Cooperatives Act 1999

An Act to provide for the formation, registration and management of cooperatives, to repeal the *Co-operative Industrial Societies Act 1928* and for other purposes

[Royal Assent 22 December 1999]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 - Preliminary

1. Short title

This Act may be cited as the *Cooperatives Act 1999*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

(1) In this Act, unless the contrary intention appears –

agreement means an agreement, arrangement or understanding –

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

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

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

alter, in relation to the rules of a cooperative, includes add to, substitute and rescind;

associate has the meaning given by Schedule 1;

association means an association registered under this Act;

authorised deposit-taking institution means a body corporate that is an authorised deposit-taking institution for the purposes of the *Banking Act 1959* of the Commonwealth;

board means the board of directors of a cooperative and includes a committee of management of a cooperative;

Commissioner means the Commissioner for Corporate Affairs;

component cooperative means a member of an association;

cooperative means a body registered under this Act as a cooperative and includes an association or federation;

debenture means a document issued by a cooperative that evidences or acknowledges indebtedness of the cooperative in respect of money that is or may be deposited with or lent to the cooperative, whether constituting a charge on property of the cooperative or not and includes a unit of a debenture but does not include –

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

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

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

deed of arrangement means a deed of arrangement executed under Part 5.3A of the Corporations Act as applying under this Act or such a deed as varied and in force from time to time;

deposit-taking cooperative means a cooperative which is permitted under section 260 to accept money on deposit;

deregistration means deregistration under section 319 or section 455(1) or clause 14 of Schedule 6;

director, in relation to a cooperative, includes –

(a) a person who occupies or acts in the position of a director or member of the board of a cooperative, whether or not the person is called a director and whether or not the person is validly appointed or duly authorised to act in the position; and

(b) a person in accordance with whose directions or instructions the directors or members of the board of directors of the cooperative are accustomed to act;

excluded Corporations legislation provision means any provision of the Corporations legislation that does not apply to cooperatives as a law of the Commonwealth;

federation means a federation registered under this Act;

financial records includes –

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

(b) documents of prime entry; and

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

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

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

foreign cooperative means a body corporate that is registered, incorporated or formed under, or subject to, a law in force outside Tasmania (including outside Australia) that regulates cooperatives or organisations having attributes the same as or similar to cooperatives but does not include –

(a) a body incorporated under the Corporations Act; or

(b) an authorised deposit-taking institution;

function includes a power;

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

model rules means the model rules approved by the Commissioner under Part 5;

mortgage includes lien, charge or other security over property;

non-trading cooperative means a non-trading cooperative within the meaning of section 14;

officer, in relation to a cooperative, means –

(a) a director, secretary or employee of the cooperative; or

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

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

(d) an administrator of a deed of arrangement executed by the cooperative; or

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

(f) an administrator of the cooperative appointed under –

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

(ii) Division 5 of Part 12 of this Act; or

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

partner means the person with whom a person is in a personal relationship, within the meaning of the *Relationships Act 2003*;

primary activity has the meaning given by section 112;

principal executive officer, in relation to a cooperative or to a subsidiary of a cooperative, means the principal executive officer of the cooperative or subsidiary for the time being, by whatever name called, and whether or not that officer is a director or the secretary;

records includes books, accounts, accounting records, minutes, registers, deeds, writings, documents and other sources of information compiled, recorded or stored in written form or on microfilm, or by electronic process, or in any other manner or by any other means;

Register means the register continued for the purposes of this Act as the Register of Cooperatives under section 431;

regulations means regulations made under this Act;

related (in the context of related bodies corporate) has the meaning given by Schedule 1;

relevant interest has the meaning given by Schedule 1;

rule means registered rule of a cooperative for the time being in force;

seal, in relation to a cooperative, means common seal or official seal;

secretary, of a cooperative, means the person appointed under section 219 to be, or to act as, the secretary of the cooperative;

share means share in the share capital of a cooperative;

subordinated debt has the meaning given by section 263;

subsidiary has the same meaning as in the Corporations Act;

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

trading cooperative means a trading cooperative within the meaning of section 13.

(2) In this Act –

(a) a reference to a function includes a reference to a power, authority and duty; and

(b) a reference to the exercise of a function includes, in relation to a duty, a reference to the performance of the duty.

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

4. Qualified privilege

(1) Where this Act provides that a person has qualified privilege in respect of an act, matter or thing, the person, in respect of that act, matter or thing –

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

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

(2) In subsection (1),

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

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

5. Cooperative principles

The cooperative principles are the principles specified in Schedule 2.

6. Interpretation to promote cooperative principles

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

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9. Excluded matter

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

(2) Subsection (1) does not exclude the application of the following provisions of the Corporations legislation to cooperatives to the extent that those provisions would otherwise be applicable to them:

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

(b) provisions that relate to the role of a cooperative in the formation of a company;

(c) provisions that relate to substantial shareholdings, by or involving a cooperative, in a company;

(d) provisions that confer or impose functions on a cooperative as a member, or former member, of a corporation;

(e) provisions that relate to dealings by a cooperative in securities of a body corporate, other than securities of the cooperative itself;

(f) provisions that confer or impose functions on a cooperative in its dealings with a corporation, not being dealings in securities of the cooperative;

(g) provisions that relate to securities of a cooperative, other than shares in, debentures of or deposits with a cooperative;

(h) provisions relating to the futures industry;

(i) provisions relating to participants in the securities industry;

(j) provisions relating to the conduct of securities business;

(k) provisions relating to dealers' accounts and audit;

(l) provisions relating to money and scrip of dealers' clients;

(m) provisions relating to registers of interests in securities.

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

(a) Part 1.2A (Disclosing entities);

(b) Chapter 2L (Debentures);

(c) Chapter 6D (Fundraising);

(d) Part 7.11 (Conduct in relation to securities).

10. Applying the Corporations legislation to cooperatives

(1) The regulations may declare any matter relating to cooperatives to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to any excluded Corporations legislation provision or provisions (with any modifications that are specified in the declaration).

(2) Without limiting subsection (1), any such regulations may –

(a) specify modifications to the definitions and other interpretative provisions of the Corporations legislation relevant to any excluded Corporations legislation provision that is the subject of the declaration; and

(b) provide for ASIC to exercise a function under any excluded Corporations legislation provision that is the subject of the declaration but only if –

(i) ASIC is to exercise that function pursuant to an agreement referred to in section 11(8) or (9A)(b) of the ASIC Act; and

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

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

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

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

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

11. Modifications to applied provisions

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

(a) a reference to articles or memorandum of association is to be read as a reference to rules;

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

(c) a reference to the *Gazette* is to be read as a reference to the Tasmanian Government Gazette;

(d) a reference to the Commonwealth is to be read as a reference to Tasmania;

(e) provisions which are not relevant to cooperatives or which are incapable of application to cooperatives are to be ignored;

(f) modifications directed by the Commissioner under subsection (2).

(2) The Commissioner may, by order published in the *Gazette*, give directions as to the modifications that are necessary or desirable for the effectual operation of the applied provisions.

PART 2 - Formation

Division 1 - Types of cooperatives

12. Types of cooperatives

(1) A body may be registered under this Act as a cooperative.

(2) A cooperative may be either –

(a) a trading cooperative; or

(b) a non-trading cooperative.

13. Trading cooperatives

(1) A trading cooperative must have a share capital.

(2) A trading cooperative is a cooperative whose rules allow it to give returns or distributions on surplus or share capital.

(3) A trading cooperative must have a membership of –

(a) two or more cooperatives, in the case of an association; and

(b) two or more associations, in the case of a federation; and

(c) for another trading cooperative –

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

(ii) otherwise, 5 or more active members.

14. Non-trading cooperatives

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

(2) A non-trading cooperative may or may not have a share capital.

(3) A non-trading cooperative must have a membership of –

(a) two or more cooperatives, in the case of an association; and

(b) two or more associations, in the case of a federation; and

(c) for another non-trading cooperative –

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

(ii) otherwise, 5 or more active members.

Division 2 - Formation meeting

15. Formation meeting

(1) Before a proposed cooperative (other than an existing body corporate) can be registered, a formation meeting must be held in accordance with this section.

(2) At the formation meeting –

(a) in the case of a proposed trading cooperative, a disclosure statement approved under section 16 must be presented to the meeting; and

(b) the proposed rules of the cooperative approved under section 17 in respect of the proposed cooperative, and including active membership provisions in accordance with Part 6, must be passed by two-thirds of the proposed members of the proposed cooperative attending the meeting; and

(c) the proposed members of the proposed cooperative must sign the application for membership which must be in a form approved by the Commissioner; and

(d) the proposed members must elect the first directors of the proposed cooperative in accordance with the proposed rules; and

(e) the proposed members must authorise a person –

(i) to apply to the Commissioner for registration of the proposed cooperative; and

(ii) to do any act or thing necessary to have the proposed cooperative registered.

(3) The formation meeting must be held by –

(a) not less than 2 suitably qualified cooperatives, in the case of an association; and

(b) not less than 2 suitably qualified associations, in the case of a federation; and

(c) not less than 5 persons or, if a lesser number than 5 is prescribed under the regulations, not less than the prescribed number of persons, suitably qualified to be members of the proposed cooperative, in the case of any other cooperative.

(4) For the purposes of subsection (3), a person is suitably qualified to be a member if –

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

(b) in the case of a natural person, the person has attained the age of 18; and

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

(5) Each cooperative forming a proposed association and each association forming a proposed federation may be represented at the formation meeting by one person.

Division 3 - Approval of disclosure statement and rules

16. Approval of disclosure statement

(1) A draft disclosure statement of a proposed trading cooperative must be submitted to the Commissioner at least 28 days (or such shorter period as the Commissioner may allow in a particular case) before the formation meeting is due to be held.

(2) The disclosure statement must contain the information necessary to ensure that prospective members are adequately informed of the nature and extent of a person's financial involvement or liability as a member of the cooperative including, so far as applicable –

(a) the estimated costs of formation; and

(b) the nature of the proposed membership of the cooperative; and

(c) the rights and liabilities attaching to shares in the proposed cooperative (including the capital required for the cooperative); and

(d) the projected income and expenditure of the cooperative for its first year of operation; and

(e) information about any contracts required to be entered into by the cooperative; and

(f) any other information that the Commissioner directs.

(3) The disclosure statement must not include a statement purporting to be made by an expert or to be based on a statement made by an expert unless –

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

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

(4) The Commissioner may –

(a) approve the draft statement as submitted; or

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

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

(d) refuse to approve the statement; or

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

(5) Approval may be given at any time before the formation meeting is held.

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

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

(8) The Commissioner is to be considered to have approved the disclosure statement as submitted to the Commissioner unless at least 5 days before the formation meeting is due to be held –

(a) the Commissioner gives notice of approval of a different disclosure statement; or

(b) the Commissioner gives notice to the person who submitted the draft statement that the Commissioner is still considering the matter; or

(c) the Commissioner gives notice of refusal to approve the disclosure statement.

(9) A notice under this section must be in writing.

17. Approval of rules

(1) A draft of the rules proposed for the cooperative (including active membership provisions in accordance with Part 6) must be submitted to the Commissioner at least 28 days (or such shorter period as the Commissioner may allow in a particular case) before the formation meeting is due to be held.

(2) The proposed rules must –

(a) be in accordance with section 100; and

(b) be in a form that may reasonably be approved; and

(c) if the rules contain any alterations of the model rules, be accompanied by a statement setting out the alterations and the reasons for the alterations.

(3) If the rules do not make provision for any matter included in the model rules, the Commissioner may approve the relevant provisions of the model rules as rules of the cooperative.

(4) The Commissioner may –

(a) approve the rules as submitted; or

(b) approve different rules to those submitted; or

(c) refuse to approve the rules.

(5) The Commissioner approves of the rules by giving written notice of the approval of the rules to the person who submitted the draft rules to the Commissioner.

(6) The Commissioner must give written notice of the refusal to approve the rules to the person who submitted the rules to the Commissioner.

Division 4 - Registration of proposed cooperative

18. Application for registration of proposed cooperative

(1) An application for registration of a proposed cooperative (other than an existing body corporate) must –

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

(b) be accompanied by the prescribed fee; and

(c) be signed by –

(i) at least 2 directors, in the case of an association or federation; and

(ii) at least 5 suitably qualified members or, if a lesser number than 5 is prescribed under the regulations, at least the prescribed number of persons, including 2 directors elected at the formation meeting, in the case of any other proposed cooperative; and

(d) be accompanied by –

(i) two copies of the proposed rules signed and certified by the persons who acted as chairperson and secretary at the formation meeting; and

(ii) in the case of a proposed trading cooperative, a copy of the disclosure statement presented to the formation meeting signed and certified by the persons who acted as chairperson and secretary at the formation meeting; and

(iii) a statement listing the name, address, occupation and place and date of birth of each director; and

(iv) any other particulars that the Commissioner may require in a particular case.

(2) The application must be lodged with the Commissioner within 2 months after closure of the formation meeting for the proposed cooperative or within such extended period as the Commissioner may allow.

19. Registration of cooperative

(1) When an application is made under this Division for registration of a proposed cooperative, the Commissioner must register the cooperative and its rules if satisfied that the requirements for registration of the cooperative have been met.

(2) The requirements for registration of a cooperative under this Division are as follows:

(a) the proposed rules of the proposed cooperative must be the rules approved by the Commissioner under section 17;

(b) the name of the proposed cooperative –

(i) must comply with the requirements of this Act; and

(ii) must not be such as is likely to be confused with the name of any other body corporate or any registered business name; and

(iii) must not be undesirable as a name for a registered cooperative; and

(iv) must conform with any direction of the Minister relating to the names of registered cooperatives;

(c) the other requirements of this Act must have been complied with in respect of the proposed cooperative and compliance must be likely to continue;

(d) the proposed cooperative must be designed to function in accordance with the cooperative principles or, if it is not designed to function entirely in accordance with the cooperative principles, the Commissioner must be satisfied that there are special reasons why the cooperative should be registered under this Act;

(e) there must be no reasonable cause for refusing registration of the proposed cooperative.

(3) If the Commissioner is not satisfied that the requirements for registration of the cooperative have been met, the Commissioner may refuse to register the cooperative and its rules.

20. Incorporation and certificate of registration

(1) The incorporation of the cooperative takes effect upon the registration of the cooperative.

(2) On the registration of the cooperative, the Commissioner must issue a certificate of registration.

Division 5 - Registration of an existing body corporate

21. Existing body corporate can be registered

A body corporate (other than a cooperative deemed to be registered under this Act) may apply to the Commissioner to be registered as a cooperative under this Act if, before or after the commencement of this Act, the body corporate was –

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

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

22. Formation meeting

(1) Before applying for registration as a cooperative, the body corporate must pass a special resolution in accordance with its articles of association or rules approving of –

(a) the proposed registration; and

(b) any alterations of its existing memorandum and articles of association or rules necessary to enable the body corporate to comply with this Act.

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

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

(b) in the case of a proposed trading cooperative, a disclosure statement approved under section 16 must be presented to the meeting.

23. Application for registration

An application for registration must be –

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

(b) accompanied by the prescribed fee; and

(c) accompanied by –

(i) a declaration in writing signed by the directors or the committee of management of the body corporate stating that at a meeting of the directors or committee they formed the opinion that the body corporate will be able to pay its debts as they fall due; and

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

(iii) a copy of the memorandum and articles of association or rules of the body corporate in force at the date of the application; and

(iv) two copies of the proposed rules of the cooperative, as provided for by the special resolution; and

(v) in the case of a proposed trading cooperative, a copy of the disclosure statement presented to the meeting held under section 22 and signed and certified by the directors or committee of management of the body corporate; and

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

(vii) evidence to the satisfaction of the Commissioner of the incorporation of the existing body corporate; and

(viii) any other particulars that the Commissioner may require in a particular case.

24. Requirements for registration

(1) When an application is made for registration of a cooperative under this Division, the Commissioner must register the body corporate as a cooperative under this Act and register its rules under this Act if the Commissioner is satisfied that the requirements for registration of the cooperative have been met.

(2) The requirements for registration of a cooperative under this Division are as follows:

(a) the proposed rules of the proposed cooperative must be the rules approved by the Commissioner under section 17;

(b) the name of the proposed cooperative –

(i) must comply with the requirements of this Act; and

(ii) must not be such as is likely to be confused with the name of any other body corporate or any registered business name; and

(iii) must not be undesirable as a name for a registered cooperative; and

(iv) must conform with any direction of the Minister relating to the names of registered cooperatives;

(c) the other requirements of this Act must have been complied with in respect of the proposed cooperative and compliance must be likely to continue;

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

(3) If the Commissioner is not satisfied that the requirements for registration of the cooperative have been met, the Commissioner may refuse to register the cooperative and its rules.

(4) If the Commissioner has determined under this section to register a body corporate under this Act, the body corporate must notify the authority responsible for registering the body corporate under the law under which it was previously registered of that determination.

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

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

25. Certificate of registration

(1) On the registration of the body corporate as a cooperative, the Commissioner must –

(a) issue a certificate of registration; and

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

(2) The corporate name of a body corporate registered as a cooperative is the name approved by the Commissioner as specified in the certificate of registration issued by the Commissioner.

26. Effect of registration

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

(2) Except as expressly provided in this Act, the registration and incorporation of the body corporate as a cooperative does not prejudice any right of a member in respect of any shares held at the time of registration and incorporation.

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

Division 6 - Conversion of cooperative

27. Conversion of cooperative

(1) A cooperative may, by alteration of its rules, convert from –

(a) a cooperative with share capital to a cooperative without share capital or vice versa; or

(b) a trading cooperative to a non-trading cooperative or vice versa.

(2) An alteration of the rules for the conversion of a cooperative must be approved by special resolution passed by means of a special postal ballot.

Division 7 - Appeals

28. Appeal against refusal to approve disclosure statement

The person who submitted a draft disclosure statement to the Commissioner under this Act may appeal to a magistrate against –

(a) a decision of the Commissioner to refuse to approve the statement; or

(b) a failure of the Commissioner to approve the statement.

29. Appeal against refusal to approve draft rules

The person who submitted draft rules to the Commissioner under this Act may appeal to a magistrate against –

(a) a decision of the Commissioner to refuse to approve the rules; or

(b) a failure of the Commissioner to approve the rules.

30. Appeal against refusal to register

The applicants for registration of a proposed cooperative under this Part may appeal to a magistrate against –

(a) a decision of the Commissioner to refuse to register the cooperative; or

(b) a failure of the Commissioner to register the cooperative.

31. Provisions with respect to appeals under this Division

(1) A magistrate to whom an appeal is made under this Division has power to hear and determine the appeal.

(2) After hearing an appeal, the magistrate may –

(a) affirm the decision of the Commissioner; or

(b) set aside the decision of the Commissioner and direct the Commissioner to take such action as the magistrate thinks fit; or

(c) direct the Commissioner to take such action as the magistrate thinks fit.

(3) The Commissioner must comply with any direction given under subsection (2)(b) or (c).

Division 8 - General

32. Acceptance of money by proposed cooperative

(1) A proposed cooperative or any person on its behalf or otherwise which accepts any money for the proposed cooperative before the proposed cooperative is registered must hold that money on trust until the cooperative is registered.

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

Penalty:

Fine not exceeding 60 penalty units.

33. Issue of duplicate certificate

The Commissioner must issue a duplicate certificate of registration –

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

(b) on payment of the prescribed fee.

PART 3 - Legal capacity and powers

Division 1 - General powers

34. Effect of incorporation

As a body corporate, a cooperative –

(a) has perpetual succession; and

(b) has a common seal; and

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

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

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

35. Power to form companies and enter into joint ventures

Without limiting any other provision of this Act, a cooperative has power –

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

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

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

Division 2 - Doctrine of ultra vires abolished

36. Interpretation: Part 3, Division 2

In this Division –

(a) a reference to the doing of an act by a cooperative includes a reference to the making of an agreement by the cooperative and a reference to a transfer of property to or by the cooperative; and

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

37. Doctrine of ultra vires abolished

(1) The objects of this Division are –

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

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

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

38. Legal capacity

(1) A cooperative has, both within and outside the State, the legal capacity of a natural person.

(2) Without limiting subsection (1), a cooperative has, both within and outside the State, power –

(a) to issue and allot fully or partly paid shares in the cooperative; and

(b) to issue debentures of the cooperative; and

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

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

(e) to grant a charge on property of the cooperative; and

(f) to procure the cooperative to be registered or recognised as a body corporate in any place outside the State; and

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

(3) Subsections (1) and (2) have effect in relation to a cooperative –

(a) subject to this Act but despite section 39(2); and

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

(c) if the rules of the cooperative contain a provision stating the objects of the cooperative, despite that fact.

