(1)(da)	Insert after paragraph (d) the following paragraph:  (da) the person is not ordinarily resident in South Australia;
section 324(1)(e)	Strike out "company" twice occurring and substitute, in each case, "co-operative".

## 48.

section 324(1)(f)	Strike out "except where the company is a proprietary company,".  Strike out "company" wherever occurring and substitute, in each case, "co-operative".
section 324(2)(a) to (c)	Strike out "a company" wherever occurring and substitute, in each case, "a co-operative".
section 324(2)(d)	Strike out "Australia" and substitute "South Australia".
section 324(2)(e)	Strike out this paragraph and substitute:  (e) the business name under which the firm is carrying on business is registered under the <i>Business Names Act 1996</i> of South Australia or a return (in a form approved by the Commission for the purpose) has been lodged showing, in relation to each member of the firm, the member's full name and address as at the time when the firm so consents, acts or prepares a report;
section 324(2)(f)	Strike out "company" twice occurring and substitute, in each case, "co-operative".
section 324(2)(g)	Strike out "except where the company is a proprietary company,".  Strike out "company" wherever occurring and substitute, in each case, "co-operative".
section 324(2)(h)	Strike out "except where the company is a proprietary company,".  Strike out "company" and substitute "co-operative".
section 324(4) to (11)	Strike out "a company" wherever occurring and substitute, in each case, "a co-operative".  Strike out "the company" wherever occurring and substitute, in each case, "the co-operative".  Strike out "that company" wherever occurring and substitute, in each case, "that co-operative".
section 324(12)	Strike out "Where it is, in the opinion of the Commission, impracticable for a proprietary company to obtain the services of a registered company auditor as auditor of the company by reason of the place where the company carries on business, a" and substitute "A".  Strike out "company's" and substitute "co-operative's".  Strike out "company" and substitute "co-operative".
section 324(13)	Strike out "company's" and substitute "co-operative's".

## 49.

section 324(14)	Strike out "company" wherever occurring and substitute, in each case, "co-operative".
section 324(15)	Strike out "company" wherever occurring and substitute, in each case, "co-operative".
section 324(16)	Strike out "company" wherever occurring and substitute, in each case, "co-operative".
section 325	Strike out this section.
section 327	Strike out "company" wherever occurring and substitute, in each case, "co-operative".
section 327(1A)	Strike out this subsection.
section 328	Strike out "company" wherever occurring and substitute, in each case, "co-operative".
section 329	Strike out "company" wherever occurring and substitute, in each case, "co-operative".
section 329(1A)	Striking out the note at the foot of this subsection.
section 329(1B)	Insert after subsection (1A) of section 329 the following subsection:  (1B) Despite subsection (1A), it is still necessary to give at least 21 days notice of a meeting of a co-operative at which a resolution will be moved to remove an auditor under this section.
section 329(8)	Strike out "Subject to subsection (9), the" and substitute "The".
section 329(9)	Strike out this subsection.
section 330	Strike out this section and substitute:  <b>330 Effect of winding up on office of auditor</b> An auditor of a co-operative ceases to hold office if- (a) a special resolution is passed in accordance with section 312 of the Act for the voluntary winding up of the co-operative; or (b) a certificate is issued by the Commission for the winding up of the co-operative; or (c) an order is made by the Court for the winding up of the co-operative.
section 331	Strike out "company" twice occurring and substitute, in each case, "co-operative".
Division 1A (sections 331AA to 331AE)	Strike out this Division.

### *Part 2M.7 (Sanctions for contraventions of Chapter)*

section 344(1)	Strike out "company, registered scheme or disclosing entity" and substitute "co-operative".
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## Schedule 3-Prescribed information relating to proposed compromise or arrangement

### Definitions

1. In this Schedule-

"internal creditor" means-

- (a) a creditor who is a member of the co-operative; or
- (b) a relative or spouse of a member; or
- (c) a relative of the spouse of a member;

"Scheme" means the proposed compromise or arrangement;

"scheme creditors" means the creditors or class of creditors of a co-operative, to whom the Scheme would apply;

"scheme members" means the members or class of members of a co-operative, to whom the Scheme would apply.