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

39. Restrictions on cooperatives in rules

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

(2) A cooperative contravenes this section if –

(a) it exercises a power contrary to an express restriction on, or an express prohibition of, the exercise of that power, being a restriction or prohibition contained in the cooperative's rules; or

(b) the rules of the cooperative contain a provision stating the objects of the cooperative and the cooperative does an act otherwise than in pursuance of those objects.

(3) An officer of a cooperative who is involved in a contravention by the cooperative of this section also contravenes this section.

(4) A person who contravenes this section is not guilty of an offence.

40. Results of contravention of restriction in rules

(1) The exercise of a power or the doing of an act in contravention of section 39 is not invalid merely because of the contravention.

(2) An act of an officer of a cooperative is not invalid merely because, by doing the act, the officer contravenes section 39.

(3) The fact that the exercise of a power or the doing of an act contravenes or would contravene section 39 may be asserted or relied on only in –

(a) a prosecution of a person for an offence against this Act; or

(b) an application for an order under Division 5 of Part 4; or

(c) an application for an injunction under section 453 to restrain the cooperative from entering into an agreement; or

(d) proceedings, other than an application for an injunction, by the cooperative, or by a member of the cooperative, against the present or former officers of the cooperative; or

(e) an application by the Commissioner or by a member of the cooperative for the winding-up of the cooperative.

(4) If, but for subsection (3), a court would have power under section 453 to grant, on the application of a person, an injunction restraining a cooperative or an officer of a cooperative from engaging in particular conduct constituting a contravention of section 39, the court may, on the application of that person, order the cooperative or the officer to pay damages to that person or any other person.

Division 3 - Persons having dealings with cooperatives

41. Assumptions entitled to be made

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

(a) dealings with a cooperative; and

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

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

42. Assumptions

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

(2) A person may assume that anyone who appears, from information provided by the cooperative that is available to the public from the Commissioner, to be a director or officer of the cooperative –

(a) has been duly appointed; and

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

(3) A person may assume that anyone who is held out by the cooperative to be an officer or agent of the cooperative –

(a) has been duly appointed; and

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

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

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

(6) A person may assume that a document has been duly sealed by the cooperative if it bears what appears to be an impression of the cooperative's seal and the sealing of the document appears to be witnessed by 2 people, one of whom is, or may be assumed to be, a director of the cooperative and the other a director or officer of the cooperative.

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

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

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

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

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

44. Lodgment of documents not to constitute constructive knowledge

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

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

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

(2) Subsection (1) does not apply in relation to a document, or in relation to the contents of a document, that has been lodged under Division 2 of Part 10 to the extent that the document relates to a charge that is registrable under that Division or law.

(3) Despite subsection (1), a member of a cooperative is to be considered to have knowledge of the rules of the cooperative.

45. Effect of fraud

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

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

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

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

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

46. Common seal

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

47. Official seal

(1) A cooperative may, if authorised by its rules, have, for use in place of its common seal outside the State where its common seal is kept, one or more official seals, each of which must be a facsimile of the common seal of the cooperative with the addition on its face of the name of every place where it is to be used.

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

(3) A document sealed with such an official seal is to be considered to be sealed with the common seal of the cooperative.

48. Authentication need not be under seal

A document or proceeding requiring authentication by a cooperative may be authenticated by the signature of 2 people, one of whom is a director of the cooperative and one of whom is a director or an officer of the cooperative and need not be authenticated under the seal of the cooperative.

49. Cooperative may authorise person to execute deed

(1) A cooperative may, by writing under its common seal, empower a person, either generally or in respect of a specified matter or specified matters, as its agent or attorney to execute deeds on its behalf.

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

(3) The authority of such an agent or attorney, as between the cooperative and a person dealing with the agent or attorney, continues during the period, if any, mentioned in the instrument conferring the authority or, if no period is so mentioned, until notice of the revocation or termination of the authority of the agent or attorney has been given to the person dealing with the agent or attorney.

50. Execution under seal

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

51. Contractual formalities

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

(2) The making, varying or discharging of a contract in accordance with subsection (1) is effectual in law and binds the cooperative and other parties to the contract.

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

52. Other requirements as to consent or sanction not affected

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

53. Transitional

This Division does not apply in relation to the making, varying or discharging of a contract before the commencement of this section, but applies otherwise in relation to a cooperative whether it gives its authority before, on or after that commencement.

Division 5 - Pre-registration contracts

54. Contracts before registration

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The release must be in writing.

(3) The party giving the release is not entitled to recover damages under section 54 from the person.

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

56. This Division replaces other rights and liabilities

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

PART 4 - Membership

Division 1 - General

57. Becoming a member

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

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

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

(4) A body corporate is not (merely because it is a body corporate) disqualified from being a member of a cooperative unless the cooperative's rules provide that bodies corporate are disqualified from being members.

(5) If 2 or more cooperatives merge, the members of the merged cooperative are –

(a) the members of the merging cooperatives; and

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

58. Members of associations

(1) The members of an association are –

(a) the component cooperatives by which the association is formed; and

(b) any other cooperative admitted to membership in accordance with the rules of the association; and

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

(2) A body corporate or other body (not being a cooperative) may be admitted to membership of the association as a component cooperative if –

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

(b) in the opinion of the board of the association, it is designed to function in accordance with cooperative principles; and

(c) it is eligible to be admitted to membership in accordance with the rules of the association.

59. Members of federations

(1) The members of a federation of associations are –

(a) the associations by which the federation is formed; and

(b) any other associations admitted to membership in accordance with the rules of the federation; and

(c) any bodies corporate admitted to membership in accordance with subsection (2).

(2) If the Commissioner certifies that there is no association to which a particular body corporate could conveniently or appropriately be admitted to membership, the body corporate may be admitted to membership of a federation.

60. Qualification for membership

(1) A person is not qualified to be admitted to membership of a cooperative unless –

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

(b) the person is otherwise eligible under the rules of the cooperative.

(2) The rules of a cooperative must contain provisions that –

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

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

61. Membership may be joint

Membership of a cooperative may be individual and, unless the rules of the cooperative provide otherwise, may be joint.

62. Members under 18 years of age

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

(2) A person under the age of 18 years is not competent to hold any office in a cooperative.

(3) A member of a cooperative who is under 18 years of age is not entitled to vote.

(4) This section applies only to natural persons.

63. Representatives of bodies corporate

(1) If a body corporate is a member of a cooperative, it may by instrument served on the cooperative appoint a person to represent it in respect of its membership.

(2) A body corporate must not appoint a person to represent the body corporate as a member of a cooperative if he or she is currently a member of the cooperative or a representative of another body corporate member.

Penalty:

Fine not exceeding 10 penalty units.

(3) The power to appoint a representative is subject to any restriction imposed by the rules of the cooperative as to the entitlement of a person to represent a body corporate.

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

64. Notification of shareholders and shareholdings

On the request of the board of directors of the cooperative, a body corporate which is a member of the cooperative must make available for inspection by the board of directors of the cooperative –

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

(b) in the case of a body corporate without share capital, a list of the members of the body corporate.

Penalty:

Fine not exceeding 20 penalty units.

65. Circumstances in which membership ceases – all cooperatives

(1) A person ceases to be a member of a cooperative in each of the following circumstances and as otherwise provided by this Act:

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

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

(c) if –

(i) the member becomes bankrupt; or

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

unless provision is made to the contrary in the rules of the cooperative;

(d) on death;

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

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

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

66. Additional circumstances in which membership ceases – cooperatives with share capital

In the case of a cooperative that has a share capital, in addition to those circumstances in section 65, a member ceases to be a member if –

(a) the member's share is transferred to another person in accordance with the rules of the cooperative, and the transferee is registered as holder in his or her place; or

(b) the member's share is forfeited in accordance with this Act or the rules of the cooperative; or

(c) the member's share is sold by the cooperative under a power conferred by the rules of the cooperative, and the purchaser is registered as holder in his or her place; or

(d) the member's share is purchased by the cooperative in accordance with this Act; or

(e) the amount paid-up on the member's share is repaid to the member in accordance with the rules of the cooperative.

67. Carrying on business with too few members

(1) If a cooperative continues to carry on business for more than 28 days after the number of members is reduced below the minimum number of members allowed, every person who is a director of the cooperative during the time when it so continues to carry on business and who knows it is carrying on business with fewer than the minimum number of members allowed is guilty of an offence and liable on summary conviction to a fine not exceeding 20 penalty units.

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

(3) The minimum number of members allowed is –

(a) for an association or federation, 2; or

(b) for any other cooperative, 5 or, if a lesser number than 5 is prescribed under the regulations, the prescribed number.

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

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

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

(b) before the period to be extended expires.

Division 2 - Rights and liabilities of members

68. Rights of membership not exercisable until registered, &c.

(1) A member of a cooperative is not entitled to exercise any rights of membership until –

(a) the member's name appears in the register of members; and

(b) the member has made any payment to the cooperative in respect of membership or acquired any share or interest that is provided in the rules of the cooperative.

(2) The board of a cooperative must ensure that the name of a person admitted to membership is recorded in the register of members within 28 days after the person is admitted to membership.

Penalty:

Fine not exceeding 20 penalty units.

69. Liability of members to cooperative

(1) A member of a cooperative is not, as such a member, under any personal liability to the cooperative, except as provided by this section.

(2) A member of a cooperative with a share capital is liable to the cooperative for the amount, if any, unpaid on the shares held by the member together with any charges payable by the member to the cooperative as required by the rules of the cooperative.

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

70. Cooperative to provide information to person intending to become a member

(1) The board of a cooperative must provide each person intending to become a member of the cooperative with –

(a) a consolidated copy of the rules of the cooperative; and

(b) a copy of all special resolutions applicable to the member passed by the members of the cooperative, except special resolutions providing for an alteration of the rules of the cooperative; and

(c) a copy of the last annual report of the cooperative under section 249.

(2) The board of a non-trading cooperative or, with the consent of the Commissioner, the board of a trading cooperative may comply with subsection (1) by –

(a) giving the person intending to become a member notice that the documents referred to in that subsection may be inspected by the person at the registered office of the cooperative and at each other office of the cooperative in or outside Tasmania, including outside Australia; and

(b) making those documents available for inspection.

(3) The Commissioner's consent may be given on conditions.

71. Entry fees and regular subscriptions

(1) The rules of a cooperative may –

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

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

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

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

(4) A person who becomes a member of the cooperative is not liable to pay any entry fees or regular subscriptions except –

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

(b) any regular subscriptions which may be imposed by any subsequent alteration of the rules and of which the member has been given notice.

72. Members, &c., may be required to deal with cooperative

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

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

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

(a) to sell products through or to the cooperative; or

(b) to obtain supplies or services through or from the cooperative; or

(c) to pay to the cooperative specified sums as liquidated damages for any failure to comply with a requirement authorised by this section.

(4) Any sum so required to be paid to the cooperative as liquidated damages is for the purposes of section 74 to be considered to be a debt due from the member to the cooperative.

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

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

73. Fines payable by members

(1) A cooperative may impose a fine on a member for any infringement of the rules of the cooperative if the rules of the cooperative so provide.

(2) A fine imposed under subsection (1) must not exceed the maximum fine fixed by the rules in accordance with section 100.

(3) A fine must not be imposed unless –

(a) notice of intention to impose the fine and the reason for it has been given to the member; and

(b) the member has been given a reasonable opportunity to appear before the board in person (with or without witnesses), or to send to the board a written statement, for the purpose of showing cause why the fine should not be imposed.

(4) The cooperative may set off the whole or any part of the fine against any money due to the member in respect of any produce delivered by the member to the cooperative, but no part of the fine is to be set off against any advance due to the member from the cooperative in accordance with the rules against produce so delivered.

74. Charge and set-off of cooperative

(1) A cooperative has, in respect of any debt due from a member or former member to the cooperative, a charge on each of the following:

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

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

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

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

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

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

75. Repayment of shares on expulsion

(1) When a member is expelled from a cooperative in accordance with its rules, the cooperative must, within one year after the day of expulsion –

(a) repay to the former member an amount (the "repayable amount") made up of the amount paid-up on the shares held by the member at the day of expulsion, less any amount owed by the member to the cooperative at the day of expulsion under the rules of the cooperative or any contract or otherwise; or

(b) apply the repayable amount under subsection (2) if –

(i) the board considers repayment would adversely affect the financial position of the cooperative; or

(ii) the board and the former member agree.

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

(a) the cooperative may appropriate the amount as a donation to the cooperative but only if the former member consents in writing to the donation;

(b) if the cooperative is a deposit-taking cooperative, the cooperative may apply the amount as a deposit by the former member with the cooperative;

(c) the cooperative may allot or issue debentures of the cooperative to the former member in satisfaction of the amount.

(3) If the balance sheet of the cooperative last issued before the expulsion of a member of the cooperative disclosed a loss or deficiency, there must be a proportionate reduction in the capital to be repaid to the member.

(4) That reduction must be by an amount that bears to the amount of the loss or deficiency so disclosed the same proportion as the number of shares held by the member bore to the total number of shares held by all members of the cooperative as at the date of expulsion of the member.

(5) Shares in respect of which capital has been repaid must be cancelled.

Division 3 - Death of member

76. Meaning of "interest"

In this Division,

interest, of a deceased member in a cooperative, includes –

(a) the member's membership; and

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

(c) any loan from or to or deposit with the cooperative; and

(d) any surplus arising on the sale by the cooperative as mortgagee of any property mortgaged by the deceased to the cooperative.

77. Transfer of share or interest on death of member

Subject to section 169, on the death of a member, the board must transfer the deceased member's share or interest in the cooperative to –

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

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

78. Transfer of small shareholdings and interests on death

(1) If the total value of a deceased member's shares or interest in a cooperative is less than $10 000 (or such other amount as may be prescribed), the board may, on the basis of such evidence as it considers sufficient, transfer the shares or interest in accordance with whichever of the following paragraphs is appropriate:

(a) if the member or person dies testate, to the person who appears to the board to be entitled to the shares or interest under the will of the deceased member or person;

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

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

(3) In this section,

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

79. Value of shares and interests

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

80. Cooperative protected

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

Division 4 - Disputes involving members

81. Grievance procedure

(1) The rules of a cooperative must set out a grievance procedure for dealing with any dispute under the rules between –

(a) a member and another member; or

(b) a member and the cooperative.

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

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

(4) In this section and section 82,

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

82. Application to Supreme Court

(1) The Supreme Court may, on the application of a member or the cooperative, make an order declaring and enforcing –

(a) the rights or obligations of members of the cooperative between themselves; or

(b) the rights or obligations of the cooperative and any member between themselves.

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

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

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

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

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

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

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

Division 5 - Oppressive conduct of affairs

83. Interpretation: Division 5 of Part 4

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

84. Application of Division

This Division does not apply in respect of anything done under or for the purposes of Part 6.

85. Who may apply for court order?

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

(a) the Commissioner;

(b) a member who believes that the affairs of the cooperative are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member, or in a manner that is contrary to the interests of the members as a whole;

(c) a member who believes that an act or omission, or a proposed act or omission, by or on behalf of the cooperative, or a resolution, or a proposed resolution, of a class of members, was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or was or would be contrary to the interests of the members as a whole.

86. Orders that the Supreme Court may make

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

(a) an order that the Commissioner appoint an administrator of the cooperative;

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

(c) an order for regulating the conduct of affairs of the cooperative in the future;

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

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

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

(g) an order appointing a receiver or a receiver and manager of property of the cooperative;

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

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

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

(k) an order as to costs.

87. Basis on which Supreme Court makes orders

The Supreme Court may make an order under this Division if it is of the opinion –

(a) that the affairs of a cooperative are being conducted in a manner that is –

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

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

(b) that an act or omission, or a proposed act or omission, by or on behalf of a cooperative, or a resolution, or a proposed resolution, of a class of members of a cooperative, was or would be –

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

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

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

The Supreme Court need not make an order under this Division for the winding-up of a cooperative if it is of the opinion that the winding-up of the cooperative would unfairly prejudice an oppressed member.

89. Application of winding-up provisions

If an order that a cooperative be wound-up is made under this Division, the provisions of this Act relating to the winding-up of cooperatives apply, with any changes that are necessary, as if the order had been made or an application duly filed in the Supreme Court by the cooperative.

90. Changes to rules

If an order under this Division makes any alteration to the rules of a cooperative –

(a) the alteration has effect as if it had been duly made by special resolution of the cooperative; and

(b) the cooperative must not (despite any other provisions of this Act), without the leave of the Supreme Court, make any further alteration to the rules inconsistent with the provisions of the order.

91. Copy of order to be lodged with Commissioner

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

Penalty:

Fine not exceeding 10 penalty units.

Division 6 - Proceedings on behalf of a cooperative by members and others

92. Bringing, or intervening in, proceedings on behalf of a cooperative

(1) A person may bring proceedings on behalf of a cooperative, or intervene in any proceedings to which a cooperative is a party for the purpose of taking responsibility on behalf of the cooperative for those proceedings, or for a particular step in those proceedings, if –

(a) the person is –

(i) a member, former member, or person entitled to be registered as a member, of the cooperative or of a related body corporate; or

(ii) an officer or former officer of the cooperative; or

(iii) the Commissioner; and

(b) the person is acting with leave granted under section 93.

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

93. Applying for and granting leave

(1) A person referred to in section 92(1)(a) may apply to the Supreme Court for leave to bring, or to intervene in, proceedings.

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

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

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

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

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

(e) either –

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

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

94. Substitution of another person for the person granted leave

(1) Any of the following persons may apply to the Supreme Court for an order that they be substituted for a person to whom leave has been granted under section 93:

(a) a member, former member, or person entitled to be registered as a member, of the cooperative or a related body corporate;

(b) an officer, or former officer, of the cooperative;

(c) the Commissioner.

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

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

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

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

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

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

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

95. Effect of ratification by members

(1) A ratification or approval of conduct by members of a cooperative –

(a) does not prevent a person from bringing or intervening in proceedings with leave under section 93 or from applying for leave under that section; and

(b) does not have the effect that proceedings brought or intervened in with leave under section 93 must be determined in favour of the defendant, or that an application for leave under that section must be refused.

(2) The Supreme Court may take into account a ratification or an approval of the conduct by members of a cooperative in deciding what order or judgment (including as to damages) to make in proceedings brought or intervened in with leave under section 93 or in relation to an application for leave under that section.

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

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

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

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

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

97. General powers of the Supreme Court

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

(a) interim orders; and

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

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

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

(i) the financial affairs of the cooperative; or

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

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

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

98. Power of Supreme Court to make costs order

At any time, the Supreme Court may, in relation to proceedings brought or intervened in with leave under section 93 or an application for leave under that section, make any orders it thinks just about the costs of the person who applied for or was granted leave, of the cooperative or of any other party to the proceedings or application, including an order requiring indemnification for costs.

PART 5 - Rules

99. Effect of rules

(1) The rules of a cooperative have the effect of a contract under seal –

(a) between the cooperative and each member; and

(b) between the cooperative and each director, the principal executive officer and the secretary of the cooperative; and

(c) between a member and each other member.

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

100. Content of rules

(1) The rules of a cooperative must set out or otherwise make provision for the matters specified in Schedule 3.

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

(3) The rules may state the objects of the cooperative.

(4) The rules may incorporate any provision of the model rules approved under section 103.

(5) The rules may provide for the imposition of a fine on a member for any infringement of the rules.

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

(7) The maximum fine fixed by the rules must not exceed any amount that may be prescribed as the maximum fine.

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

101. Purchase and inspection of copy of rules

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

(2) The amount required by the rules must not exceed the prescribed fee for obtaining a copy of the rules from the Commissioner.

(3) Any person is entitled to obtain from the Commissioner a copy of the rules of a cooperative on payment of the prescribed fee.

102. False copies of rules

(1) A person who gives to a member of a cooperative or to a person intending or applying to become a member of a cooperative a copy of any rules or any alterations of rules, other than those which have been duly registered, representing that they are binding on the members of the cooperative is guilty of an offence and liable on summary conviction to a fine not exceeding 10 penalty units.

(2) A person who alters any of the rules of a cooperative after they have been registered and circulates them representing that they have been duly registered when they have not been is guilty of an offence and liable on summary conviction to a fine not exceeding 10 penalty units.

103. Model rules

(1) The Commissioner may by notice published in the *Gazette* approve model rules for cooperatives or for any class of cooperatives and alter or repeal the model rules from time to time.

(2) The model rules may make provision for anything for which the rules of a cooperative may make provision.

(3) If the model rules provide for a matter and the rules of a cooperative of the class to which the model rules apply do not provide for that matter, the provision of the model rules relating to that matter is deemed to be included in the rules of the cooperative.

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

The rules of a cooperative cannot be altered except in accordance with this Act.