### Prescribed information relating to proposed compromise or arrangement with creditors or class of creditors

2. (1) The prescribed information which must be included in a draft explanatory statement or explanatory statement (as the case may be) in relation to a proposed compromise or arrangement between a co-operative and any of its creditors is-

- (a) the expected dividend that would be available to scheme creditors if the co-operative were to be wound up within 6 months after the date of the hearing of the application to the Court for an order under section 335(1) of the Act; and
- (b) if a composition of debts is proposed-the expected dividend that would be paid to scheme creditors if the Scheme were put into effect as proposed; and
- (c) a list of the names of all known scheme creditors and the debts owed to those creditors; and
- (d) if a scheme creditor is known to be a guaranteed creditor-the name of the creditor and the amount of the debt owed; and
- (e) if a scheme creditor is known to be an internal creditor-the name of the creditor and the amount of the debt owed.

(2) The statement referred to in subclause (1) must contain a statement that an order under section 335(1) of the Act is not an endorsement of, or any other expression of opinion on, the Scheme.

(3) The statement referred to in subclause (1) must contain or include-

- (a) a report on the affairs of the co-operative in or to the effect of the form approved by the Commission, showing the financial position of the co-operative as at a day within one month of the date on which it is intended to apply to the Court for an order under section 335(1) of the Act; and

## 51.

- (b) a copy, certified by a director or by the principal executive officer or a secretary of the co-operative to be a true copy, of all accounts and group accounts (if any) required to be laid before the co-operative at the annual general meeting, together with a copy of every document required by law to be annexed to the accounts; and
- (c) if the co-operative the subject of the Scheme is a trustee-a statement-
  - (i) of the number of trusts administered by the trustee; and
  - (ii) whether the trustee carries on any business separate from that of the trust; and
  - (iii) how the scheme creditors may obtain a copy of the relevant trust deed, free of charge, prior to the date of the meeting; and
  - (iv) if the person (if any) who would be appointed to manage the Scheme proposes to charge for his or her services and for the services of his or her staff in accordance with a particular scale of charges, that scale of charges.

### **Prescribed information relating to proposed compromise or arrangement with members or a class of members**

3. (1) The prescribed information which must be included in a draft explanatory statement or explanatory statement (as the case may be) in relation to a proposed compromise or arrangement between a co-operative and any of its members is-

- (a) unless the co-operative the subject of the Scheme is in the course of being wound up or is under official management-in relation to each director of the co-operative-
    - (i) whether the director recommends the acceptance of the Scheme or recommends against acceptance and, in either case, his or her reasons for so recommending; or
    - (ii) if the director is not available to consider the Scheme-that the director is not so available and the cause of his or her not being available; or
    - (iii) in any other case-that the director does not desire to make, or does not consider himself or herself justified in making, a recommendation and, if the director so requires, his or her reasons for not wishing to do so; or
  - (b) if the co-operative is in the course of being wound up or is under official management-in relation to each liquidator or each official manager-
    - (i) whether he or she recommends acceptance of the Scheme or recommends against acceptance and, in either case his or her reasons for so recommending; or
    - (ii) in any other case-that the liquidator or official manager does not wish to make a recommendation and his or her reasons for not wishing to do so.
- (2) The statement referred to in subclause (1) must set out-
- (a) the number, description and amount of marketable securities of the co-operative the subject of the Scheme held by or on behalf of each director of the co-operative or, if none are held by or on behalf of a director, a statement to that effect; and
- (b) for each director of the co-operative by whom or on whose behalf shares in that co-operative are held, whether-
- (i) the director intends to vote in favour of, or against, the Scheme; or
  - (ii) the director has not decided whether he or she will vote in favour of, or against, the Scheme; and
- (c) if the other party to the proposed reconstruction or amalgamation is, or includes, a corporation-whether any marketable securities of the corporation are held by, or on behalf of, any director of the co-operative the subject of the Scheme and, if so, the number, description and amount of those marketable securities; and
  - (d) particulars of any payment or other benefit that is proposed to-
    - (i) be made or given to any director, secretary or executive officer of the co-operative the subject of the Scheme as compensation for loss of, or as consideration for or in connection with his or her retirement from, office in that co-operative or in a related body corporate; or
    - (ii) be made or given to any director, secretary or executive officer of any related body corporate as compensation for the loss of, or as consideration for or in connection with his or her retirement from, office in that body corporate or in the co-operative the subject of the Scheme; and
  - (e) if there is any other agreement or arrangement made between a director of the co-operative the subject of the Scheme and another person in connection with or conditional on the outcome of the Scheme-particulars of the agreement or arrangement; and
  - (f) if the object of the Scheme is for a co-operative to acquire control of another corporation that is a company-particulars of the nature and extent of any interest of a director of that company in any contract entered into by the co-operative; and
  - (g) whether, within the knowledge of the directors of the co-operative the subject of the Scheme, or, if the co-operative is in liquidation or under official management, the knowledge of the liquidator or the official manager, the financial position of the co-operative has materially changed since the date of the last balance sheet laid before the co-operative in general meeting and, if so, full particulars of any change; and