105. Approval of alteration of rules

(1) A proposed alteration of the rules must be approved by the Commissioner before the resolution altering the rules is passed by a cooperative or the board of a cooperative.

(2) A draft of the proposed alteration must be submitted to the Commissioner at least 28 days (or such shorter period as the Commissioner may allow in a particular case) before –

(a) the notice of the proposed special resolution altering the rules is given to the members by the cooperative; or

(b) the resolution is passed by the board of the cooperative.

(3) The proposed alteration must –

(a) be in accordance with section 100; and

(b) be in a form that may reasonably be approved; and

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

(4) The Commissioner may –

(a) approve the alteration as submitted; or

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

(c) refuse to approve the alteration.

(5) The Commissioner approves of the alteration by giving written notice of the approval of the alteration to the person who submitted the alteration to the Commissioner.

(6) The Commissioner must give written notice of the refusal to approve the alteration to the person who submitted the alteration to the Commissioner.

106. Alteration by special resolution

The rules of a cooperative must be altered by special resolution unless otherwise specified in this Act.

107. Alteration by resolution of board

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

(2) If the rules of a cooperative are altered pursuant to this section, the cooperative must cause the alteration to be notified in writing to its members as soon as practicable after the alteration takes effect and in any event not later than the date on which notice is given to the members of the next annual general meeting of the cooperative after the alteration takes effect.

108. Alteration does not take effect until registered

(1) An alteration of the rules of a cooperative does not take effect unless and until it is registered by the Commissioner.

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

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

(b) be made within 28 days, or such other period as may be prescribed, after the alteration is made; and

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

(3) The Commissioner must register the alteration unless –

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

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

(4) A certificate of registration of any alteration of the rules of a cooperative given by the Commissioner is, in favour of any person advancing money to the cooperative on the faith of the certificate or in favour of any guarantor of that advance, conclusive evidence that the alteration in the rules was duly made.

109. Appeal against refusal to approve alteration

A cooperative may appeal to a magistrate against –

(a) a decision of the Commissioner to refuse to approve an alteration of its rules; or

(b) a failure of the Commissioner to approve an alteration of its rules.

110. Appeal against refusal to register alteration

A cooperative may appeal to a magistrate against –

(a) a decision of the Commissioner to refuse to register an alteration of its rules; or

(b) a failure of the Commissioner to register an alteration of its rules.

111. Provisions with respect to appeals under this Part

(1) A magistrate to whom an appeal is made under this Part has power to hear and determine the appeal.

(2) After hearing an appeal, the magistrate may –

(a) affirm the decision of the Commissioner; or

(b) set aside the decision of the Commissioner and direct the Commissioner to take such action as the magistrate thinks fit; or

(c) direct the Commissioner to take such action as the magistrate thinks fit.

(3) The Commissioner must comply with any direction given under subsection (2)(b) or (c).

PART 6 - Active membership

Division 1 - Interpretation

112. Primary activity – meaning

A primary activity of a cooperative is an activity specified in the rules of the cooperative as a primary activity of the cooperative.

113. What is active membership?

For the purposes of this Act, a member of a cooperative is an active member of the cooperative if the member –

(a) utilises or supports an activity of, or maintains a relationship or an arrangement with, the cooperative, in connection with the carrying on of a primary activity of the cooperative, in the manner and to the extent which the rules of the cooperative provide is sufficient to establish active membership; or

(b) maintains any other relationship or arrangement with the cooperative in connection with the carrying on of a primary activity of the cooperative that the regulations provide is sufficient to establish active membership.

114. What are active membership provisions and resolutions?

(1) Active membership provisions in the rules of a cooperative are provisions in the rules which specify –

(a) which of the activities of the cooperative are the primary activities of the cooperative; and

(b) the manner in which and the extent to which a member of the cooperative is required to utilise or support an activity of, or maintain a relationship or an arrangement with, the cooperative, in connection with the carrying on of a primary activity of the cooperative, in order to establish active membership of the cooperative.

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

Division 2 - Rules to contain active membership provisions

115. Number of primary activities required

A cooperative must have at least one primary activity.

116. Rules to contain active membership provisions

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

117. Factors and considerations for determining primary activities, &c.

(1) The board of a cooperative must ensure that the relevant factors and considerations are taken into account in determining –

(a) which of the activities of a cooperative are its primary activities; and

(b) the manner in which and the extent to which a member is required to utilise or support an activity of, or maintain a relationship or an arrangement with, a cooperative, in connection with the carrying on of a primary activity of the cooperative, in order to establish active membership of the cooperative.

(2) The relevant factors and considerations are –

(a) the primary activity or (if more than one) the primary activities taken together must constitute the basic purpose for which the cooperative exists and a significant contribution to the business of the cooperative; and

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

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

(3) The regulations may –

(a) provide for the matters to be taken into account in determining whether an activity makes or activities make a significant contribution to the business of the cooperative; and

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

(4) Factors and considerations may be prescribed so as to apply to cooperatives generally, to a specified class of cooperatives or to a specified individual cooperative.

(5) Nothing in this section limits the right of active members other than the board of the cooperative to propose an active membership resolution.

118. Active membership provisions – trading cooperatives

The only active membership provisions which may be contained in the rules of a trading cooperative are –

(a) provisions requiring a member to utilise an activity of the cooperative in connection with the carrying on of a primary activity specified in the provisions to establish active membership; and

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

119. Regular subscription – active membership of non-trading cooperative

(1) Active membership provisions for a non-trading cooperative may include provision that the payment of a regular subscription by a member of the cooperative, to be applied in connection with a primary activity of the cooperative, is sufficient to establish active membership of the cooperative.

(2) A member of a cooperative who would, on payment of such a subscription, be an active member of a cooperative is to be considered to be an active member until the subscription is due and payable.

Division 3 - Active membership resolutions

120. Notice of meeting

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

(2) The notice must, in addition to the other matters required to be specified –

(a) specify whether the member is eligible to vote on the resolution; and

(b) specify the full text of the proposed resolution; and

(c) contain a copy of section 124.

(3) If the notice to a member states that he or she is not eligible to vote on a resolution, the member may, after endeavouring to settle the matter with the cooperative, apply to the Commissioner for a determination as to the member's eligibility.

(4) The Commissioner may determine the matter, on the information available to the Commissioner, by direction in writing to the cooperative and the member.

(5) The Commissioner's determination as to eligibility has effect but only if given before the meeting concerned is due to be held.

121. Eligibility to vote on active membership resolution

The only members of a cooperative who are eligible to vote on an active membership resolution when the rules do not contain active membership provisions are those members who would be active members if the resolution had already taken effect.

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

If the board of a cooperative is meeting to consider a proposal to submit an active membership resolution to a meeting of the cooperative –

(a) subject to paragraph (b), a director is only eligible to vote on that proposal if he or she would be eligible to vote on the resolution at the meeting of the cooperative; or

(b) if less than 2 directors (whether or not they are present at the meeting of the board of directors) would be eligible to vote on the resolution at the meeting of the cooperative, all the directors are eligible to vote on that proposal at the meeting of the board of directors.

123. Other entitlements of members not affected

A provision of this Division which renders a member of a cooperative ineligible to vote on a resolution does not affect any other right, entitlement, obligation or duty of the member as a member.

Division 4 - Cancellation of membership of inactive members

124. Cancellation of membership of inactive member

(1) The board of a cooperative must declare the membership of a member cancelled if –

(a) the whereabouts of the member are not presently known to the cooperative and have not been known to the cooperative for at least the required period before that time; or

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

(2) This section applies to a member only if he or she was a member of the cooperative throughout the required period.

(3) The question of whether a member was an active member at a particular time in the past is to be determined as if the active membership provisions concerned had been in force at that time.

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

(5) A person may apply to the Supreme Court for an order under section 130 in respect of the cancellation of the person's membership under this section.

(6) In this section,

the required period, in relation to a cooperative, means –

(a) 3 years; or

(b) if a shorter period is provided for in the rules of the cooperative, that shorter period.

125. Share to be forfeited if membership cancelled

(1) If a cooperative has a share capital, the board of the cooperative must declare the shares of a member to be forfeited at the same time as the member's membership is cancelled under section 124.

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

(3) Nothing in this section affects the operation of section 131.

126. Failure to cancel membership – offence by director

If the board of a cooperative fails to cancel the membership of a member as required by this Part, a director of the cooperative who did not use all due diligence to prevent that failure is guilty of an offence and liable on summary conviction to a fine not exceeding 20 penalty units.

127. Deferral of forfeiture by board

(1) The board of a cooperative may by resolution defer cancellation of a member's membership for a period of up to 12 months –

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

(b) if –

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

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

(2) The board of the cooperative must review the resolution to defer before the end of the deferral period to determine if a further resolution should be made under subsection (1).

128. Cancellation of membership prohibited in certain circumstances

Unless the regulations otherwise provide, the board of a cooperative must not declare the membership of a member to be cancelled under this Part –

(a) if the cooperative is insolvent; or

(b) if the cooperative is under administration under Part 5.3A of the Corporations Act as applying under this Act; or

(c) if a compromise or an arrangement is being administered in respect of the cooperative; or

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

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

(f) if the cooperative has, for the purposes of being registered as a company under the Corporations Act, filed with the Commissioner a copy of the entry made in the minute book of the cooperative under section 198; or

(g) in such other circumstances as may be prescribed.

129. Notice of intention to cancel membership

(1) The board of a cooperative must ensure that not less than 28 days notice of its intention to declare the membership of a member to be cancelled is given to the member.

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

(a) the member's whereabouts are unknown to the cooperative; and

(b) the amount required to be repaid to the member in respect of the cancelled membership (whether by reason of the cancellation of shares or otherwise) does not exceed $50.

130. Order of Supreme Court against cancellation

(1) If the Supreme Court is satisfied in a particular case that the cancellation of a member's membership under section 124 was or would be unreasonable, the Supreme Court may by order direct that the membership should not have been cancelled or should not be cancelled.

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

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

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

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

131. Repayment of amounts due in respect of cancelled membership

(1) If the membership of a member of a cooperative is cancelled under this Part, the cooperative must, within 12 months after the date of cancellation –

(a) repay to the former member the amount due to the member in respect of that cancellation; or

(b) apply that amount in accordance with subsection (2) if –

(i) the board is of the opinion that repayment would adversely affect the financial position of the cooperative; or

(ii) the board and the former member so agree.

(2) The amount due may be applied as follows:

(a) if the cooperative is a deposit-taking cooperative, the cooperative may apply the amount as a deposit by the former member with the cooperative (subject to the requirements of section 132 as to interest on the deposit);

(b) the cooperative may allot or issue debentures of the cooperative to the former member in satisfaction of the amount;

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

(3) The amount due to a former member in respect of the cancellation of membership includes any amount paid-up in respect of shares forfeited as a result of the cancellation of membership.

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

132. Interest on deposits and debentures

(1) This section applies when the amount due to a former member under section 75 or 131 is applied as a deposit with the cooperative or the cooperative allots or issues debentures to the former member in satisfaction of the amount.

(2) The deposit or debenture bears interest during any period –

(a) in the case of a cooperative with share capital –

(i) at the rate (or, if there is more than one rate, at the higher or highest rate) of dividend payable in respect of that period on the share capital of the cooperative; or

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

(iii) if a rate of dividend has never been determined in respect of the share capital of the cooperative, at the rate that the board of the cooperative considers reasonable; or

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

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

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

(4) The following provisions of the Corporations Act (as applied by section 264 of this Act) do not apply to an allotment or issue of debentures under this section:

(a) Chapter 2L (Debentures);

(b) Chapter 6D (Fundraising).

133. Repayment of deposits and debentures

(1) A deposit or debenture to which an amount due to a former member is transferred under this Division or section 75(2) is to be repaid to the former member as soon as repayment would not, in the opinion of the board, adversely affect the financial position of the cooperative.

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

134. Register of cancelled memberships

A cooperative must keep a register specifying the prescribed particulars of persons whose membership has been cancelled under this Part.

Division 5 - Entitlements of former members of trading cooperatives

135. Application of Division

This Division only applies to trading cooperatives.

136. Former shareholders to be regarded as shareholders for certain purposes

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

(a) the entitlements of a shareholder in respect of the purchase of shares in the cooperative pursuant to an offer described in section 292(1)(a), (b) or (c) or the purchase of all the shares in the cooperative, if the offer or purchase occurs within 5 years after the person's shares were forfeited;

(b) the entitlement of a shareholder when the cooperative becomes registered as a company if the relevant special resolution under section 309 is passed within 5 years after the person's shares were forfeited;

(c) the entitlement of a shareholder to a distribution of surplus in a winding-up of the cooperative that commences within 5 years after the person's shares were forfeited.

(2) Subsection (1)(a) does not apply in respect of –

(a) an offer described in section 292(1)(a) or (c) that is made by another cooperative; or

(b) the purchase of all the shares in the cooperative by another cooperative.

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

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

(5) This section does not apply to a forfeited shareholding in a cooperative if section 137 operates to require that forfeited shareholding to be regarded as a forfeited shareholding in another cooperative.

137. Entitlements of former shareholders on mergers, &c.

(1) This section applies when a person's shares in a cooperative ("the original cooperative") are forfeited under this Part and within 5 years after that forfeiture –

(a) the original cooperative becomes a subsidiary of another cooperative ("the new cooperative"); or

(b) another cooperative ("the new cooperative") is created as a result of a merger under Division 1 of Part 12 involving the original cooperative; or

(c) the engagements of the original cooperative are transferred to another cooperative ("the new cooperative") under Division 1 of Part 12.

(2) A person referred to in subsection (1) is, for the purposes of the operation of section 136 (and the further operation of this section) to be regarded as having held shares in the new cooperative and as having had those shares in the new cooperative forfeited under this Part when the person's shares in the original cooperative were forfeited.

(3) The extent of the forfeited shareholding in the new cooperative is determined as follows:

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

(b) in any other case, the forfeited shareholding in the new cooperative is the shareholding that is the same in all respects as the forfeited shareholding in the original cooperative.

(4) The determination under subsection (3)(a) of the person's shareholding in the new cooperative must be made –

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

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

138. Set-off of amounts repaid, &c., on forfeited shares

(1) If a person has an entitlement because of the operation of section 137, the entitlement operates to extinguish any liability of the cooperative –

(a) to repay to the person under section 131 any amount in respect of the forfeited shares concerned; or

(b) in respect of a deposit held by the cooperative, or debentures allotted or issued to the person, under section 131 in respect of the forfeited shares concerned (except a liability to pay interest that is due but unpaid).

(2) If an amount has been repaid to a person under section 131 or 133, the amount repaid is to be set off against any entitlement of the person under section 136 in respect of the forfeited shares concerned.

(3) If the amount repaid cannot be set off against the entitlement because the entitlement is not, or is only partly, an entitlement to money, the entitlement is lost unless the person pays to the cooperative the amount repaid to the person and does so within the period required under subsection (4).

(4) If the circumstances specified in subsection (3) arise, the cooperative concerned must –

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

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

139. Entitlement to distribution from reserves

A person whose membership of a cooperative has been cancelled under this Part is to be considered to still be a member for the purposes of any distribution from reserves of the cooperative that takes place within 5 years after the person's membership was cancelled.

140. Commissioner may exempt cooperatives from provisions

The Commissioner may, by order, exempt a specified cooperative or a cooperative that is a member of a specified class of cooperatives from all or specified provisions of this Division.

PART 7 - Shares

Division 1 - Nature of share

141. Nature of share in cooperative

(1) A share or other interest in a cooperative –

(a) is personal property; and

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

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

(2) Subject to subsection (1) –

(a) the laws applicable to ownership of and dealing with personal property apply to a share or other interest of a member in a cooperative as they apply to other property; and

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

Division 2 - Disclosure

142. Disclosure to intending shareholders in trading cooperative

(1) The board of a trading cooperative must give a person who intends to acquire shares in the cooperative and is not already a shareholder in the cooperative a current disclosure statement that –

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

(b) complies with section 143 and has been filed by the cooperative with the Commissioner.

(2) The disclosure statement must be given before the person becomes bound to acquire the shares.

(3) The disclosure statement is in addition to any information required to be provided to the person under Part 4.

(4) A disclosure statement is current until whichever of the following happens first after the statement is prepared:

(a) a change in the rights or liabilities attaching to any class of share in the cooperative;

(b) a significant change in the financial position or prospects of the cooperative;

(c) any of the next financial, directors' or auditor's reports required to be prepared under section 238(1) become available.

(5) If a disclosure statement stops being a current disclosure statement because of a change mentioned in subsection (4)(a) or (b), the cooperative must, within 14 days after the change –

(a) give the Commissioner written notice –

(i) that the disclosure statement is no longer current because of a change mentioned in subsection (4)(a); or

(ii) that the disclosure statement is no longer current because of a change mentioned in subsection (4)(b); or

(b) file a current disclosure statement with the Commissioner that complies with section 143.

143. Content of disclosure statement to intending shareholders

A disclosure statement given to a person under section 142 must contain –

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

(b) a copy of the last annual report of the cooperative under section 249 unless a copy of the report –

(i) has already been given to the person under this Act; or

(ii) has been made available for inspection under a notice given to the person under section 70(2); and

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

(d) any other information the Commissioner directs.

144. Exemptions for disclosure statements

(1) The Commissioner may exempt the board or boards of a trading cooperative or a class of trading cooperative from a requirement under section 142 or 143.

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

Division 3 - Issue of shares

145. Shares – general

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

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

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

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

146. Adoption of certain Corporations Act provisions about shares

(1) An offer or intended offer for subscription for shares in a cooperative and an invitation or intended invitation for shares in a cooperative are declared to be applied Corporations legislation matters for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to sections 716(2), 722, 723 and 734 of the Corporations Act but only if –

(a) the shares are offered to persons who are not shareholders in the cooperative; or

(b) the invitation is made to persons who are not shareholders in the cooperative.

(2) The provisions of the Corporations Act referred to in subsection (1) apply as if –

(a) a prospectus is taken to include a disclosure statement of any type under this Act; and

(b) a minimum subscription, in relation to a share offer or invitation, means the amount stated in a disclosure statement under section 142 as the minimum amount that, in the opinion of the directors, must be raised by the issue of shares; and

(c) a reference in those provisions to ASIC is read as a reference to the Commissioner.

147. Minimum paid-up amount

(1) A share must not be allotted unless at least 10% of the nominal value of the share has been paid.

(2) Any balance unpaid in respect of shares at the time of allotment must be paid in a manner specified in the rules or permitted by this Act.

(3) This section does not apply to a bonus share issued under section 152 or 275.

148. Shares not to be issued at a discount

A cooperative must not issue shares at a discount.

149. Issue of shares at a premium

(1) A trading cooperative may issue shares at a premium.

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

(3) If a trading cooperative issues shares for which it receives a premium, a sum equal to the aggregate amount or value of the premiums on those shares must be transferred to a share premium account.

(4) The share premium account is to be regarded as paid-up share capital of the trading cooperative and may be applied in any one or more of the following ways:

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

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

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

(d) in writing off the preliminary expenses of the cooperative;

(e) in providing for the premium payable on redemption of shares or debentures.

150. Joint ownership of shares

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

151. Members may be required to take up additional shares

(1) If authorised by the rules of the cooperative, the board of a trading cooperative may require a member to take up or subscribe for additional shares in accordance with a proposal approved by a special resolution of the cooperative.

(2) The board of a trading cooperative may deduct amounts in payment for additional shares from money due to members in respect of dealings with the cooperative, in accordance with a proposal approved by a special resolution of the cooperative.

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

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

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

(c) be accompanied by a statement informing the member that the member may inform the board by notice on or before the date specified in the statement (being a date before the passing of the special resolution) that the member resigns on the passing of the special resolution.

(4) Any proposal to deduct amounts in payment for additional shares from money due to members in respect of their dealings with the trading cooperative must clearly show –

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

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

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

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

(b) all persons who become members of the trading cooperative after that date and before the total number of shares to be issued pursuant to the proposal has been issued.

(6) Sections 16 (except subsection (2)) and 28 apply to the approval of a disclosure statement under this section with any necessary modifications and in particular as if any reference in section 16 to a formation meeting were a reference to the special resolution.

(7) To remove any doubt, it is declared that this section does not apply to the issue of bonus shares to a member under section 275.

152. Bonus share issues

(1) In addition to section 275, the rules of a trading cooperative may authorise the issue of bonus shares to members of the cooperative if the assets of the cooperative –

(a) have been sold at a profit; or

(b) have been revalued at a greater value than that disclosed prior to the revaluation in the books of the cooperative.

(2) This section does not apply if the assets were acquired for resale at a profit.