52.

(h) any other information material to the making of a decision in relation to the Scheme, being information that is within the knowledge of any director, liquidator or official manager of a co-operative the subject of the Scheme or of a related company and that has not previously been disclosed to the Scheme members.

(3) If-

(a) the other party to the proposed reconstruction or amalgamation of the co-operative the subject of the Scheme has a prescribed shareholding in the co-operative; or

(b) a director of any corporation that is the other party to the proposed reconstruction or amalgamation is a director of a co-operative the subject of the Scheme,

53.

the statement must include a copy of a report made by an expert who is not associated with the corporation that is the other party, stating whether or not, in his or her opinion, the proposed Scheme is in the best interest of the members of the co-operative the subject of the Scheme and setting out his or her reasons for that opinion.

(4) If the co-operative the subject of the Scheme obtains 2 or more reports, each of which could be used for the purposes of subclause (3), the statement must include a copy of each report.

(5) If-

- (a) the co-operative the subject of the Scheme obtains a report for the purposes of subclause (3); and
- (b) the report contains-
  - (i) a forecast of the profits or profitability of the co-operative; or
  - (ii) a statement that the market value of an asset or assets of the co-operative or of a related body corporate differs from an amount at which the value of the asset or assets is shown in the books of the co-operative or the related body corporate,

that report must not be included in the statement except with the consent in writing of the Commission and in accordance with such conditions (if any) as are stated by the Commission.

(6) For the purposes of subclause (3)-

- (a) a person has a prescribed shareholding in a co-operative if he or she is entitled to not less than 30 per cent of the voting shares in the co-operative;
- (b) a person has a prescribed shareholding in a co-operative in which the voting shares are divided into 2 or more classes of shares, if he or she is entitled to not less than 30 per cent of the shares in one of those classes.

(7) If the consideration to be offered to scheme members consists, in whole or in part, of marketable securities issued, or to be issued, by a corporation, the statement must set out the formula to be applied to find out the number of marketable securities to be issued to each scheme member, and the basis on which that formula was developed.

(8) If marketable securities of the same class as those referred to in subclause (7) are granted official quotation on a securities exchange, the statement must state the fact, specify the securities exchange concerned, and set out-

- (a) the latest recorded sale price before the date on which the statement is sent to the Commission; and
- (b) the highest and lowest recorded sale prices during the 3 months immediately before that date and the dates of the relevant sales; and
- (c) if the Scheme has been the subject of a public announcement in newspapers or by any other means before the statement has been sent to the Commission-the latest recorded sale price immediately before the public announcement.

## 54.

(9) If the marketable securities referred to in subclause (8) are granted official quotation on more than one securities exchange, it is sufficient compliance with subclause (12)(a) and (c) if information on the marketable securities is given for the securities exchange at which there has been the greatest number of recorded dealings in the securities in the 3 months immediately before the date on which the statement is sent to the Commission.