153. Restrictions on bonus shares

Bonus shares under section 152 may be issued in accordance with the rules of the cooperative, subject to the following restrictions:

(a) each issue must have been approved by a special resolution of the cooperative;

(b) they are to be issued as fully paid-up shares with no payment required to be made by a member of the cooperative to whom they are issued;

(c) they are to be issued only in respect of shares of the same class of shares that are fully paid-up as at the date of issue of the bonus shares;

(d) the total nominal value of bonus shares issued by a cooperative during any 12 month period must not exceed 20% or such other percentage as may be prescribed of the nominal value of the issued share capital of the cooperative immediately before the date of issue of the bonus shares.

154. Notice in respect of bonus shares

Notice of the meeting or postal ballot at which a resolution is to be proposed as a special resolution for the purpose of approving a bonus share issue must be accompanied by –

(a) a statement of the value of the assets concerned as disclosed in the books of the cooperative before the sale or revaluation; and

(b) if the issue arises from, or partly from, a sale of assets, a statement of the price for which the assets were sold; and

(c) if the issue arises from, or partly from, a revaluation of assets, a certificate of value of the assets, being a certificate furnished in respect of a valuation made not more than 12 months before the date of the notice by a prescribed person or a person having prescribed qualifications; and

(d) particulars of acquisitions of shares in the cooperative made during the 3 years immediately preceding the date of the notice by or on behalf of each of its directors and his or her spouse or partner and the father, mother, children, brothers and sisters of each such director and spouse or partner; and

(e) a certificate signed by 2 directors of the cooperative stating that to the best of their knowledge and belief the issue of bonus shares would not be imprudent and that no circumstances are known to them as to why the issue should not take place.

Division 4 - Beneficial and non-beneficial interest in shares

155. Notice of non-beneficial ownership at time of transfer

(1) If it may reasonably be expected (having regard to all relevant circumstances) that on registration of a transfer of shares the transferee will hold some or all of the shares non-beneficially, the instrument of transfer must include a non-beneficial ownership notice.

(2) A non-beneficial ownership notice is a notice that –

(a) contains a statement to the effect that, on registration of the transfer, the transferee will hold particular shares non-beneficially; and

(b) sets out particulars of those shares; and

(c) is signed by or on behalf of the transferee.

(3) A transferee must ensure that this section is complied with when an instrument of transfer of shares is lodged by or on behalf of the transferee with the cooperative for registration of the transfer.

Penalty:

Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months, or both.

(4) An offence under this section does not affect the validity of the registration of a transfer of shares.

156. Notice of non-beneficial ownership not notified at time of transfer

(1) If on the registration of an instrument of transfer of shares the transferee holds non-beneficially any of the shares transferred, notice of that fact must be given to the cooperative.

(2) The notice must –

(a) set out the name and address of the transferee; and

(b) contain a statement to the effect that, as from registration of the transfer, the transferee holds the shares non-beneficially; and

(c) set out particulars of those shares; and

(d) be signed by or on behalf of the transferee.

(3) The notice must be given within 14 days after the registration of the transfer (even if before the end of that 14 days the transferee begins to hold any of the relevant shares beneficially).

(4) The transferee of the shares must ensure that this section is complied with.

Penalty:

Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months, or both.

(5) This section does not apply in respect of any shares for which particulars were set out in a non-beneficial ownership notice under section 155 included in the instrument of transfer.

157. Registration as beneficial owner of shares notified as non-beneficially transferred

(1) If an instrument of transfer of shares lodged with a cooperative includes a non-beneficial ownership notice under section 155 in respect of particular shares but on registration of the transfer the transferee holds some or all of those shares beneficially, notice of that fact must be given to the cooperative.

(2) The notice must –

(a) set out the name and address of the transferee; and

(b) contain a statement to the effect that, as from registration of the transfer, the transferee holds the relevant shares beneficially; and

(c) set out particulars of the shares held beneficially; and

(d) be signed by or on behalf of the transferee.

(3) The notice must be given within 14 days after the registration of the transfer (even if before the end of that 14 days the transferee begins to hold any of the relevant shares non-beneficially).

(4) The transferee of the shares must ensure that this section is complied with.

Penalty:

Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months, or both.

158. Notification of change in nature of shareholding

(1) A person must notify the cooperative in accordance with this section of the change in the person's shareholding in the cooperative if the person –

(a) commences to hold any shares beneficially that the person currently holds non-beneficially; or

(b) commences to hold any shares non-beneficially that the person currently holds beneficially.

Penalty:

Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months, or both.

(2) The notice must –

(a) set out the name and address of the person; and

(b) contain a statement to the effect that, as from the time of the change, the person holds the shares beneficially or non-beneficially (as appropriate); and

(c) specify the time of the change and set out particulars of the shares affected; and

(d) be signed by or on behalf of the person.

(3) The notice must be given within 14 days after the change (even if before the end of that 14 days another such change affecting any of the shares occurs).

159. Presumption of awareness

(1) For the purposes of this Division, a person is, unless the contrary is established, to be presumed to have been aware at a particular time of a circumstance of which an employee or agent of the person was aware at that time.

(2) Subsection (1) only applies if the employee or agent has duties or acts in relation to the transfer to, or ownership by, the person of a share or shares in the cooperative concerned.

160. Presumption that shares held non-beneficially

(1) A person is taken to hold particular shares non-beneficially if the person –

(a) holds the shares in a capacity other than that of sole beneficial owner; or

(b) without limiting paragraph (a), holds the shares as trustee for, as nominee for, or otherwise on behalf of or on account of, another person.

(2) A person is taken to hold shares beneficially at a particular time unless the person holds the shares non-beneficially at that time.

161. Noting of beneficial and non-beneficial interests in register of members

(1) The register of members kept by a cooperative must contain a statement of the shares that each member holds beneficially and of the shares that each member holds non-beneficially.

(2) In determining for the purposes of an entry in the register whether a member of a cooperative holds shares beneficially or non-beneficially, regard is to be had only to the following information:

(a) information contained in a non-beneficial ownership notice under section 156 included in an instrument of transfer registered by the cooperative;

(b) information contained in a notice given to the cooperative under any other provision of this Division.

162. Registration as trustee, &c., on death of owner of shares

(1) A trustee, executor or administrator of the estate of a dead person who was the registered holder of a share in a cooperative may be registered as the holder of that share as trustee, executor or administrator of that estate.

(2) A trustee, executor or administrator of the estate of a dead person who was entitled in equity to a share in a cooperative may, with the consent of the cooperative and of the registered holder of that share, be registered as the holder of that share as trustee, executor or administrator of that estate.

163. Registration as administrator of estate on incapacity of shareholder

(1) This section applies to a person ("the appointed person") who is appointed under a law of a State or Territory relating to the administration of the estates of persons who, through mental or physical infirmity, are incapable of managing their affairs, to administer the estate of another person ("the incapable person").

(2) If the incapable person is the registered holder of a share in a cooperative, the appointed person may be registered as the holder of that share as administrator of the estate of the incapable person.

(3) If the incapable person is entitled in equity to a share in a cooperative, the appointed person may, with the consent of the cooperative and of the registered holder of that share, be registered as the holder of the share as administrator of the estate of the incapable person.

164. Registration as Official Trustee in Bankruptcy

(1) This section applies when a share in a cooperative that is the property of a bankrupt vests by force of the *Bankruptcy Act 1966* of the Commonwealth in the Official Trustee in Bankruptcy.

(2) If the bankrupt is the registered holder of the share, the Official Trustee may be registered as the holder of that share as the Official Trustee in Bankruptcy.

(3) If the bankrupt is entitled in equity to the share, the Official Trustee may, with the consent of the cooperative and of the registered holder of the share, be registered as the holder of that share as the Official Trustee in Bankruptcy.

165. Liabilities of person registered as trustee or administrator

(1) A person registered under section 162, 163 or 164 is, while so registered, subject to the same liabilities in respect of the share as those to which the person would have been subject if the share had remained, or had been, registered in the name of the dead person, the incapable person or the bankrupt.

(2) The person registered is subject to no other liabilities in respect of the share.

166. Notice of trusts in register of members

Shares held by a trustee in respect of a particular trust may, with the consent of the cooperative, be marked in the register of members in such a way as to identify the shares as being held in respect of the trust.

167. No notice of trust except as provided by this Division

Except as provided in this Division –

(a) no notice of a trust, whether express, implied or constructive, is to be entered on a register or be receivable by the Commissioner; and

(b) no liabilities are affected by anything done under this Division; and

(c) nothing done under this Division affects a cooperative with notice of a trust.

Division 5 - Sale or transfer of shares

168. Sale or transfer of shares

(1) A share in a cooperative cannot be sold or transferred except –

(a) in accordance with Division 3 of Part 4 and section 169, on the death of a member; or

(b) to a person appointed to administer the estate of a shareholder under a law relating to the administration of the estates of persons who, through mental or physical infirmity, are incapable of managing their affairs; or

(c) with the consent of the board, to any person if there are reasonable grounds for believing that the person will be an active member of the cooperative.

(2) A share in a cooperative cannot be sold or transferred except in accordance with the rules of the cooperative.

169. Transfer on death of member

(1) On the death of a member, the member's share in the cooperative cannot be transferred to a person other than an administrator or executor except with the consent of the board of the cooperative.

(2) The board may only give its consent under subsection (1) if there are reasonable grounds for believing that the person will be an active member of the cooperative.

170. Restriction on total shareholding

The board of a cooperative must not consent under section 168 or 169 to the sale or transfer of a share if as a result of the sale or transfer the nominal value of the shares held by the purchaser or transferee would exceed –

(a) 20% of the nominal value of the share capital of the cooperative; or

(b) if a lower percentage is specified in the rules of the cooperative, that lower percentage of the nominal value of the share capital of the cooperative.

171. Transfer not effective until registered

A transferor of a share remains the holder of the share until the transfer is registered and the name of the transferee is entered in the register of members in respect of the share.

Division 6 - Repurchase of shares

172. Purchase and repayment of shares

(1) The rules of a cooperative may authorise the cooperative to –

(a) purchase any share of a member in the cooperative at the request of the member; and

(b) repay to a member, with the member's consent, the whole or any part of the amount paid-up on any share held by the member when the sum repaid is not required for the activities of the cooperative.

(2) The amount paid by a cooperative under this section in purchasing shares or repaying any amount paid-up on shares, or both, in any financial year of the cooperative must not exceed the sum of –

(a) 5% of the nominal value of the issued share capital of the cooperative immediately before the commencement of that financial year; and

(b) the amount of any additional share capital of the cooperative subscribed for during that year.

(3) The members of a cooperative may by special resolution exempt a cooperative from the operation of subsection (2) in respect of a particular financial year, either unconditionally or subject to conditions.

(4) The amount paid for a share when it is repurchased may be an amount determined by the board that is less than the nominal value of the share but only –

(a) if the books of the cooperative disclose that the amount paid is the net shareholder's equity per share in the undertaking of the cooperative; or

(b) in accordance with the rules of the cooperative.

(5) A cooperative must not purchase shares or repay amounts paid-up on shares if –

(a) the cooperative is likely to become insolvent because of the repurchase of the shares or because of the repayment of amounts paid-up on the shares; or

(b) the cooperative is insolvent.

(6) This section does not apply if the member has resigned or has been expelled from the cooperative or the member's membership has been otherwise cancelled.

173. Deposit or debentures in lieu of payment when share repurchased

(1) If a cooperative repurchases a share of a member, the cooperative may instead of paying the purchase price to the member –

(a) in the case of a deposit-taking cooperative, apply the amount as an interest bearing deposit by the member with the cooperative; or

(b) allot or issue debentures of the cooperative to the member in satisfaction of the amount.

(2) Subsection (1) applies only –

(a) if the board is of the opinion that payment of the repurchase price would adversely affect the financial position of the cooperative; or

(b) if the board and the member so agree.

(3) The deposit or debenture bears interest during any period –

(a) in the case of a cooperative with share capital –

(i) at the rate (or, if there is more than one rate, at the higher or highest rate) of dividend payable in respect of that period on the share capital of the cooperative; or

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

(iii) if a rate of dividend has never been determined in respect of the share capital of the cooperative, at the rate that the board of the cooperative considers reasonable; or

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

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

(4) The deposit or debenture must be repaid to the member as soon as repayment would not, in the opinion of the board, adversely affect the financial position of the cooperative.

(5) The deposit or debenture must, in any case, be repaid within 10 years (or within any shorter period that the rules of the cooperative may require) after the repurchase of the shares concerned.

174. Cancellation of shares

A cooperative must cancel any share purchased by or forfeited to the cooperative in accordance with this Act or the rules of the cooperative.

PART 8 - Voting and meetings

Division 1 - Voting entitlements

175. Application of Part to voting

The provisions of this Part applying to voting apply to voting on all resolutions.

176. Voting

(1) The right to vote attaches to membership and not shareholding.

(2) Except as provided in subsections (3) and (4), each member has only one vote at a meeting of the cooperative.

(3) If its rules so provide, a member of an association or federation may have the number of votes up to 5 at a general meeting that is specified in the rules.

(4) If the rules so provide, the chairperson has a second vote at a board meeting or general meeting.

(5) In the case of joint membership –

(a) the joint members have only one vote between them; and

(b) that vote may be exercised (subject to the grant of a proxy or power of attorney) only by the joint member determined in accordance with the rules.

(6) If shares are held jointly, each member (other than a joint member) holding the share is entitled to vote at a general meeting.

177. Voting by proxy

(1) If the rules so provide, voting may be by proxy at a general meeting.

(2) The instrument of proxy may specify the manner in which a proxy is to vote in respect of a particular resolution.

(3) The proxy must vote in the manner authorised by an instrument of proxy referred to in subsection (2).

(4) A person must not act as a proxy unless he or she –

(a) is an active member of the cooperative; or

(b) in the case of an association or a federation, is entitled to represent a component cooperative or association of the association or federation on the association or federation.

(5) A person must not act as proxy for more than 10 persons (or any lesser number of persons specified in the rules of the cooperative) on any one occasion.

(6) Subsection (5) does not apply if the proxy acts under an instrument of proxy referred to in subsection (2).

178. Restriction on voting entitlement under power of attorney

A person is not entitled to exercise, under a power of attorney, the power of a member of the cooperative to vote if the person has that power in respect of another member of the cooperative under another power of attorney.

179. Restriction on voting by representatives of bodies corporate

A person is not entitled to exercise, as the representative of a body corporate, the power of a body corporate member of the cooperative to vote if the person has that power as the representative of another body corporate member of the cooperative.

180. Inactive members not entitled to vote

A member is not entitled to vote if the member is not an active member of the cooperative.

181. Control of the right to vote

(1) A person must not directly or indirectly control the exercise of the right to vote of a member.

Penalty:

Fine not exceeding 60 penalty units or imprisonment for a term not exceeding 6 months, or both.

(2) If a person controls the exercise of the right to vote of a member at a meeting of a cooperative –

(a) the vote of that member; and

(b) the vote of that person, if that person is a member –

are invalid.

(3) Nothing in this section prevents the exercise of a vote by means of a proxy or power of attorney.

182. Effect of disposal of shares on voting rights

A member of a cooperative can not vote if the member has sold or transferred, or disposed of the beneficial interest in, the member's shares or agreed to do so.

183. Effect of relevant share and voting interests on voting rights

(1) A member of a cooperative is not entitled to vote if another person (whether or not a member of the cooperative) has a relevant interest in any share held by the member or in the right to vote of the member.

(2) A member who is not entitled to vote because of this section may apply to the Commissioner to review the matter.

(3) The Commissioner may order that the member is entitled to vote if he or she is satisfied in the circumstances of the case that loss of the right to vote would be unjust or unreasonable, and the order of the Commissioner has effect accordingly.

184. Rights of representatives to vote

A person appointed as provided by this Act to represent a member of a cooperative, association or federation –

(a) is entitled to receive notice of all meetings in the same manner as the member represented; and

(b) is entitled to exercise the same rights to vote as the member represented; and

(c) is eligible to be elected to the board of directors if the member represented holds the qualifications required for holding office as a director (other than any relating to age).

185. Other rights and duties of members not affected by ineligibility to vote

A provision of this Act which disentitles a member of a cooperative to vote (either generally or in relation to a particular matter) does not affect any other right, entitlement, obligation or duty of the member as a member.

186. Vote of disentitled member to be disregarded

Any vote cast by or on behalf of a member of a cooperative when not entitled to vote must be disregarded.

Division 2 - Resolutions

187. Decisions to be by ordinary resolution

Except as otherwise provided in this Act or by the rules of the cooperative, every question for decision by a cooperative must be determined by ordinary resolution.

188. Ordinary resolutions

An ordinary resolution is a resolution of a cooperative which is passed by a simple majority at a general meeting of the cooperative or in a postal ballot of members.

189. Special resolutions

(1) A special resolution is a resolution of a cooperative which is passed –

(a) by a two-thirds majority at a general meeting of members; or

(b) by a two-thirds majority in a postal ballot (other than a special postal ballot) of members; or

(c) by a three-quarters majority in a special postal ballot of members.

(2) A special resolution may be passed by a postal ballot only if the rules of the cooperative so permit or this Act requires the special resolution to be passed by postal ballot (including a special postal ballot).

(3) A resolution is not to be considered to have been passed as a special resolution unless not less than 21 days notice has been given to the members of the cooperative specifying –

(a) the intention to propose the special resolution; and

(b) the reasons for the making of the special resolution; and

(c) the effect of the special resolution being passed.

(4) A cooperative must give at least 28 days notice to the Commissioner of a proposed special resolution before giving notice to the members of the proposed special resolution.

Penalty:

Fine not exceeding 20 penalty units.

(5) A failure to give notice to the Commissioner under subsection (4) does not affect the validity of the resolution.

190. How majority obtained is ascertained

(1) A resolution is passed by a particular majority at a meeting if that majority of the members of the cooperative who, being entitled to do so, vote in person or (if proxies are allowed) by proxy at the meeting vote in favour of the resolution.

(2) A resolution is passed by a particular majority in a postal ballot if that majority of the members of the cooperative who, being entitled to do so, cast formal votes in the postal ballot vote in favour of the resolution.

191. Disallowance by Commissioner

The Commissioner may disallow a proposed special resolution before it is passed by written notice to the cooperative if the Commissioner is of the opinion that the effect of the special resolution if passed would be in contravention of this Act or any other law.

192. Declaration of passing of special resolution

(1) At a meeting of a cooperative for the purpose of passing a special resolution, a declaration by the chairperson of the meeting that the resolution has been passed as a special resolution is conclusive evidence of the fact.

(2) A declaration by the returning officer for a postal ballot to pass a special resolution that the resolution has been passed as a special resolution is conclusive evidence of that fact.

(3) Subsection (1) does not apply if a poll is taken at the meeting of the cooperative.

193. Effect of special resolution

(1) Subject to subsection (2), a special resolution has effect from the date that it is passed.

(2) A special resolution relating to any of the following has no effect until it is registered:

(a) the removal of an auditor;

(b) the expulsion of a member;

(c) any matter for which a special resolution is required to be passed by special postal ballot.

194. Lodgment of special resolution

(1) A cooperative must lodge 2 copies of each special resolution passed by the cooperative with the Commissioner in accordance with this section for registration.

(2) The copies must –

(a) be lodged within 28 days after the passing of a special resolution or such further period as the Commissioner allows; and

(b) be signed by a director and the secretary of the cooperative; and

(c) be accompanied by the prescribed lodgment fee.

(3) A cooperative and any officer of the cooperative that knowingly fails to lodge the required copies in accordance with this section is guilty of an offence and liable on summary conviction to a fine not exceeding 20 penalty units.

(4) This section and section 195 do not apply to a special resolution altering the rules of a cooperative.

195. Decision of Commissioner on application to register special resolution

(1) If the Commissioner is satisfied that the cooperative has complied with the provisions of this Act and that the special resolution is not contrary to this Act, the Commissioner must register the resolution.

(2) If the Commissioner is of the opinion that the effect of a special resolution lodged for registration would be in contravention of this Act or any other law, the Commissioner may –

(a) refuse to register the special resolution; and

(b) give written notice to the cooperative that the special resolution –

(i) has no effect, in the case of a special resolution referred to in section 193(2); and

(ii) has no effect as from the date that it was passed, in any other case.

(3) A certificate of registration of a special resolution given by the Commissioner is, in favour of any person advancing money to the cooperative on the faith of the certificate or in favour of any guarantor of that advance, conclusive evidence that the resolution was duly passed.

Division 3 - Resolution by circulated document

196. Application of Division 3

(1) This Division applies to a resolution of a cooperative, including a resolution appointing an officer or auditor or approving of or agreeing to any act, matter or thing, if –

(a) the cooperative has fewer than 50 members; and

(b) the resolution is required or permitted under this Act or the rules of the cooperative to be passed at a general meeting of the cooperative.