(10) If the securities referred to in subclause (8) have not been granted official quotation on a securities exchange, the statement must set out all the information that a director, liquidator or official manager of the co-operative the subject of the Scheme or of a related body corporate has about the number of securities that have been sold in the 3 months immediately before the date on which the explanatory statement was prepared and the price of those securities or, if that information or any part of that information cannot be ascertained, must include a statement to that effect.

(11) The statement must set out particulars of the intentions of the directors of the co-operative the subject of the Scheme regarding-

- (a) the continuation of the business of the co-operative or, if the undertaking, or any part of the undertaking, of a co-operative is to be transferred, how that undertaking or part is to be conducted in the future; and
- (b) any major changes to be made to the business of the co-operative, including any redeployment of the fixed assets of the co-operative; and
- (c) the future employment of the present employees of the co-operative.

## Schedule 4-Forms

Form 1

## COMPULSORY ACQUISITION NOTICE

*Co-operatives Act 1997**(s. 350(1))*

1. To  
of
  - A. The transferee (*insert name of person giving notice*) on (*insert date*) made an offer to the holders of \*shares in (*insert name*) Co-operative Limited/\*shares included in a class of shares in (*insert name*) Co-operative Limited for the transfer of those shares to the transferee, not being an offer made under a scheme or contract to which Division 2 of Part 11 of the *Co-operatives Act 1997* 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 holders of at least 90 per cent 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 350(1) of the *Co-operatives Act 1997* that the transferee desires to acquire those shares held by you.
3. You are entitled under section 350(2) of the *Co-operatives Act 1997* 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 350(2) of the *Co-operatives Act 1997*, 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 350(2) of the *Co-operatives Act 1997*, the Supreme Court otherwise orders, the transferee will be entitled and bound subject to section 350(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 19

*(signature of transferee)*

\*Omit if not applicable

56.

Form 2

**NOTICE TO REMAINING SHAREHOLDERS**

*Co-operatives Act 1997*

(s. 352(1)(a))

1. To  
of
  - 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*) Limited/\*included in a class of shares in (*insert name of co-operative*) Limited for the transfer of those shares to the transferee, not being offers made under a scheme or contract to which Division 2 of Part 11 of the *Co-operatives Act 1997* 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 corporation related to the transferee, is beneficially entitled, comprise or include 90 per cent 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 350(1) of the *Co-operatives Act 1997*.
2. The transferee gives you notice under section 352(1)(a) of the *Co-operatives Act 1997* that under that scheme or contract the transferee on (*insert date*) became beneficially entitled to shares in (*insert name of co-operative*) Limited and those shares together with any other shares in that co-operative to which the transferee, or the transferee and any corporation 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 352(1)(b) of the *Co-operatives Act 1997*, within 3 months after being given this notice, by notice to the transferee to require the transferee to acquire your shares.
- \*4. You are entitled under section 352(1)(b) of the *Co-operatives Act 1997*, 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 that under 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 the 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 19  
(*signature of transferee*)

\*Omit if not applicable

57.

Form 3

**NOTICE REQUIRING PRODUCTION OF DOCUMENTS OR APPEARANCE TO  
ANSWER QUESTIONS**

*Co-operatives Act 1997  
(s. 388(1))*

To: *(name of co-operative or person)*

In relation to an inspection of *(name of co-operative)*, you are required-

- \**(a)* to produce to me on *(date)* at *(time)* at *(full details of place)* the documents specified in the Schedule to this notice relating to the co-operative; and
- \**(b)* to attend on *(date)* at *(time)* before *(name if inspector)* at *(full details of place)* to answer any questions relating to the promotion, formation, membership, control, transactions, dealings, business or property of the co-operative.

Please note section 393 of the Act (relating to self-incrimination).

**SCHEDULE**

Signed by the Inspector

Date

\*Omit if not applicable

58.

Form 4

**NOTICE TO PRODUCE DOCUMENTS, GIVE ASSISTANCE OR TO APPEAR FOR  
EXAMINATION AT INQUIRY**

*Co-operatives Act 1997  
(Ss. 400 & 401)*

To: *(name of involved person)*

In relation to an inquiry into the affairs of *(name of co-operative)*, you are required:

- \* *(a)* to produce to me on *(date)* at *(time)* at *(full details of place)* the documents referred to in the Schedule to this notice that are in your custody or control and that relate to the affairs of *(name of co-operative)*;
- \* *(b)* to give all reasonable assistance in connection with the inquiry;
- \* *(c)* to appear on *(date)* at *(time)* before *(name of investigator)* at *(full details of place)* for examination on oath or affirmation.

Please note the provisions of section 401(1) of the Act (relating to legal representation) and sections 401(2) and (3) of the Act (relating to self-incrimination).

**SCHEDULE**

Signed by the Investigator

Date

\*Delete if not applicable

**Schedule 5-Fees**

1.	Application to Commission for approval of proposed disclosure statement (s. 17)	\$238
2.	Application to Commission for approval of proposed rules (s. 18)	\$119
3.	Application to Commission for registration of proposed co-operative (s. 19)	\$119
4.	Application to Commission for registration-existing body corporate (s. 24)	\$119
5.	Issue of duplicate certificate (s. 35)	\$30
6.	Application for Commission's certificate (s. 61(2))	\$30
7.	Application for Commission's consent (s. 72(2))	\$59
8.	Application to Commission for approval of alteration to rules (s. 107)-\$10 per rule to a maximum of \$100	
9.	Registration of rule alteration (s. 110(2))	\$30
10.	Issue of certificate of registration of rule alteration (s. 110(4))	\$30
11.	Application to the Commission for determination of a member's eligibility to vote (s. 122(3))	\$119
12.	Application to Commission for exemption (s. 142)	\$238
12A.	Application to Commission for exemption (section 144B)	\$238
13.	Application to Commission for approval of proposed disclosure statement (s. 150)	\$238
14.	Application to Commission for review (s. 181)	\$238
15.	Lodgment of special resolution (s. 192)	\$30
16.	Application to Commission for approval of proposed disclosure statement (s. 195)	\$238
17.	Application to Commission for exemption (s. 234)	\$238
18.	Approval of office where register to be kept (s. 240(1)(d))	\$30
19.	Lodgment of annual report (s. 244)	\$59
20.	Application to Commission for approval of abbreviation or elaboration of name (s. 248(e))	\$30
21.	Application to Commission for approval of name change (s. 250(1))	\$30
22.	Application to Commission for approval of proposed disclosure statement (s. 253)	\$238
23.	Filing a disclosure document under s. 727 of the Corporations Act as applied by s. 258 of the Act	\$1 739
24.	Application to Commission for exemption (s. 258(4))	\$238
25.	Application to Commission for approval of proposed disclosure statement (s. 259)	\$238
26.	Application to Commission for approval of proposed disclosure statement (s. 262)	\$238
27.	Application to Commission for exemption (s. 270)	\$238
28.	Application to Commission for approval of maximum share interest (s. 275(5))	\$238
29.	Inspection of register of notifiable interests-fee payable to the co-operative (s. 280(3)(b))	\$30
30.	Application to Commission for exemption (s. 284)	\$238