(2) However, this division does not apply to a resolution of a cooperative –

(a) of which more than 14 days notice is required to be given under this Act; or

(b) that is required to be passed by a majority other than a simple majority.

197. Resolution by circulation of document – fewer than 50 members

(1) If all the members of a cooperative have signed a document that sets out the terms of a resolution and contains a statement that they are in favour of the resolution, the resolution is taken to have been passed at a general meeting of the cooperative.

(2) The meeting is taken to have been held –

(a) if all the members signed the document on the one day, on the day the document was signed, at the time the document was signed by the last member to sign; or

(b) if the members signed the document on different days, on the day, and at the time, the document was signed by the last member to sign.

(3) The document need not exist as a single document, but may exist in the form of 2 or more documents in identical terms.

(4) The document is taken to constitute a minute of the general meeting.

(5) Anything attached to the document and signed by the members signing the document is taken to have been laid before the cooperative at the general meeting.

(6) The document is signed by all members of a cooperative only if the document is signed by each person who was a member of the cooperative at the time the document was signed by the last member to sign.

(7) Nothing in this section affects or limits any rule of law about the effectiveness of the assent of members of a cooperative given to the document, or to an act, matter or thing, otherwise than at a general meeting of the cooperative.

Division 4 - Postal ballots

198. Postal ballots

(1) A postal ballot may be held as provided by the rules of a cooperative and must be conducted in accordance with the regulations.

(2) On the declaration by the returning officer of the result of the ballot, the secretary of the cooperative must make an entry in the minute book of the cooperative showing –

(a) the number of formal votes cast in favour of the proposal concerned; and

(b) the number of formal votes cast against the proposal; and

(c) the number of informal votes cast.

199. Special postal ballots

(1) A special postal ballot is a postal ballot that is conducted as required by this section.

(2) The ballot must not be held less than 21 days after notice of the ballot is given to members so as to enable sufficient time for a meeting to discuss the proposal that is the subject of the ballot to be convened and held (whether by the board or on the requisition of members).

(3) The cooperative must send to each member (along with any other material required to be sent in connection with the postal ballot) a disclosure statement approved by the Commissioner and containing information concerning –

(a) the financial position of the cooperative; and

(b) the interests of the directors of the cooperative in the proposal with which the ballot is concerned, including any interests of the directors in another organisation concerned in the proposal; and

(c) any compensation or consideration to be paid to officers or members of the cooperative in connection with the proposal; and

(d) such other matters as the Commissioner directs.

(4) If the Commissioner so requires, the statement is to be accompanied by a report made by an independent person approved by the Commissioner concerning any matters that the Commissioner directs.

(5) Sections 16 (except subsection (2)) and 28 apply to the approval of a disclosure statement under this section with any necessary modifications and in particular as if any reference in section 16 to a formation meeting were a reference to the notice of the special postal ballot.

200. When is a special postal ballot required?

In addition to any requirement of this Act, the rules of a cooperative must require a special postal ballot to be conducted for the purpose of passing a special resolution in relation to any of the following matters relating to a cooperative:

(a) conversion of –

(i) a share capital cooperative to a non-share capital cooperative or vice versa; or

(ii) a trading cooperative to a non-trading cooperative or vice versa;

(b) transfer of incorporation;

(c) an acquisition or disposal of assets referred to in section 277;

(d) the maximum permissible level of share interest in the cooperative;

(e) takeover;

(f) merger;

(g) transfer of engagements;

(h) members' voluntary winding-up.

201. Holding of postal ballot on requisition

(1) The board of a cooperative must conduct a postal ballot (including a special postal ballot) for the purpose of the passing of a special resolution on the written requisition of such number of members who together are able to cast at least 20% (or any lesser percentage specified in the rules of the cooperative) of the total number of votes able to be cast at a meeting of the cooperative.

(2) A member is not entitled to be a requisitioning member unless the member is an active member.

(3) The following provisions apply to a requisition for a postal ballot:

(a) it must specify –

(i) the proposed special resolution to be voted on; and

(ii) the reasons for the making of the special resolution; and

(iii) the effect of the special resolution being passed;

(b) it must be signed by the requisitioning members (and may consist of several documents in like form each signed by one or more of the requisitioning members);

(c) it must be served on the cooperative by being lodged at the registered office of the cooperative.

(4) The postal ballot must be conducted as soon as practicable and in any case must be conducted within 2 months after the requisition is served.

(5) If the special resolution for which the requisitioned postal ballot is conducted is not passed, the cooperative may recover the expenses of the postal ballot from the members who requisitioned the postal ballot as a debt due to the cooperative.

202. Expenses involved in postal ballots on requisition

(1) All reasonable expenses incurred by a cooperative in and in connection with preparing for and holding a special postal ballot are to be considered to constitute the "expenses of the postal ballot" for the purposes of section 201.

(2) Those expenses include (but are not limited to) the following expenses:

(a) the cost of obtaining expert advice (including legal and financial advice) and of commissioning expert reports;

(b) costs attributable to the use of staff of the cooperative in connection with preparing for and holding the ballot;

(c) the cost of producing, printing and posting the ballot papers and other material associated with the ballot.

Division 5 - Meetings

203. Annual general meetings

(1) The first annual general meeting of a cooperative must be held at any time within 18 months after the incorporation of the cooperative.

(2) The second or any subsequent annual general meeting of a cooperative must be held within –

(a) 5 months after the close of the financial year of the cooperative; or

(b) any further time that may be allowed by the Commissioner or is prescribed.

204. Special general meetings

A special general meeting of a cooperative may be convened at any time by the board of directors.

205. Notice of meetings

The board must give each member at least 14 days notice of each general meeting.

206. Quorum at meetings

(1) The quorum for a meeting of a cooperative must be specified in the rules.

(2) An item of business must not be transacted at a meeting of a cooperative unless a quorum of members entitled to vote is present during the transaction of that item.

207. Decision at meetings

(1) A question for decision at a general meeting must be determined by a majority of members present in person at the meeting and voting, but this is subject to any other provisions of this Act and to the rules of the cooperative.

(2) Unless a poll is demanded by at least 5 members, a question for decision at a general meeting must be determined by a show of hands.

(3) In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded may exercise a second or casting vote if the rules so provide.

208. Convening of general meeting on requisition

(1) The board of a cooperative must convene a general meeting of the cooperative on the written requisition of such number of members who together are able to cast at least 20% (or any lesser percentage specified in the rules of the cooperative) of the total number of votes able to be cast at a meeting of the cooperative.

(2) A member is not entitled to be a requisitioning member unless the member is an active member.

(3) The following provisions apply to a requisition for a general meeting:

(a) it must state the objects of the meeting;

(b) it must be signed by the requisitioning members (and may consist of several documents in like form each signed by one or more of the requisitioning members);

(c) it must be served on the cooperative by being lodged at the registered office of the cooperative.

(4) The meeting must be convened and held as soon as practicable and in any case must be held within 2 months after the requisition is served.

(5) If the board does not convene the meeting within 21 days after the requisition is served, the following provisions apply:

(a) the requisitioning members (or any of them representing at least half their aggregate voting rights) may convene the meeting in the same manner as nearly as possible as meetings are convened by the board;

(b) for that purpose they may request the cooperative to supply a written statement setting out the names and addresses of the persons entitled when the requisition was served to receive notice of general meetings of the cooperative;

(c) the board must send the requested statement to the requisitioning members within 7 days after the request for the statement is made;

(d) the meeting convened by the requisitioning members must be held not later than 3 months after the requisition is served;

(e) any reasonable expenses incurred by the requisitioning members because of the board's failure to convene the meeting must be paid by the cooperative;

(f) any amount required to be paid by the cooperative under paragraph (e) must be retained by the cooperative out of any money due from the cooperative by way of fees or other remuneration in respect of their services to such of the directors as were in default.

209. Minutes

(1) Minutes of each general meeting, board meeting and subcommittee meeting must be entered in the appropriate records within 28 days after the meeting and confirmed at and signed by the chairperson of the next succeeding meeting.

(2) The minutes of each general meeting must be available for inspection by members.

(3) The rules may provide that the minutes of board meetings and subcommittee meetings be available for inspection by members.

(4) Minutes must be kept in the English language.

PART 9 - Management and administration of cooperatives

Division 1 - The board

210. Board of directors

(1) Subject to this Act and the rules of the cooperative, the business of a cooperative is to be managed by a board of directors.

(2) The board of directors may exercise all the powers of the cooperative that are not, by this Act or the rules of the cooperative, required to be exercised by the cooperative in general meeting.

(3) The acts of a director are valid despite any defect that may afterwards be discovered in his or her appointment or qualification.

211. Election of directors

(1) Except as provided in subsections (2), (3) and (4), the directors of a cooperative are to be elected in the manner specified in the rules of the cooperative.

(2) The first directors of –

(a) a cooperative formed under this Act are to be elected at its formation meeting; and

(b) a cooperative which was a body corporate incorporated under another Act are to be the directors in office at the date of registration under this Act.

(3) If so authorised by the rules of the cooperative, a board of directors may appoint a person to fill a casual vacancy in the office of a director until the next annual general meeting.

(4) A motion approving or nominating for election 2 or more persons as directors by a single resolution must not be made at a meeting of a cooperative unless a resolution that it be so made has first been agreed to by the meeting without any vote being given against it.

(5) If a resolution is passed following a motion in contravention of subsection (4) –

(a) the resolution is void; and

(b) there is no provision for the automatic re-election of retiring directors in default of another election.

(6) This section does not apply to a resolution altering the rules to prevent the election of 2 or more directors by ballot.

(7) A nomination for election or appointment to the office of a director must provide details of the qualifications and experience of the person nominated.

(8) Except as specified in this Act or in the rules of a cooperative, a director is eligible for re-election at the expiration of his or her term of office.

212. Qualification of directors

(1) A person is not qualified to be a director of a cooperative unless he or she is –

(a) a member of the cooperative or a representative of a body corporate which is a member of the cooperative ("member director"); or

(b) an employee of the cooperative or a person qualified as provided by the rules ("independent director").

(2) The majority of directors must be member directors.

(3) Subsection (2) does not prevent the rules requiring that a greater number of directors than a majority must be member directors.

213. Disqualified persons

(1) A person must not act as a director or directly or indirectly take part in or be concerned with the management of a cooperative if the person –

(a) is the auditor of the cooperative or a partner, employee or employer of the auditor; or

(b) has been convicted, whether before or after the commencement of this section, within or outside Tasmania –

(i) on indictment of an offence in connection with the promotion, formation or management of a body corporate; or

(ii) of an offence involving fraud or dishonesty punishable on conviction by imprisonment for a period of not less than 3 months; or

(iii) of any offence under section 184, 344, 590, 592, 670A or 728 of the Corporations Act; or

(iv) of any offence under any provision of a previous law of Tasmania or of another State or a Territory with which any of the provisions referred to in subparagraph (iii) corresponds, within a period of 5 years after the conviction or, if sentenced to imprisonment, after his or her release from prison, except with the leave of the Supreme Court.

Penalty:

Fine not exceeding 240 penalty units or imprisonment for a term not exceeding 2 years, or both.

(2) A person must not act as a director or directly or indirectly take part in or be concerned with the management of a cooperative if the person –

(a) has been convicted of any offence under this Act, within a period of 5 years after the conviction, except with leave of the Supreme Court; or

(b) is disqualified from managing corporations under Part 2D.6 (Disqualification from managing corporations) of the Corporations Act; or

(c) is an insolvent under administration (as defined in the Corporations Act).

(d) . . . .

Penalty:

Fine not exceeding 240 penalty units or imprisonment for a term not exceeding 2 years, or both.

(3) In any proceeding for an offence against subsection (1), a certificate by a prescribed authority stating that a person was released from prison on a specified date is, in the absence of evidence to the contrary, proof that that person was released from prison on that date.

(4) A person who intends to apply for leave of the Supreme Court must give the Commissioner at least 21 days notice of his or her intention.

(5) The Supreme Court may grant leave subject to any condition or limitation it considers appropriate.

(6) A person must comply with any condition or limitation subject to which leave is granted.

Penalty:

Fine not exceeding 240 penalty units or imprisonment for a term not exceeding 2 years, or both.

(7) On the application of the Commissioner the Supreme Court may revoke its leave.

(8) Subject to this section, a cooperative 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 Part 2D.6 of the Corporations Act subject to the following modifications:

(a) a reference in those provisions to corporations is to be read as a reference to cooperatives;

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

214. Meeting of the board of directors

(1) Meetings of the board of directors must be held at least once every 3 months and may be held as often as may be necessary.

(2) A meeting of the board of directors may be called by a director giving notice individually to every other director.

(3) A meeting of the board of directors may be called or held using any technology consented to by the board and the consent may be a standing one.

(4) A quorum of a meeting of the board of directors is 50% of the number of directors or such greater number of the directors as is specified in the rules.

(5) However, for a quorum, the member directors must outnumber the independent directors by at least one or, if a greater number is stated in the rules of the cooperative, the greater number.

(6) The chairperson of the board may be elected either by the board or at a general meeting of the cooperative, and is to be elected, hold office, and retire, and may be removed from office, as provided by the rules of the cooperative.

215. Transaction of business outside meetings

(1) The board of a cooperative may, if it thinks fit, transact any of its business by the circulation of papers among all of the directors of the board.

(2) A resolution in writing approved in writing by a majority of the directors of the board is to be taken to be a decision of the board.

(3) Separate copies of a resolution may be distributed for signing by the directors if the wording of the resolution and approval is identical in each copy.

(4) For the purpose of the approval of a resolution under this section, the chairperson of the board and each director of the board have the same voting rights as they have at an ordinary meeting of the board.

(5) The resolution is approved when the last director required for the majority signs.

(6) A resolution approved under this section must be recorded in the minutes of the meetings of the board within 28 days after the resolution is approved.

(7) Papers may be circulated among directors of the board for the purposes of this section by facsimile or other transmission of the information in the papers concerned.

216. Deputy directors

(1) In the absence of a director from a meeting of the board, a person appointed by the board in accordance with the rules of the cooperative concerned to act as a deputy for that director may act in the place of that director.

(2) The rules of the cooperative may include provisions regulating the term of office, vacation of or removal from office, and remuneration of a deputy.

217. Delegation by board

(1) If the rules of a cooperative so provide, the board may, by resolution, delegate the exercise of such of the board's functions (other than this power of delegation) as are specified in the resolution –

(a) to a director; or

(b) to a committee of 2 or more directors; or

(c) to a committee of members of the cooperative; or

(d) to a committee of members of the cooperative and other persons if members comprise the majority of persons on the committee.

(2) The cooperative or the board may, by resolution, revoke wholly or in part a delegation under this section.

(3) A function, the exercise of which has been delegated under this section, may be exercised from time to time in accordance with the terms of the delegation while the delegation remains unrevoked.

(4) A delegation under this section may be made subject to conditions or limitations as to the exercise of any of the functions delegated, or as to time or circumstance.

(5) Despite any delegation under this section, the board may continue to exercise all or any of the functions delegated.

218. Removal from and vacation of office

(1) The directors hold office and must retire, and may be removed from office, as provided by the rules of the cooperative.

(2) A director vacates office in the circumstances (if any) provided in the rules of the cooperative and in any of the following cases:

(a) if the director is disqualified from being a director as provided by section 213;

(b) if the director absents himself or herself from 3 consecutive ordinary meetings of the board without its leave;

(c) if the director resigns the office of director by written notice given by the director to the cooperative;

(d) if the director is removed from office by special resolution of the cooperative;

(e) if the person ceases to hold the qualification by reason of which the person was qualified to be a director;

(f) if an administrator of the cooperative's affairs is appointed under Division 5 of Part 12.

Division 2 - Secretary

219. Secretary

(1) A cooperative must have a secretary.

(2) The board of the cooperative is to appoint the secretary.

(3) The board may appoint a person to act as the secretary during the absence or incapacity of the secretary.

(4) A person is not qualified to be appointed as, or to act as, the secretary unless the person is an adult who ordinarily lives in Australia.

Division 3 - Duties and liabilities of directors, officers and employees

220. Meaning of "officer"

In this Division,

officer, in relation to a cooperative, means –

(a) a director or secretary of the cooperative; or

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

(c) a receiver, or receiver and manager, of property of the cooperative, or any other authorised person who enters into possession or assumes control of property of the cooperative for the purpose of enforcing any charge; or

(d) an administrator of a deed of arrangement executed by the cooperative; or

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

(f) an administrator of the cooperative appointed under Part 5.3A of the Corporations Act as applying under this Act; or

(g) a trustee or other person administering a compromise or arrangement made between the cooperative and another person or other persons.

221. Officers must act honestly

(1) An officer of a cooperative must at all times act honestly in the exercise of his or her powers and the discharge of the duties of his or her office, both in the State and elsewhere.

(2) The penalty applicable to a contravention of this section is –

(a) if the contravention was committed with intent to deceive or defraud the cooperative, members or creditors of the cooperative or creditors of any other person or for any other fraudulent purpose, a fine not exceeding 240 penalty units or imprisonment for a term not exceeding 2 years, or both; or

(b) in any other case, a fine not exceeding 60 penalty units.

222. Standard of care and diligence required

(1) In the exercise of his or her powers and the discharge of his or her duties, an officer of a cooperative must exercise the degree of care and diligence that a reasonable person in a like position in a cooperative would exercise in the cooperative's circumstances.

Penalty:

Fine not exceeding 20 penalty units.

(2) An officer is not liable to be convicted for a contravention of this section if the cooperative has resolved by ordinary resolution to forgive the contravention.

223. Improper use of information or position

(1) An officer or employee or former officer or employee of a cooperative or a member of a committee referred to in section 217(1) must not make improper use of information acquired by reason of his or her position as such an officer or employee or member to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the cooperative.

(2) An officer or employee of a cooperative or a member of a committee referred to in section 217(1) must not make improper use of his or her position as an officer or employee or member to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the cooperative.

(3) The penalty applicable to a contravention of this section is –

(a) if the contravention was committed with intent to deceive or defraud the cooperative, members or creditors of the cooperative or creditors of any other person or for any other fraudulent purpose, a fine not exceeding 240 penalty units or imprisonment for a term not exceeding 2 years, or both; or

(b) in any other case, a fine not exceeding 60 penalty units.

224. Court may order payment of compensation

(1) If the court that convicts a person for a contravention of a provision of this Division is satisfied that a cooperative has suffered loss or damage as a result of the act or omission that constituted the offence, the court may (in addition to imposing a penalty) order the convicted person to pay a specified amount of compensation to the cooperative.

(2) An order under subsection (1) may be enforced as if it were a judgment of that court.

225. Recovery of damages by cooperative

(1) If a person contravenes a provision of this Division in relation to a cooperative, the cooperative may, whether or not the person has been convicted of an offence in respect of that contravention, recover an amount from the person as a debt due to the cooperative.

(2) The amount that the cooperative is entitled to recover from the person is –

(a) if the person or any other person made a profit as a result of the contravention, an amount equal to that profit; and

(b) if the cooperative has suffered loss or damage as a result of the contravention, an amount equal to that loss or damage.

226. Other duties and liabilities not affected

This Division has effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person by reason of the person's office or employment in relation to a cooperative and does not prevent the institution of any civil proceedings in respect of a breach of such a duty or in respect of such a liability.

227. Indemnification of officers and auditors

(1) Any provision, whether contained in the rules or in a contract with a cooperative or elsewhere, for exempting any officer or auditor of the cooperative from, or indemnifying the officer or auditor against, any liability that by law would otherwise attach to the officer or auditor in respect of any negligence, default, breach of duty or breach of trust of which the officer or auditor may be guilty in relation to the cooperative is void.

(2) Subsection (1) does not apply in relation to a contract of insurance.

(3) Despite subsection (1), a cooperative may, pursuant to its rules or otherwise, indemnify an officer or auditor against any liability incurred by the officer or auditor in defending any proceedings, whether civil or criminal, in which judgment is given in the officer's or auditor's favour or in which the officer or auditor is acquitted or in connection with any application in relation to any such proceedings in which relief is under this section granted to the officer or auditor by the court.

(4) If in proceedings for negligence, default or breach of duty against an officer or auditor of a cooperative it appears to the court that the person is or may be liable in respect of the negligence, default or breach of duty but acted honestly and reasonably and that, having regard to all the circumstances of the case (including those connected with the person's appointment), the person ought fairly to be excused for the negligence, default or breach of duty, the court may relieve the person, either wholly or partly, from the person's liability on such terms as the court thinks fit.

(5) If an officer or auditor of a cooperative has reason to believe that any claim will or might be made against him or her in respect of any negligence, default or breach of duty in relation to the cooperative, the person may apply to the Supreme Court for relief, and the Supreme Court then has the same power to relieve the person as it would have under this section if it had been a court before which proceedings against the officer or auditor for negligence, default or breach of duty had been brought.