## 60.

31. Application to Commission for approval of share offer (s. 286) \$238
32. Application to Commission for extension of period of offer (s. 288(5)) \$59
33. Application to Commission for exemption (s. 292) \$238
34. Application for Commission's consent (s. 295(2)) \$59
35. Application to Commission for approval of proposed disclosure statement (s. 296(2)) \$238
36. Application to Commission for exemption (s. 296(4))\$238
37. Application to Commission for approval of merger or transfer of engagements (s. 297) \$238
38. Application to Commission for exemption (s. 302(3))\$238
39. Filing an application for the Commission to exercise powers conferred by s. 601AE or s. 601AF of the Corporations Act as applied by s. 311 of the Act\$232
40. Application to Commission for exemption (s. 312(2))\$238
41. Application for Commission's permission (s. 336(1)) \$59
42. Application to Commission for direction (s. 338(1)(f)) \$238
43. Application to Commission for approval of explanatory statement (s. 345(1)) \$594
44. Application to Commission for registration (s. 364) \$119
45. Application to Commission for registration (s. 365) \$594
46. Application to Commission for certificate of compliance (s. 373) \$714
47. Application for South Australian Registrar's consent (s. 376) \$59
48. Application to South Australian Registrar for approval of proposed disclosure statement (s. 377(2)) \$238
49. Application to South Australian Registrar for exemption (s. 377(4))\$238
50. Application to South Australian Registrar for approval of merger or transfer of engagements (s. 378) \$238
51. Application to Commission for special meeting (s. 415(1)(a)) \$238
52. Application to Commission for inquiry (s. 415(1)(b)) \$594
53. Application to Commission for extension or abridgment of time (s. 421) \$59
54. Inspection of a register or document (s. 427(1)(a) and (b)) \$17
55. Copy of, or copy of an extract from, an entry in a register, a certificate of incorporation, an acknowledgment of registration or a document held or registered by the Commission (s. 427(1)(c)) (in addition to the fee payable under clause 54)-
  - (a) for a certified copy-
    - (i) for one page \$17
    - (ii) for each additional page or part of a page \$1
  - (b) for an uncertified copy-
    - (i) for one page \$4
    - (ii) for each additional page or part of a page \$1
56. Application to Commission for permission to give notice by newspaper (s. 451(2)(c)(iii)) \$59

61.

- 57. Lodgment of notice of charge (Sched. 3, cl. 13(1)) \$83
- 58. Lodgment of notice of acquisition of property subject to charge (Sched. 3, cl. 17(1)) \$83
- 59. Application to Commission for extension of time (Sched. 3, cl. 20(3)(c)) \$59
- 60. Lodgment of notice of assignment of charge (Sched. 3, cl. 36(1)) \$42
- 61. Lodgment of notice of variation of charge (Sched. 3, cl. 36(2)) \$42
- 62. Lodgment of memorandum of discharge (Sched. 3, cl. 37(2)) \$42
- 63. Request for certificate (Sched. 3, cl. 42) \$30
- 64. Application to Commission for exemption (Sched. 3, cl. 44) \$238
- 65. Application to Commission for direction (Sched. 4, cl. 3(1)(f)) \$238
- 66. Inspection of managing controller's report (Sched. 4, cl. 12(3)(b)) \$17
- 67. Late lodgment of a document (in addition to any lodgment fee provided by any other item for the lodging of that document)-
  - (a) if lodged within one month after the prescribed time \$35
  - (b) if lodged more than one month but within three months after the prescribed time \$108
  - (c) if lodged more than three months after the prescribed time \$181

## Schedule 6-Savings and transitional

### Definitions

1. In this Schedule-

"repealed Act" means the *Co-operatives Act 1983*.

### Saving of exemptions under repealed Act

2. Subject to the Act, an exemption in force under section 9 of the repealed Act immediately before the commencement of this clause continues in force as a exemption under section 234 of the Act subject to the same conditions of exemption (if any).

### Removal and resignation of auditor

3. A consent to the resignation of an auditor given by the Commission under section 53(7) of the repealed Act is deemed to be a consent given by the Commission under section 329(6) of the *Corporations Law* as adopted by regulation 13 and modified under section 10(3) of the Act.

### Existing account provisions to apply to transferred co-operatives

4. For the purposes of clause 24 of Schedule 5 of the Act, the prescribed date is 31 March 1998.

### Interstate co-operative carrying on business in this State

5. (1) An interstate co-operative that carried on business in this State (within the meaning of section 363 of the Act) immediately before the commencement of this clause must-

- (a) as soon as practicable after that commencement notify the Commission that it is carrying on business in this State; and
- (b) if it proposes to continue carrying on business in this State-apply to the Commission, within 6 months after the commencement of this clause (or such longer period as the Commission may allow), for registration under Part 14 of the Act as a foreign co-operative.

(2) An interstate co-operative that notifies the Commission in accordance with subregulation (1) is deemed to be registered under Part 14 of the Act as a foreign co-operative for 6 months after the commencement of this clause (or such longer period as the Commission may allow).

(3) An interstate co-operative that notifies the Commission and makes an application for registration in accordance with subregulation (1) is deemed to be registered under Part 14 of the Act as a foreign co-operative until-

- (a) it is registered as such by the Commission on that application; or
- (b) the Commission gives written notice to the co-operative that the Commission has refused the application.

(4) In this clause-

"interstate co-operative" means a body registered or incorporated as a co-operative in another State.

63.  
**APPENDIX**

**LEGISLATIVE HISTORY**

**Transitional Provisions**

*(Transitional provision from Regulation No. 25 of 1999, Sched.)*

(1) Regulation 13 of the principal regulations (as substituted by these amending regulations) applies to financial years and half-years ending after 30 April 1999.

(2) In relation to financial years and half-years that end on or before 30 April 1999 (but after 31 March 1998)-

(a) regulation 13 of the principal regulations (as in force immediately before the commencement of these amending regulations) continues to apply as if it had not been substituted subject, however, to the modification that it is to be read as if subregulation (5) were struck out and the following subregulation were substituted:

(5) The provisions of Part 3.7 of the *Corporations Law* adopted in subregulation (2) apply as if section 324(12) were amended by striking out "Where it is, in the opinion of the Commission, impracticable for a proprietary company to obtain the services of a registered company auditor as auditor of the company by reason of the place where the company carries on business, a" and substituting "A".; and

(b) the provisions of the *Corporations Law* (and the accounting standards and regulations made under that Law) adopted by that regulation continue to apply as if they had not been repealed, relocated or amended; and

(c) any directions given under section 10 of the Act by the Commission as to modifications that are necessary or desirable for the effectual operation of the adopted provisions of the *Corporations Law* (as in force immediately before the commencement of these regulations) continue to apply, except to the extent that the directions contemplate the omission of subsections (12) to (15) of section 324 of the *Corporations Law*; and

(d) any relevant exemptions under section 234 of the Act continue in force.

**Legislative History**

*(entries in bold type indicate amendments incorporated since the last consolidation)*

Regulation 5:	varied by 154, 2001, reg. 3
<b>Regulation 5A:</b>	<b>inserted by 149, 2003, reg. 4</b>
<b>Regulation 12:</b>	substituted by 154, 2001, reg. 4; <b>varied and redesignated as reg 12(1) by 149, 2003, reg. 5(1), (2)</b>
<b>Regulation 12(2):</b>	<b>inserted by 149, 2003, reg. 5(2)</b>
<b>Regulation 13:</b>	<b>substituted by 25, 1999, reg. 3; 154, 2001, reg. 5; 149, 2003, reg. 6</b>
Regulation 17:	redesignated as reg. 17(1) by 25, 1999, reg. 4
Regulation 17(2):	inserted by 25, 1999, reg. 4; varied by 154, 2001, reg. 6
<b>Regulation 27:</b>	<b>revoked by 149, 2003, reg. 7</b>
Regulation 28:	substituted by 154, 2001, reg. 7
Regulation 35(1):	varied by 154, 2001, reg. 8
<b>Schedule 2</b>	
<b>Forms:</b>	<b>redesignated as clause 11 by 147, 2003, Sched. 1</b>

64.

**Schedule 2A:**

Schedule 2A heading:

Clause 1:

Clause 2:

**Schedule 5:**

inserted by 25, 1999, reg. 5

substituted by 154, 2001, reg. 9

substituted by 154, 2001, reg. 10

varied by 154, 2001, reg. 11

varied by 25, 1999, reg. 6; substituted by 70, 1999, reg. 3; 74, 2000, reg. 3; 90, 2001, reg. 3; varied by 154, 2001, reg. 12; **substituted by 76, 2002, reg. 3; 78, 2003, reg. 4; varied by 149, 2003, reg. 8**