(6) If any case to which subsection (4) applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if satisfied that the defendant should in pursuance of that subsection be relieved either wholly or partly from the liability sought to be enforced against him or her, withdraw the case in whole or in part from the jury and direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge thinks proper.

(7) In this section,

officer includes an employee of a cooperative and any other person empowered under the rules of the cooperative to give directions in regard to the business of the cooperative.

228. Application of Corporations Act provisions concerning officers of cooperatives

(1) A cooperative 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 sections 589 to 598 and 1307 of the Corporations Act, subject to the following modifications:

(a) a reference in those provisions to a company is to be read as a reference to a cooperative;

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

(c) section 592(1)(a) of the Corporations Act applies as if "before 23 June 1993" were omitted;

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

Division 4 - Restrictions on directors and officers

229. Directors' remuneration

A director of a cooperative must not be paid any remuneration for services as a director other than fees, concessions and other benefits that are approved at a general meeting of the cooperative.

230. Certain financial accommodation to officers prohibited

(1) An officer of a cooperative who is not a director of the cooperative must not obtain financial accommodation from the cooperative other than –

(a) with the approval of a majority of the directors; or

(b) under a scheme about providing financial accommodation to officers that has been approved by a majority of the directors.

Penalty:

Fine not exceeding 240 penalty units or imprisonment for a term not exceeding 2 years, or both.

(2) For the purposes of this section, financial accommodation is taken to be obtained by an officer of a cooperative if it is obtained by –

(a) a proprietary company in which the officer is a shareholder or director; or

(b) a trust of which the officer is a trustee or beneficiary; or

(c) a trust of which a body corporate is trustee if the officer is a director or other officer of the body corporate.

(3) A cooperative must not give financial accommodation to an officer of the cooperative if –

(a) by giving the financial accommodation, the officer would contravene this section; and

(b) the cooperative knows or should reasonably know of the contravention.

Penalty:

Fine not exceeding 500 penalty units.

231. Financial accommodation to directors and associates

(1) In this section,

associate, of a director, means –

(a) the director's spouse or partner; or

(b) a person when acting in the capacity of trustee of a trust under which –

(i) the director or director's spouse or partner has a beneficial interest; or

(ii) a body corporate mentioned in paragraph (c) has a beneficial interest; or

(c) a body corporate if –

(i) the director or director's spouse or partner has a material interest in shares in the body corporate; and

(ii) the nominal value of the shares is not less than 10% of the nominal value of the issued share capital of the body corporate.

(2) For the purposes of this section, a person has a "material interest" in a share in a body corporate if –

(a) the person has power to withdraw the share capital subscribed for the share or to exercise control over the withdrawal of that share capital; or

(b) the person has power to dispose of or to exercise control over the disposal of the share; or

(c) the person has power to exercise or to control the exercise of any right to vote conferred on the holder of the share.

(3) A cooperative must not provide financial accommodation to a director, or to a person the cooperative knows or should reasonably know is an associate of a director, unless –

(a) the accommodation is –

(i) approved under subsection (4); or

(ii) given under a scheme approved under subsection (4); or

(iii) provided on terms no more favourable to the director or associate than the terms on which it is reasonable to expect the cooperative would give if dealing with the director or associate at arms-length in the same circumstances; and

(b) the directors have approved the accommodation, at a meeting of the board at which a quorum was present, by a majority of at least two-thirds of the directors present and voting on the matter.

Penalty:

Fine not exceeding 500 penalty units.

(4) For the purposes of subsection (3)(a)(i) and (ii), financial accommodation or a scheme is approved if –

(a) it is approved by a resolution passed at a general meeting; and

(b) the full details of the accommodation or scheme were made available to members at least 21 days before the meeting.

(5) A director or an associate of a director who obtains financial accommodation given in contravention of subsection (3) is guilty of an offence and liable on summary conviction to a fine not exceeding 240 penalty units or to imprisonment for a term not exceeding 2 years, or both.

(6) For the purposes of this section, a concessional rate of interest for a borrower from a cooperative is a normal term only if the borrower is entitled to the concession by being a member of a class of borrowers from the cooperative specified in its rules as being entitled to the concession.

(7) If a director of a cooperative or an associate of a director accepts in payment of a debt owed by a member of the cooperative to the director or associate any proceeds of financial accommodation provided to the member by the cooperative, this section has effect as if the financial accommodation has been provided to the director or associate.

(8) In this section, a reference to –

(a) the provision of financial accommodation to a director or an associate of a director; or

(b) the obtaining of financial accommodation by a director or an associate of a director; or

(c) a debt owed to a director or an associate of a director –

includes a reference to a provision of financial accommodation to, or an obtaining of financial accommodation by, the director or associate, or a debt owed to the director or associate, jointly with another person.

232. Restriction on directors of certain cooperatives selling land to cooperative

A director of a cooperative the primary activity of which is or includes the acquisition of land in order to settle or retain people on the land and of providing any community service or benefit must not sell land to the cooperative except pursuant to and in accordance with a special resolution of the cooperative.

233. Management contracts

(1) In this section,

management contract means a contract or other arrangement under which –

(a) a person who is not an officer of the cooperative agrees to perform the whole, or a substantial part, of the functions of the cooperative, whether under the control of the cooperative or not; or

(b) a cooperative agrees to perform the whole or a substantial part of its functions –

(i) in a particular way; or

(ii) in accordance with the directions of any person; or

(iii) subject to specified restrictions or conditions.

(2) A cooperative must not enter into a management contract unless that contract has first been approved by special resolution.

(3) A management contract entered into in contravention of subsection (2) is void.

Division 5 - Declaration of interests

234. Declaration of interest

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

Penalty:

Fine not exceeding 240 penalty units or imprisonment for a term not exceeding 2 years, or both.

(2) In the case of a proposed contract, the declaration must be made –

(a) at the meeting of the board at which the question of entering into the contract is first considered; or

(b) if the director was not at that time interested in the proposed contract, at the next meeting of the board held after the director becomes interested in the proposed contract.

(3) If a director becomes interested in a contract with the cooperative after it is made, the declaration must be made at the next meeting of the board held after the director becomes interested in the contract.

(4) For the purposes of this section, a general written notice given to the board by a director to the effect that the director –

(a) is a member of a specified entity; and

(b) is to be regarded as interested in any contract which may, after the giving of the notice, be made with the entity –

is a sufficient declaration.

(5) A director of a cooperative who holds an office or has an interest in property whereby, whether directly or indirectly, duties or interests might be created that could conflict with the director's duties or interests as director must, under subsection (6), declare at a meeting of the board of directors the fact and the nature, character and extent of the conflict.

Penalty:

Fine not exceeding 240 penalty units or imprisonment for a term not exceeding 2 years, or both.

(6) A declaration required by subsection (5) in relation to holding an office or having an interest must be made by a person –

(a) if the person holds the office or has the interest when he or she becomes a director, at the first meeting of the board held after –

(i) the person becomes a director; or

(ii) the relevant facts as to holding the office or having the interest come to the person's knowledge –

whichever is the later; or

(b) if the person starts to hold the office or acquires the interest after the person becomes a director, at the first meeting of the board held after the relevant facts as to holding the office or having the interest come to the person's knowledge.

(7) If a director has made a declaration under this section then, unless the board otherwise determines, the director must not –

(a) be present during any deliberation of the board in relation to the matter; or

(b) take part in any decision of the board in relation to the matter.

(8) For the purposes of the making of a determination of the board under subsection (7) in relation to a director who has made a declaration under this section, the director must not –

(a) be present during any deliberation of the board for the purpose of making the determination; or

(b) take part in the making by the board of the determination.

235. Declarations to be recorded in minutes

Every declaration under this Division is to be recorded in the minutes of the meeting at which it was made.

236. Division does not affect other laws or rules

Except as provided in section 237, this Division is in addition to, and not in derogation of, the operation of any rule of law or any provision in the rules of the cooperative restricting a director from having any interest in contracts with the cooperative or from holding offices or possessing properties involving duties or interests in conflict with his or her duties or interests as director.

237. Certain interests need not be declared

The interest in a contract or proposed contract that a director is required by this Division to declare does not include an interest in –

(a) a contract or proposed contract for a purchase of goods and services by the director from the cooperative; or

(b) a lease of land to the director by the cooperative; or

(c) a contract or proposed contract for the sale of agricultural products or livestock by the director to the cooperative; or

(d) a contract or proposed contract that, pursuant to the rules of the cooperative, may be made between the cooperative and a member; or

(e) a contract or proposed contract of a class of contracts prescribed for the purposes of this section –

that is made in good faith, in the ordinary course of the business of the cooperative, and on such terms as are usual and proper in similar dealings between the cooperative and its members.

Division 6 - Accounts and audit

238. Requirements for accounts and financial records

(1) A cooperative must –

(a) keep financial records and prepare accounts and consolidated accounts as required by the regulations; and

(b) ensure that those accounts are audited in accordance with the regulations.

Penalty:

Fine not exceeding 20 penalty units.

(2) Without limiting the matters for which regulations under this section may make provision, the regulations may make provision for or with respect to the following:

(a) any matter for which provision is made by or under Part 2F.3 and Chapter 2M of the Corporations Act (including the conferring of jurisdiction on a court);

(b) requiring accounts and consolidated accounts to be prepared in accordance with any accounting standards in force for the purposes of Part 2F.3 and Chapter 2M of the Corporations Act (with or without modifications specified in the regulations);

(c) requiring the submission of accounts or consolidated accounts to the Australian Accounting Standards Board;

(d) requiring the adoption by a cooperative of the same financial year for each entity that the cooperative controls;

(e) prescribing the qualifications and the functions of auditors of the accounts of a cooperative and providing for the appointment, the holding of office by, the remuneration of and the removal of auditors;

(f) the duties of directors of a cooperative in relation to the preparation, auditing and tabling at meetings of members of accounts and consolidated accounts, including the reports to be prepared by directors in relation to those accounts and consolidated accounts;

(g) the sending or making available to members of copies of accounts and reports in relation to accounts.

(3) The regulations may declare any matter associated with the operation of subsection (2) to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to any provisions of the Corporations Act (including provisions that would otherwise be excluded under another provision of this Act), with such modifications as may be specified in the declaration.

239. Power of Commissioner to grant exemptions

(1) The Commissioner may exempt a cooperative or any class of cooperatives, a person or firm proposed to be appointed as an auditor or a director or auditor of a cooperative from compliance with all or specified provisions of the regulations made for the purposes of this Part.

(2) An exemption –

(a) may be given subject to conditions; and

(b) may be limited as to time; and

(c) may be varied, suspended or revoked by the Commissioner by a further order in writing.

(3) An order under this section takes effect –

(a) if it applies to a particular cooperative, when the order is served on the cooperative; or

(b) if it applies to a class of cooperatives, when the order is published in the *Gazette*.

240. Meaning of "entity" and "control"

In this Division –

control has the same meaning in relation to a cooperative as it has under Parts 3.6 and 3.7 of the Corporations Act in relation to a corporation;

entity has the same meaning in relation to a cooperative as it has under Parts 3.6 and 3.7 of the Corporations Act in relation to a corporation.

241. Disclosure by directors

The directors of a cooperative must make the disclosures in relation to the affairs of the cooperative and of any entity that the cooperative controls that are required by the regulations.

Penalty:

Fine not exceeding 20 penalty units.

242. Protection of auditors, &c.

(1) An auditor of a cooperative has qualified privilege in respect of –

(a) any statement that the auditor makes, orally or in writing, in the course of his or her duties as auditor; or

(b) the giving of any notice, or the sending of any copy of accounts, consolidated accounts or a report, to the Commissioner under this Act.

(2) A person has qualified privilege –

(a) in respect of the publishing of any document prepared by an auditor in the course of the auditor's duties and required by or under this Act to be lodged with the Commissioner, whether or not the document has been so lodged; or

(b) in respect of the publishing of any statement made by an auditor as mentioned in subsection (1).

(3) This section does not limit or affect any right, privilege or immunity that an auditor or other person has, apart from this section, as defendant in proceedings for defamation.

243. Financial year

(1) The financial year of a cooperative is to end on the day in each calendar year that is provided for by the rules of the cooperative.

(2) The first financial year of a cooperative may extend from the date of its registration to a date not later than 18 months from the date of its registration.

(3) On an alteration of the rules of a cooperative altering its financial year, the alteration may provide either that the financial year current at the date of alteration is to be extended for a period not exceeding 6 months or that the financial year next following the financial year that is so current is to be a period exceeding 12 months but not exceeding 18 months.

Division 7 - Registers, records and returns

244. Registers to be kept by cooperatives

(1) A cooperative must keep the following registers in accordance with this section:

(a) a register of members, directors and shares (if any);

(b) a register of any loans to, securities given by, debentures issued by and deposits received by the cooperative;

(c) a register of names of persons who have given loans or deposits to or hold securities or debentures given or issued by the cooperative;

(d) . . . .

(e) a register of memberships cancelled under Part 6;

(f) a register of notifiable interests in accordance with section 287;

(g) such other registers as the regulations may require.

Penalty:

Fine not exceeding 20 penalty units.

(2) The registers must be kept in the manner and contain the particulars that are prescribed by this Act.

245. Location of registers

(1) A register kept under this Division must be kept at –

(a) the cooperative's registered office; or

(b) an office at the cooperative's principal place of business; or

(c) an office (whether of the cooperative or of some other person) where the work involved in maintaining the register is done; or

(d) another office approved by the Commissioner.

(2) The office must be in Tasmania.

(3) The cooperative must lodge with the Commissioner a notice of the address at which the register is kept within 28 days after the register is –

(a) established at an office that is not the cooperative's registered office; or

(b) moved from one office to another.

246. Inspection of registers, &c.

(1) A cooperative must have at the office where the registers are kept and available during all reasonable hours for inspection by any member free of charge the following:

(a) a copy of this Act and the regulations;

(b) a copy of the rules of the cooperative;

(c) a copy of the minutes of each general meeting of the cooperative;

(d) a copy of the last annual report of the cooperative under section 249;

(e) the register of directors, members and shares;

(f) the register of names of persons who have given loans or deposits to, or hold securities or debentures given or issued by, the cooperative;

(g) such other registers as the regulations provide are to be open for inspection under this section.

(2) If a register is not kept on a computer, the person inspects the register itself.

(3) If the register is kept on a computer, the person inspects a hard copy of the information on the register unless the person and the cooperative agree that the person can access the information by computer.

(4) A member is entitled to make a copy of entries in a register specified in subsection (1) free of charge unless the rules of the cooperative require a fee to be paid, in which case on payment of the required fee.

(5) The fee required by the rules must not exceed the fee prescribed for a copy of any entry in the Register.

(6) A cooperative must –

(a) permit a member to inspect a document or make a copy of a document that the member is entitled to inspect or make under this section; and

(b) give the member all reasonable assistance to inspect the document or make the copy.

Penalty:

Fine not exceeding 20 penalty units.

(7) A cooperative must have, at the place where the registers are kept and available during all reasonable hours for inspection by any person, such documents in relation to the cooperative as are prescribed.

Penalty:

Fine not exceeding 20 penalty units.

247. Use of information on registers

(1) A person must not –

(a) use information about a person obtained from a register kept under this Division to contact or send material to the person; or

(b) disclose information of that kind knowing that the information is likely to be used to contact or send material to the person –

unless that use or disclosure of the information is –

(c) relevant to the holding of the directorship, membership, shares, loans, securities, debentures or deposits concerned or the exercise of the rights attaching to them; or

(d) approved by the board; or

(e) necessary to comply with a requirement of this Act.

(2) A person who contravenes subsection (1) is liable to compensate any other person who suffers loss or damage because of the contravention.

(3) A person who makes a profit from a contravention of subsection (1) owes a debt to the cooperative.

(4) The amount of the debt referred to in subsection (3) is the amount of the profit.

248. Notice of appointment, &c., of directors and officers

(1) A cooperative must give notice to the Commissioner in accordance with this section of the appointment of a person as a director, principal executive officer or secretary of the cooperative or any subsidiary of the cooperative, and of the cessation of any such appointment.

(2) The notice must –

(a) be in the form approved by the Commissioner; and

(b) be given within 28 days after the appointment or cessation of appointment; and

(c) specify the prescribed particulars of the appointment or cessation of appointment.

Penalty:

Fine not exceeding 20 penalty units.

249. Annual report to be filed with Commissioner

(1) A cooperative must file with the Commissioner within the required period in each year an annual report containing each of the following:

(a) a list in the approved form listing the secretary, directors and the principal executive officers of the cooperative and of each of its subsidiaries, as at the date the annual report is filed with the Commissioner;

(b) if the cooperative is required under section 238(1) to prepare a financial report of the cooperative for its most recently ended financial year – a copy of the financial report;

(c) a copy of the financial report of each subsidiary of the cooperative for the most recently ended financial year of the subsidiary;

(d) a copy of any report by the auditor or the directors of the cooperative or subsidiary –

(i) prepared under section 238(1); or

(ii) on a financial report mentioned in paragraph (b) or (c);

(e) such other particulars as may be prescribed.

Penalty:

Fine not exceeding 20 penalty units.

(2) For the purposes of subsection (1), the required period is –

(a) 28 days after the annual general meeting of the cooperative; or

(b) if the annual general meeting of the cooperative is not held within the period specified in section 203(2)(a), 28 days after the end of that period.

250. List of members to be furnished at request of Commissioner

A cooperative must, at the request in writing of the Commissioner, send to the Commissioner, within the time and in the manner that the Commissioner specifies, a full list of the members of the cooperative and of each subsidiary of the cooperative, together with the particulars with regard to those members that the Commissioner specifies in the request.

Penalty:

Fine not exceeding 20 penalty units.

251. Special return to be furnished at request of Commissioner

(1) The Commissioner may by direction in writing require a cooperative to furnish to the Commissioner a special return in the form, within the time, and relating to the subject matter, specified by the Commissioner.

(2) The cooperative must comply with a direction under subsection (1).

Penalty:

Fine not exceeding 20 penalty units.

Division 8 - Name and registered office

252. Name to include certain matter

(1) The name of a cooperative may consist of words, numbers or a combination of both.

(2) The name of the cooperative must include the word "cooperative" or "co-operative" or the abbreviation "co-op".

(3) The word "limited" or the abbreviation "ltd" must be the last word of the name.

(4) A body corporate which is formed or incorporated under any Act other than this Act must not register under that other Act by any name which includes the word "cooperative" or "co-operative" or the abbreviation "co-op".

Penalty:

Fine not exceeding 20 penalty units.

(5) Subsection (4) does not apply to a co-operative housing society within the meaning of the *Co-operative Housing Societies Act 1963*.

253. Use of abbreviations

A description of a cooperative is not inadequate or incorrect merely because of one or more of the following:

(a) the use of the abbreviation "co-op" instead of the word "cooperative" or "co-operative" in the cooperative's name;

(b) the use of the abbreviation "ltd" instead of the word "limited" in the cooperative's name;

(c) the use of the symbol "&" instead of the word "and" in the cooperative's name;

(d) the use of any of those words instead of the corresponding abbreviation or symbol in the cooperative's name;

(e) the use of any abbreviation or elaboration of the name of the cooperative that is approved in a particular case or for a particular purpose by the Commissioner in writing.

254. Name to appear on business documents, &c.

(1) The name of a cooperative must appear in legible characters –

(a) on its seal; and

(b) in all notices, advertisements and other official publications of the cooperative; and

(c) in all its business documents.

(2) If subsection (1) is contravened, the cooperative is guilty of an offence and liable on summary conviction to a fine not exceeding 20 penalty units.

(3) An officer of a cooperative or a person on its behalf must not –

(a) use any seal of the cooperative; or

(b) issue or authorise the issue of any notice, advertisement or other official publication of the cooperative; or

(c) sign or authorise to be signed on behalf of the cooperative any business document of the cooperative –

in or on which the cooperative's name does not appear in legible characters.

Penalty:

Fine not exceeding 20 penalty units.

(4) A director of a cooperative who knowingly authorises or permits a contravention of this section is guilty of an offence and liable on summary conviction to a fine not exceeding 20 penalty units.

(5) In this section,

business document, in relation to a cooperative, means a document that is issued, signed or endorsed by or on behalf of the cooperative and is –

(a) a business letter, statement of account, invoice or order for goods or services; or

(b) a bill of exchange, promissory note, cheque or other negotiable instrument; or

(c) a receipt or letter of credit issued by the cooperative; or

(d) a document of a class prescribed as a class of business documents.

255. Change of name of cooperative

(1) A cooperative may by special resolution change its name to a name approved by the Commissioner.

(2) A change of name must be advertised as prescribed.

(3) A change of name does not take effect until –

(a) the Commissioner has noted the change on the certificate of registration of the cooperative; or

(b) the certificate of registration is surrendered to the Commissioner and a replacement certificate of registration is issued in the new name.

(4) A change of name by a cooperative does not affect –

(a) the identity of the cooperative; or

(b) the exercise of any rights, or the enforcement of any obligations, by or against the cooperative or any person; or

(c) the continuation of any legal proceedings by or against the cooperative.

(5) Any legal proceedings that might have been continued or commenced by or against the cooperative in its former name may be continued or commenced by or against the cooperative in its new name.

(6) The Commissioner may refuse to approve a change of name if –

(a) the Commissioner is of the opinion that the new name is undesirable; or

(b) the Commissioner is of the opinion that the name is such as is likely to be confused with the name of a body corporate or a registered business name; or

(c) the new name does not conform with any direction of the Minister relating to the names of registered cooperatives.

(7) The Commissioner may direct a cooperative to change its name if the Commissioner is of the opinion that the name is such as is likely to be confused with the name of a body corporate or a registered business name.

256. Restriction on use of word "cooperative" or similar words

(1) A person other than a cooperative must not trade, or carry on business, under a name or title containing the word "cooperative", the abbreviation "co-op" or words importing a similar meaning.

Penalty:

Fine not exceeding 20 penalty units.

(2) Subsection (1) does not apply to an entity mentioned in section 252(5).

257. Registered office of cooperative

(1) A cooperative must have a registered office.

Penalty:

Fine not exceeding 20 penalty units.

(2) A cooperative must, at the premises of its registered office, publicly and conspicuously display a notice stating the name of the cooperative and identifying the premises as its registered office.

Penalty:

Fine not exceeding 20 penalty units.

(3) Not later than 28 days after changing the address of its registered office, a cooperative must give the Commissioner written notice of the new address.

Penalty:

Fine not exceeding 20 penalty units.

PART 10 - Funds and property

Division 1 - Power to raise money

258. Meaning of obtaining financial accommodation

A reference in this Division to the obtaining of financial accommodation includes a reference to the obtaining of credit and the borrowing or raising of money by any means.

259. Fundraising to be in accordance with Act and regulations

The regulations may impose requirements and restrictions on the obtaining of financial accommodation and the giving of security in connection with the obtaining of financial accommodation by a cooperative.

260. Limits on deposit taking

A cooperative must not accept money on deposit unless –

(a) the cooperative is authorised by its rules to accept money on deposit and was authorised by its rules immediately before the commencement of this Act to accept money on deposit; or

(b) the cooperative was a deposit-taking body corporate immediately before it became a cooperative and it is authorised by its rules to accept money on deposit; or

(c) in the case of a merged cooperative, one or more of the cooperatives involved in the merger was a deposit-taking cooperative immediately before the registration of the merged cooperative and the merged cooperative is authorised by its rules to accept money on deposit.

261. Members, &c., not required to see to application of money

A member or other person from whom a cooperative obtains financial accommodation is not required to see to its application and is not affected or prejudiced by the fact that in doing so the cooperative contravened any provision of this Act or the rules of the cooperative.

262. Commissioner's directions about fundraising

(1) The Commissioner may by written notice served on a cooperative give a direction to the cooperative as to the manner in which it is to exercise its functions in connection with the activities of the cooperative in obtaining financial accommodation.

(2) A direction under subsection (1) may make provision for any one or more of the following matters:

(a) requiring the cooperative to cease obtaining financial accommodation or to cease obtaining financial accommodation in a particular way;

(b) requiring the cooperative to repay in accordance with the direction all or part of financial accommodation obtained;

(c) requiring the cooperative to refinance in a specified manner financial accommodation repaid in accordance with the Commissioner's direction;

(d) the manner in which the cooperative is permitted to invest or use the proceeds of financial accommodation it obtains.

263. Subordinated debt

(1) A cooperative may incur subordinated debt.

(2) Subordinated debt is debt incurred under an agreement under which, in the event of the winding-up of the cooperative, any claim of the creditor against the cooperative in respect of the debt is to rank in priority –

(a) equally with the claim of any other creditor who is a party to a similar agreement; and

(b) except as provided by paragraph (a), after the claims of any other creditor of the cooperative and before the claims of members to repayment of any share capital in the cooperative.

(3) An agreement referred to in subsection (2) has effect despite the provisions of Division 6 of Part 5.6 of the Corporations Act (as applied under Division 3 of Part 12 of this Act).

264. Application of Corporations Act to issues of debentures

(1) Subject to subsection (2), the debentures of a cooperative are declared to be applied Corporations legislation matters for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Part 1.2A (Disclosing entities), Chapter 2L (Debentures), Chapter 6D (Fundraising) and Part 7.11 (Conduct in relation to securities) of the Corporations Act, subject to the following modifications:

(a) the provisions apply as if a cooperative were a company;

(b) a reference in those provisions to a corporation includes a reference to a cooperative;

(c) a reference in those provisions to ASIC is a reference to the Commissioner.

(2) The provisions of the Corporations Act made applicable to the debentures of a cooperative by this section do not apply to the following:

(a) a loan to which section 269 applies;

(b) an issue of debentures of a cooperative that is made –

(i) solely to members; or

(ii) solely to members and employees of the cooperative; or

(iii) to a person who on becoming an inactive member of the cooperative has had his or her share capital converted to debt.

(3) Expressions used in this section which are not defined in this Act have the same meaning as in the Corporations Act.

(4) The Commissioner may exempt a cooperative from any of the requirements of the Corporations Act applied by this section or by section 10 and may grant such an exemption unconditionally or subject to conditions.

265. Application of certain other Corporations Act provisions

Debentures to which section 266 applies are declared to be applied Corporations legislation matters for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to sections 722 and 734 of the Corporations Act as if –

(a) a prospectus includes a disclosure statement under section 266; and

(b) a reference to ASIC is read as a reference to the Commissioner.

266. Disclosure statement

(1) This section applies to the issue of debentures of a cooperative where the issue is made –

(a) solely to members; or

(b) solely to members and employees of the cooperative.

(2) Before issuing to the person debentures to which this section applies, a cooperative must provide a person with a disclosure statement, approved by the Commissioner, and containing such information as is reasonably necessary to enable a person to make an informed assessment of the financial prospects of the cooperative, including –

(a) the purpose for which the money raised by the cooperative by the issue of debentures is to be used; and

(b) the rights and liabilities attaching to the debentures; and

(c) the financial position of the cooperative; and

(d) the interests of the directors of the cooperative in the issue of the debentures; and

(e) any compensation or consideration to be paid to officers or members of the cooperative in connection with the issue of debentures; and

(f) such other matters as the Commissioner directs.

(3) Sections 16 (except subsection (2)) and 28 apply to the approval of a disclosure statement under this section with any necessary modifications and in particular as if any reference in section 16 to a formation meeting were a reference to the issue of debentures.

267. Approval of board for transfer of debentures

A debenture of a cooperative cannot be sold or transferred except with the consent of the board and in accordance with the rules of the cooperative.

268. Application of Corporations Law – reissue of redeemed debentures

Debentures issued by a cooperative to any of its members are declared to be applied Corporations legislation matters for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to section 124(1)(b) or 563AAA of the Corporations Act as if a cooperative were a company.

269. Compulsory loan by member to cooperative

(1) If the rules of the cooperative so provide, the cooperative may require its members to lend money, with or without security, to the cooperative, in accordance with a proposal approved by special resolution of the cooperative.

(2) The proposal must not require a loan to be for a term exceeding 7 years or such other term as is prescribed.

(3) The proposal must –

(a) be accompanied by a disclosure statement, approved by the Commissioner, that explains the purpose for which the money raised by the cooperative pursuant to the proposal is to be used and includes any other information that the Commissioner directs; and

(b) clearly show the total amount of the loan to be raised by the cooperative and the basis on which the money required to be lent by each member is to be calculated; and

(c) be accompanied by a statement informing the member that the member may inform the board by notice on or before the date specified in the statement (being a date before the passing of the special resolution) that the member resigns on the passing of the special resolution.

(4) If the proposal so allows, the board of the cooperative may, in accordance with the terms of the proposal, deduct the money required to be lent by a member to the cooperative from money due from the cooperative to the member in respect of his or her dealings with the cooperative.

(5) A proposal to deduct money referred to in subsection (4) must, in addition, clearly show –

(a) the basis on which the money is to be deducted; and

(b) the time and manner of making the deductions.

(6) When approved, the proposal is binding on –

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

(b) all persons who become members of the cooperative after that date and before the total amount of the loan to be raised pursuant to the proposal has been raised.

(7) Sections 16 (except subsection (2)) and 28 apply to the approval of a disclosure statement under this section with any necessary modifications and in particular as if any reference in section 16 to a formation meeting were a reference to the special resolution.

270. Interest payable on compulsory loan

(1) The rate of interest payable by a cooperative in respect of a loan under section 269 during any period is –

(a) in the case of a cooperative with share capital –

(i) the rate (or, if there is more than one rate, at the higher or highest rate) of dividend payable in respect of that period on the share capital of the cooperative; or

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

(iii) if a rate of dividend has never been determined in respect of the share capital of the cooperative, at the rate that the board of the cooperative considers reasonable; or

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

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

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

Division 2 - Charges

271. Registration of charges

Schedule 4 has effect but does not apply to –

(a) a mortgage, charge or encumbrance that is over specific land and is registered under the *Land Titles Act 1980* or a memorandum of which has been registered under the *Conveyancing and Law of Property Act 1884*; or

(b) a mortgage, charge or encumbrance over a specific licence under the laws relating to mining.

Division 3 - Receivers and other controllers of property of cooperatives

272. Receivers and other controllers of property of cooperatives

Schedule 5 has effect.

Division 4 - Disposal of surplus from activities

273. Retention of surplus for benefit of cooperative

The board of a cooperative may resolve to retain all or any part of the surplus arising in any year from the business of the cooperative to be applied for the benefit of the cooperative.

274. Application for charitable purposes or members' purposes

(1) The rules of a cooperative may authorise the cooperative to apply a part of the surplus arising in any year from the business of the cooperative for any charitable purpose.

(2) The rules of a trading cooperative may authorise the cooperative to apply a part of the surplus arising in any year from the business of the cooperative for supporting any activity approved by the cooperative.

(3) The rules must limit the amount that may be applied under subsection (1) or (2) to a specified proportion of the surplus.

(4) A cooperative may apply part of the surplus for a purpose and to the extent authorised by rules under subsection (1) or (2).

275. Distribution of surplus or reserves to members

(1) The rules of a trading cooperative may authorise the cooperative to apply a part of the surplus arising in any year from the business of the cooperative or a part of the reserves of the cooperative by –

(a) distribution to members as a rebate on the basis of business done with the cooperative; or

(b) the issue of bonus shares to members on the basis of business done with the cooperative or on the basis of the shares held by the member; or

(c) the issue to members of a limited dividend for shares held by the member.

(2) The amount of any rebate or dividend payable to a member under subsection (1) may, with the consent of the member, be applied –

(a) in payment for the issue to the member of bonus shares; or

(b) as a loan to the cooperative.

(3) In this section,

limited dividend means a dividend that does not exceed the prescribed amount.

276. Application of surplus to other persons

(1) If authorised by its rules, any part of the surplus arising in any year from the business of a trading cooperative may be credited to any person who is not a member, but is qualified to be a member, by way of rebate in proportion to the business done by him or her with the cooperative, if –

(a) the person was a member at the time the business was done and the membership has lapsed; or

(b) the person has applied for membership after the business was done.

(2) Nothing in this section precludes the payment of a bonus to an employee in accordance with the terms of his or her employment.

Division 5 - Acquisition and disposal of assets

277. Acquisition and disposal of assets

(1) A cooperative must not do any of the following things except as approved by special resolution by means of a special postal ballot:

(a) sell or lease as a going concern, the undertaking of the cooperative or a part of the undertaking that relates to its primary activities the value of which represents 5% or more of the total value of the undertaking;

(b) acquire from or dispose to a director or employee of the cooperative, or a relative (within the meaning of the Corporations Act) of such a director or employee or of the spouse or partner of such a director or employee, any property the value of which represents 5% or more of the total value of all the assets of the cooperative that relate to its primary activities;

(c) acquire an asset the value of which exceeds 5% or more of the assets of the cooperative if the acquisition would result in the cooperative commencing to carry on an activity that is not one of its primary activities;

(d) dispose of an asset if the disposal would result in the cooperative ceasing to carry on any primary activity of the cooperative or in the ability of the cooperative to carry on any primary activity of the cooperative being substantially impaired either generally or in a particular geographical region.

(2) The Commissioner may exempt a cooperative from compliance with all or specified provisions of this section and section 199 in relation to any matter to which this section applies and may grant that exemption unconditionally or subject to conditions.

(3) If a cooperative contravenes this section, each person who is a member of the board of the cooperative is guilty of an offence and liable on summary conviction to a fine not exceeding 60 penalty units unless the person satisfies the court that he or she used all due diligence to prevent the contravention by the cooperative.

PART 11 - Restrictions on the acquisition of interests in cooperatives

Division 1 - Restrictions on share and voting interests

278. Application of Part

This Part applies to trading cooperatives.

279. Notice required to be given of voting interest

(1) A person (whether or not a member of the cooperative) must give notice to a cooperative within 5 business days after becoming aware that the person has a relevant interest in the right to vote of a member of the cooperative.

Penalty:

Fine not exceeding 20 penalty units.

(2) A person (whether or not a member of the cooperative) who has ceased to have a relevant interest in the right to vote of a member of a cooperative must give notice to the cooperative within 5 business days after becoming aware of that fact.

Penalty:

Fine not exceeding 20 penalty units.

(3) Section 183 provides for the effect of a person having a relevant interest in the right to vote of a member of a cooperative.

280. Notice required to be given of substantial share interest

(1) A person must give notice to a cooperative within 5 business days after becoming aware that the person has a substantial share interest in the cooperative.

Penalty:

Fine not exceeding 20 penalty units.

(2) A person who has a substantial share interest in a cooperative must give notice to the cooperative within 5 business days after becoming aware that a substantial change has occurred in that share interest.

Penalty:

Fine not exceeding 20 penalty units.

(3) A person who has ceased to have a substantial share interest in a cooperative must give notice to the cooperative within 5 business days after becoming aware that the person has ceased to have that interest.

Penalty:

Fine not exceeding 20 penalty units.

(4) A person has a "substantial share interest" in a cooperative if the nominal value of the shares in the cooperative in which the person has a relevant interest represents 5% or more of the nominal value of the issued share capital of the cooperative.

(5) A "substantial change" takes place in a person's share interest in a cooperative if there is an increase or decrease in the number of shares in the cooperative in which the person has a relevant interest and the increase or decrease represents at least 1% of the nominal value of the issued share capital of the cooperative.

281. Requirements for notices

A notice required under this Division must –

(a) be in the form approved by the Commissioner; and

(b) specify the prescribed particulars of the interest or change being notified.

282. Maximum permissible level of share interest

(1) A person must not have a relevant interest in shares of a cooperative the nominal value of which exceeds 20% of the nominal value of the issued share capital of the cooperative.

(2) The Commissioner, by order published in the *Gazette*, may specify a maximum greater than 20% as the maximum for the purposes of subsection (1) in respect of a particular cooperative, a particular class of cooperatives or cooperatives generally.

(3) On the making of an order under subsection (2), the percentage is varied accordingly.

(4) The maximum of 20% specified by subsection (1) may be increased in respect of a particular person by special resolution of the cooperative concerned passed by means of a special postal ballot.

(5) A resolution under subsection (4) does not have effect unless –

(a) it is approved by the Commissioner; or

(b) the person concerned is another cooperative.

(6) The Commissioner's approval of the resolution may be given on conditions.

283. Shares to be forfeited to remedy contravention

(1) If a person has a relevant interest in a share of a cooperative in contravention of this Division, the board of the cooperative must declare to be forfeited sufficient of the shares in which the person has a relevant interest to remedy the contravention.

(2) The shares to be forfeited are –

(a) the shares nominated by the person for the purpose; or

(b) in the absence of such a nomination, the shares in which the person has had a relevant interest for the shortest time.

(3) A declaration of the board that shares are forfeited operates to forfeit the shares concerned.

(4) Sections 131 to 133 apply to and in respect of shares forfeited under this section as if the shares had been forfeited under Part 6.

284. Powers of board in response to suspected contravention

(1) If the board of a cooperative is satisfied on reasonable grounds that a person has contravened section 279 in respect of the cooperative, the board may do either or both of the following:

(a) refuse to register any share transfer involving the person;

(b) suspend any specified rights or entitlements that a person has as a member of the cooperative or attaching to any shares of the cooperative in which the person has a relevant interest.

(2) The board may request a person who it suspects has a relevant interest in any shares of the cooperative to furnish specified information to the board concerning that interest.

(3) A failure by a person to comply with a request under subsection (2) constitutes reasonable grounds for being satisfied that the person has contravened section 279.

285. Powers of Supreme Court with respect to contravention

(1) If a person has contravened section 279 in respect of a cooperative, the Supreme Court may, on the application of the cooperative or the Commissioner, make any order or orders that it thinks just.

(2) Without limiting subsection (1), the orders may include –

(a) a remedial order; and

(b) for the purpose of securing compliance with any other order made under this section, an order directing the cooperative or any other person to do or refrain from doing a specified act.

(3) An order may be made whether or not the contravention continues.

(4) Proof to the satisfaction of the Supreme Court at the hearing of an application that –

(a) a person has a relevant interest in a share of a cooperative because an associate of the person has a relevant interest in a share; and

(b) the associate became entitled to that relevant interest within 6 months before the application was filed with the Supreme Court –

is evidence that the associate was an associate of the person from the time the person first had the relevant interest until the date of the hearing.

286. Cooperative to inform Commissioner of interest over 20%

(1) A cooperative must inform the Commissioner in writing within 14 days after the board becomes aware that –

(a) a particular person has a relevant interest in shares of the cooperative the nominal value of which exceeds 20% of the nominal value of the issued share capital of the cooperative; or

(b) there has been a change in the number of shares in which such a person holds a relevant interest.

(2) The notification must give details of the relevant interest concerned or of the change concerned.

287. Cooperative to keep register

(1) A cooperative must keep a register of notifiable interests.

(2) The cooperative must enter in the register in alphabetical order the names of persons from whom the cooperative has received a notification under this Division together with the information contained in the notification.

(3) The register must be open for inspection –

(a) by any member of the cooperative free of charge; and

(b) by any other person on payment of the fee (if any) that the cooperative may require, not exceeding the prescribed maximum fee.

288. Unlisted companies to provide list of shareholders, &c.

(1) This section applies to a company (within the meaning of the Corporations Act) that is not a listed corporation (within the meaning of that Act).

(2) A company to which this section applies that is a member of a cooperative must furnish to the cooperative a list showing –

(a) the name of each member of the company as at the end of the financial year of the company and the number of shares in the company held by each member; and

(b) the name of each person who has a relevant interest (within the meaning of the Corporations Act) in any share of the company together with details of that interest; and

(c) the name of each person who is an associate (within the meaning of the Corporations Act) of the company.

(3) A list under subsection (2) must be furnished within 28 days after the end of each financial year of the company and within 28 days after a request for the list is made in writing to the company by the Commissioner.

(4) The details to be shown on the list are those details as at the end of the financial year concerned or, if the list is provided at the request of the Commissioner, as at the date specified in the request.

(5) The Commissioner may make a request under subsection (3) at any time but only if the Commissioner is of the opinion that the company is or may be involved in a suspected contravention of a provision of this Division.

289. Excess share interest not to affect loan liability

(1) This section applies if a cooperative has made a loan to a member and the member had or has a relevant interest in shares of the cooperative in contravention of this Division.

(2) Until the amount lent to the member has been repaid to the cooperative (with any interest payable), the member is liable to make to the cooperative the payments which the member would be liable to make if all the shares concerned were lawfully held by the member.

(3) Any security for the repayment of the loan is not affected by a contravention of this Division.

290. Extent of operation of Division

This Division –

(a) applies to all natural persons, whether resident in Tasmania or in Australia or not and whether Australian citizens or not, and to all bodies corporate or unincorporated, whether incorporated or carrying on business in the State or in Australia or not; and

(b) extends to acts done or omitted to be done outside the State, whether in Australia or not.

291. Commissioner may grant exemption from Division

(1) The Commissioner may grant exemptions from the operation of this Division in a particular case or class of cases.

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

Division 2 - Restrictions on certain share offers

292. Share offers to which Division applies

(1) This Division applies to the following offers to purchase shares in a cooperative:

(a) an offer made as part of a proposal for, or that is conditional on, the sale of the undertaking or any part of the undertaking, as a going concern, of the cooperative;

(b) an offer made as part of a proposal for, or that is conditional on, the registration of the cooperative as a company under the Corporations Act;

(c) an offer made as part of a proposal for, or that is conditional on, the winding-up of the cooperative;

(d) an offer that would result in a contravention of section 282 were the offeror to be registered (immediately after the offer is made) as the holder of the shares that are the subject of the offer;

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

(2) In subsection (1)(e) –

substantial share interest has the same meaning as it has in section 280;

substantial change has the same meaning as it has in section 280.

293. Requirements to be satisfied before offer can be made

(1) A person must not make an offer to which this Division applies unless the making of the offer has been approved –

(a) by special resolution by means of a special postal ballot; and

(b) by the Commissioner.

(2) Despite subsection (1), an offer referred to in section 292(1)(e) can be made even if it has not been approved as referred to in that subsection if it is made in circumstances specified in and in accordance with the requirements of the regulations.

294. Some offers totally prohibited if they discriminate

An offer referred to in section 292(1)(a) to (d) must not be made at all if it operates or would operate to discriminate between members who are active members and members who are not active members.

295. Offers to be submitted to board first

(1) Any proposal to make an offer to which this Division applies must, in the first instance, be submitted to the board of the cooperative.

(2) The board may decline to put a proposed offer to a special postal ballot unless arrangements satisfactory to the board have been made for payment to the cooperative of the expenses involved in holding the ballot.

(3) The board may require payment in advance under subsection (2).

(4) A requisition for a special postal ballot for the purposes of this Division cannot be served unless and until the board has had a reasonable opportunity to consider the proposed offer concerned.

(5) A period of 28 days is to be considered to constitute a reasonable opportunity for considering a proposed offer but the Commissioner may extend that period in a particular case by written notice to the cooperative.

296. Announcements of proposed takeovers concerning proposed company

(1) This section applies to an offer to purchase shares in a cooperative made as part of a proposal for, or that is conditional on, the registration of the cooperative as a company ("the proposed company") under the Corporations Act.

(2) A person must not make a public announcement to the effect that the person proposes, or that the person and another person or other persons together propose, to make takeover offers, or to cause a takeover announcement to be made, in relation to the proposed company if –

(a) the person knows that the announcement is false or is recklessly indifferent as to whether it is true or false; or

(b) the person has no reasonable grounds for believing that the person, or the person and the other person or persons, will be able to perform obligations arising under the scheme or announcement or under the Corporations Act in connection with the scheme or announcement if a substantial proportion of the offers or the offers made under the announcement are accepted.

Penalty:

Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 5 years, or both.

(3) If a person makes a public announcement to the effect that the person proposes, or that the person and another person or other persons together propose, to make a takeover bid in relation to the proposed company, the person must proceed to make a takeover bid in relation to shares in the company in accordance with the public announcement within 2 months after the day on which the company is incorporated.

Penalty:

Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years, or both.

(4) A person is not liable to be convicted of more than one offence under subsection (3) in respect of any one public announcement.

(5) A person who contravenes this section (whether or not the person is convicted of an offence for the contravention) is liable to pay compensation to any other person who suffered loss as a result of entering into a transaction with respect to shares in reliance on the public announcement concerned.

(6) The amount of that compensation is the difference between the price of the shares at which the transaction was entered into and the price of the shares at which the transaction would have been likely to have been entered into if the person had not made the public announcement.

(7) A person is not guilty of an offence for a contravention of subsection (3) and is not liable to pay compensation in respect of the contravention if it is proved that the person could not reasonably have been expected to make the takeover bid concerned –

(a) as a result of circumstances that existed at the time of the making of the public announcement but of which the person had no knowledge and could not reasonably have been expected to have knowledge; or

(b) as a result of a change in circumstances after the making of the announcement, other than a change in circumstances caused directly or indirectly by the person.

(8) Expressions used in this section have the same meanings as in section 746 of the Corporations Law as applying on 12 March 2000.

297. Additional disclosure requirements for offers involving conversion to company

If an offer is part of a proposal for, or is conditional on, the registration of the cooperative as a company under the Corporations Act, the disclosure statement required to be sent to members for the purposes of the special postal ballot must contain the following additional information:

(a) full particulars of any proposal whereby any of the directors will acquire a relevant interest in any share of the company to be formed;

(b) any other information that is material to the making of a decision by a member whether or not to agree to the making of the offer, being information that is within the knowledge of the directors and has not previously been disclosed to the members;

(c) any other information that the Commissioner directs.

298. Consequences of prohibited offer

(1) If a person makes an offer to purchase shares in a cooperative in contravention of this Division –

(a) the person is not entitled to be registered as the holder of the shares concerned; and

(b) if the transfer of the shares is registered, the person is not entitled to vote at any meeting of the cooperative.

(2) Any vote cast by or on behalf of a member when the member is not entitled to vote because of the operation of this section is to be disregarded.

299. Commissioner may grant exemptions

The Commissioner may exempt a cooperative from compliance with all or specified provisions of this Division and section 199 in relation to any matter to which this Division applies and may grant such an exemption unconditionally or subject to conditions.

PART 12 - Merger, Transfer of engagements, winding-up

Division 1 - Mergers and transfers of engagements

300. Application of Division

This Division does not apply to a merger or transfer of engagements to which Part 14 applies.

301. Mergers and transfers of engagements of local cooperatives

Any 2 or more cooperatives may consolidate all or any of their assets, liabilities and undertakings by way of merger or transfer of engagements approved under this Division.

302. Requirements before application can be made

(1) Before cooperatives can apply for approval under this Division of a merger or transfer of engagements, the proposed merger or transfer must have been approved by each of the cooperatives by –

(a) a special resolution passed by means of a special postal ballot; or

(b) (if permitted by subsection (2)) a resolution of the board of the cooperative.

(2) The proposed merger or transfer of engagements may be approved by resolution of the board of a cooperative if the Commissioner consents to that procedure applying in the particular case.

303. Disclosure statement required

(1) A resolution of a cooperative is not effective for the purposes of this Division unless this section has been complied with.

(2) Each cooperative must send to each of its members a disclosure statement approved by the Commissioner specifying –

(a) the financial position of each cooperative concerned in the proposed merger or transfer of engagements as shown in financial statements that have been prepared as at a date that is not more than 6 months before the date of the statement; and

(b) any interest that any officer of each cooperative has in the proposed merger or transfer of engagements; and

(c) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to any officer or member of each cooperative in relation to the proposed merger or transfer of engagements; and

(d) whether the proposal is a merger or transfer of engagements and the reason for the merger or transfer of engagements; and

(e) in the case of a transfer of engagements, whether it is a total or partial transfer of engagements; and

(f) any other information that the Commissioner directs.

(3) The disclosure statement must be sent to the members of each cooperative so that it will, in the ordinary course of post, reach each member who is entitled to vote on the special resolution not later than 21 days before the day on or before which the ballot papers must be returned by members voting in the special postal ballot.

(4) The Commissioner may exempt a cooperative from complying with this section.

(5) The Commissioner may grant an exemption, or approve a disclosure statement, subject to any conditions he or she considers appropriate.

304. Making an application

(1) An application for approval of a merger or transfer of engagements under this Division must be made to the Commissioner in the manner and form required by the Commissioner.

(2) An application for approval of a merger must be accompanied by 2 copies of the proposed rules of the merged cooperative and any other particulars required by the Commissioner.

305. Approval of merger

(1) The Commissioner must approve a merger pursuant to an application under this Division if satisfied that –

(a) this Division has been complied with in relation to the application; and

(b) the proposed rules of the merged cooperative are consistent with this Act and the regulations and are such that may reasonably be approved; and

(c) the certificates of registration of the cooperatives have been surrendered to the Commissioner or have been lost or destroyed; and

(d) there is no good reason why the merged cooperative and its rules should not be registered.

(2) On approving an application for merger, the Commissioner must –

(a) cancel the registration of the cooperatives involved in the merger; and

(b) register the merged cooperative and its rules; and

(c) issue to the merged cooperative a certificate of registration under this Act.

(3) A merger takes effect on the issue of the certificate of registration for the merged cooperative.

306. Approval of transfer of engagements

(1) The Commissioner must approve a transfer of engagements pursuant to an application under this Division if satisfied that –

(a) this Division has been complied with in relation to the application; and

(b) the rules or proposed rules of the transferee cooperative are adequate; and

(c) in the case of a total transfer of engagements from a cooperative, the certificate of registration of the cooperative has been surrendered to the Commissioner or has been lost or destroyed; and

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

(2) A transfer of engagements takes effect on the day specified in the approval of the Commissioner.

307. Transfer of engagements by direction of Commissioner

(1) The Commissioner may, with the approval of the Minister, direct a cooperative –

(a) to transfer its engagements to a cooperative approved by the Commissioner; and

(b) within a period specified by the Commissioner when giving the direction or within such further period as the Commissioner may allow, to enter into an agreement approved by the Commissioner to give effect to the transfer of engagements directed.

(2) The Commissioner must not give such a direction to a cooperative unless the necessary grounds exist for the giving of the direction, as referred to in section 339.

(3) The transfer of engagements must make provision in a manner approved by the Commissioner for those members of the transferor cooperative who wish to do so to become members of the transferee cooperative.

(4) If a cooperative fails to comply with a direction under this section, the Commissioner may elect to treat the failure as the necessary grounds –

(a) for the winding-up of the cooperative on a certificate of the Commissioner; or

(b) for the appointing of an administrator of the cooperative.

(5) The Commissioner must notify the cooperative of the Commissioner's decision under subsection (4).

(6) The Commissioner may revoke a direction under this section at any time up until the cooperative has agreed pursuant to the direction to transfer its engagements.

(7) A transfer of engagements directed under this section takes effect on a day notified by the Commissioner in the *Gazette*.

(8) An officer of a cooperative who –

(a) fails to take all reasonable steps to secure compliance by the cooperative with a direction given under this section; or

(b) by a wilful act or omission is the cause of a failure by the cooperative to comply with such a direction –

is guilty of an offence and liable on summary conviction to a fine not exceeding 20 penalty units.

Division 2 - Transfer of incorporation

308. Application for transfer

A cooperative, if approved under this Division, may apply to become registered or incorporated as one of the following bodies corporate:

(a) a company under the Corporations Act;

(b) an incorporated association under the *Associations Incorporation Act 1964*;

(c) a cooperative housing society under the *Co-operative Housing Societies Act 1963*;

(d) any body corporate that is incorporated, registered or otherwise established under a law that is a law of a place outside the State and that is prescribed for the purposes of this section.

309. Requirements before application can be made

(1) Before an application is made under section 308, the cooperative must, by special resolution passed by means of a special postal ballot –

(a) approve the proposed application; and

(b) determine under what name the cooperative is to apply to be incorporated or registered; and

(c) adopt any memorandum or articles of association or constitution or replaceable rules or rules that may be necessary or considered desirable.

(2) The name applied for need not be the same as that of the cooperative and must not include the word "cooperative" or any other word importing a similar meaning.

(3) The Commissioner may, by order, exempt a cooperative from compliance with all or specified provisions of this section and section 199 in relation to any matter to which this section applies.

(4) An exemption under subsection (3) may be granted unconditionally or subject to conditions.

310. Meaning of "new body" and "transfer"

The registration or incorporation of a cooperative as a body corporate as a result of an application under this Division is referred to in this Division as its "transfer" and the body corporate concerned is referred to in this Division as "the new body".

311. New body ceases to be registered as cooperative

On the transfer of a cooperative under this Division, it ceases to be registered as a cooperative under this Act.

312. Transfer not to impose greater liability, &c.

(1) Any memorandum or articles of association or constitution or replaceable rules or rules adopted for the purposes of the transfer must not be such as to –

(a) impose on the members of the new body who were members of the cooperative at the date of transfer any greater or different liability to contribute to the assets of the new body than the liability to which they were subject as members of the cooperative; or

(b) deprive any member of the new body of any preferential rights with respect to dividend or capital to which the member was entitled as a member of the cooperative at the date of transfer.

(2) The transfer must result in all persons who were members of the cooperative at the date of transfer becoming members of the new body.

(3) In the case of a transfer of a cooperative that has a share capital to a new body that has a share capital, the transfer must result in every member of the cooperative at the date of transfer who held shares in the cooperative being the holder of shares in the capital of the new body equal in number and nominal value to the shares held by the member as a member of the cooperative.

313. Effect of new certificate of registration

A certificate of registration or incorporation as the new body issued by the appropriate officer under the law applicable to the new body is conclusive evidence that all the requirements of this Division in respect of that registration or incorporation have been complied with.

314. New body must give copy of new certificate of registration or incorporation to Commissioner

On the transfer of a cooperative under this Division, the new body must immediately give the Commissioner a copy of its new certificate of registration or incorporation.

Penalty:

Fine not exceeding 10 penalty units.

315. New body is a continuation of the cooperative

(1) When a cooperative transfers to a new body, the body corporate constituted by the new body is to be considered to be the same entity as the body corporate constituted by the cooperative.

(2) Without limiting subsection (1), Division 6 applies to a transfer under this Division.

Division 3 - Winding-up and deregistration

316. Methods of winding-up

(1) A cooperative may be wound-up voluntarily or by the Supreme Court or on a certificate of the Commissioner.

(2) In the case of a winding-up voluntarily or by the Supreme Court, the cooperative may be wound-up in the same manner and in the same circumstances as a company under the Corporations Act may be so wound-up.

317. Winding-up on Commissioner's certificate

(1) A cooperative may be wound-up on a certificate of the Commissioner only if the necessary grounds for the taking of that action exist, as referred to in section 339.

(2) A winding-up on a certificate of the Commissioner commences when the certificate is given.

(3) On the giving of a certificate, the Commissioner may appoint a person to be the liquidator of the cooperative.

(4) The liquidator need not be a registered liquidator under the Corporations Act.

(5) The liquidator must, within 10 days after appointment, give notice of his or her appointment in the *Gazette*.

(6) The liquidator must give such security as may be prescribed and is entitled to receive such fees as are fixed by the Commissioner.

(7) Any vacancy occurring in the office of liquidator is to be filled by a person appointed by the Commissioner.

318. Method of deregistration

A cooperative may be deregistered in the same way and in the same circumstances as a company under the Corporations Act may be deregistered.

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

The winding-up or deregistration of a cooperative, and a deregistered cooperative, are declared to be applied Corporations legislation matters for the purposes of *Part 3 of the Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Parts 5.4 to 5.7 and Chapter 5A of the Corporations Act, subject to the following modifications:

(a) a reference in any of those provisions to a special resolution or an extraordinary resolution is to be read as a reference to a special resolution within the meaning of this Act;

(b) a reference in any of those provisions to ASIC is to be read as a reference to the Commissioner;

(c) section 461(1)(h) is to be considered to be amended by substituting for "ASIC has stated in a report prepared under Division 1 of Part 3 of the ASIC Act that, in its opinion:", "the Commissioner has, as a result of an inquiry conducted under Division 2 or Division 4 of Part 15 of the *Cooperatives Act 1999*, stated that –";

(d) section 464(1) is to be considered to be amended by substituting for "Where ASIC is investigating, or has investigated, under Division 1 of Part 3 of the ASIC Act:", "Where the Commissioner is holding or has held an inquiry under Division 2 or Division 4 of Part 15 of the *Cooperatives Act 1999* in relation to –"

(e) section 513B is to be considered to be amended by inserting after paragraph (d) –

(da) if the winding-up is on the certificate of the Commissioner, on the date that the certificate is given; or

(f) section 516 is to be considered to be amended by inserting after the words "past member" the words "together with any charges payable by him or her to the cooperative in accordance with the rules";

(g) section 542(3) is to be considered to be amended by inserting after paragraph (c) –

and

(d) in the case of a winding-up on a certificate of the Commissioner under section 317 of the *Cooperatives Act 1999* – with the consent of the Commissioner.

(h) a reference in any of those provisions to a registered liquidator is to be read as including a reference to a person approved by the Commissioner as a liquidator of a cooperative;

(i) a reference in any of those provisions to section 233 of the Corporations Act is to be read as a reference to Division 5 of Part 4 of this Act;

(j) for the purposes of the application of those provisions to a winding-up on the certificate of the Commissioner, the winding-up is to be considered to be a voluntary winding-up (but section 490 of the Corporations Act does not apply);

(k) those provisions are to be read subject to section 69 (Liability of members to cooperative) and section 325 (Liability of member to contribute in a winding-up where shares forfeited, &c.) of this Act for the purposes of determining the liability of members and former members to contribute on a winding-up of a cooperative;

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

320. Restrictions on voluntary winding-up

(1) A cooperative may be wound-up voluntarily only –

(a) by a creditors' voluntary winding-up; or

(b) if a special resolution is passed by means of a special postal ballot in favour of voluntary winding-up.

(2) The Commissioner may by order exempt a cooperative from compliance with all or specified provisions of this section or section 199.

(3) An exemption under subsection (2) may be granted either unconditionally or subject to conditions.

(4) When a special postal ballot is held, the members may, by means of the same ballot, by simple majority –

(a) appoint one or more liquidators for the purpose of winding-up the affairs and distributing the assets of the cooperative; and

(b) fix the remuneration to be paid to the liquidator.

321. Commencement of members' voluntary winding-up

A members' voluntary winding-up of a cooperative commences when the result of the special postal ballot is noted in the minute book by the secretary of the cooperative.

322. Distribution of surplus – non-trading cooperatives

(1) On a winding-up of a non-trading cooperative, the surplus property of the cooperative must be distributed as required by the rules of the cooperative.

(2) The rules of a non-trading cooperative must make provision for the manner in which the surplus property of the cooperative is to be distributed in a winding-up.

(3) In this section,

surplus property means that property of the cooperative that remains after satisfaction of the debts and liabilities of the cooperative and the costs, charges and expenses of the winding-up.

323. Liquidator – vacancy may be filled by Commissioner

If a cooperative is being wound-up voluntarily and a vacancy occurs in the office of liquidator which in the opinion of the Commissioner is unlikely to be filled in the manner provided by the Corporations Act, the Commissioner may appoint a person to be liquidator.

324. Review of liquidator's remuneration

Any member or creditor of a cooperative or the liquidator may at any time before the completion of the winding-up of the cooperative apply to the Supreme Court to review the amount of the remuneration of the liquidator.

325. Liability of member to contribute in a winding-up where shares forfeited, &c.

(1) If a person's membership of a cooperative is cancelled under Part 6 within 2 years before the commencement of the winding-up of the cooperative, the person is liable on the winding-up to contribute to the property of the cooperative the nominal value of any shares forfeited in connection with that cancellation (being their nominal value immediately before cancellation).

(2) If under section 172 a cooperative –

(a) purchases any share of a member in the cooperative; or

(b) repays to a member the whole or any part of the amount paid-up on any share held by a member –

within 2 years before the commencement of the winding-up of the cooperative, the member or former member is liable on the winding-up to contribute to the property of the cooperative the amount which was paid by the cooperative to the member or former member in respect of the purchase or repayment together with any amount unpaid on those shares immediately before the purchase or repayment.

(3) If a person contributes to the property of a cooperative pursuant to a liability under this section, the amount contributed is, for the purposes of the winding-up concerned, to be treated as having been paid-up by the person on shares of the cooperative.

(4) The liability of a member or former member of a cooperative under this section is in addition to any other liability of the member or former member to contribute to the property of the cooperative on a winding-up of the cooperative.

Division 4 - Administration of cooperative – adoption of Corporations Law

326. Application of Corporations Act to winding-up

A cooperative 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 Part 5.3A and Division 3 of Part 5.9 of the Corporations Act, subject to the following modifications:

(a) those provisions are to be read as if a cooperative were a company;

(b) those provisions are to be read as including the provisions of section 327 of this Act;

(c) references in those provisions to sections 128 and 129 of the Corporations Act are to be read as references to sections 41 to 43 and 45 of this Act;

(d) references in those provisions to an administrator appointed under a provision of Part 5.3A are to be read as including a reference to an administrator appointed by the Commissioner under the provision included by paragraph (b);

(e) references in those provisions to ASIC are to be read as references to the Commissioner;

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

Division 5 - Appointment of administrator

327. Appointment of administrator

(1) The Commissioner may, by written notice, appoint an administrator to conduct the affairs of a cooperative.

(2) A notice of appointment must specify –

(a) the date of appointment; and

(b) the appointee's name; and

(c) the appointee's business address.

(3) If the appointee's name or business address changes, the appointee must immediately give written notice of the change to the Commissioner.

(4) The Commissioner must not appoint an administrator unless the necessary grounds for the taking of that action exist, as referred to in section 339.

328. Effect of appointment of administrator

(1) On the appointment of an administrator of a cooperative –

(a) the directors of the cooperative cease to hold office; and

(b) all contracts of employment with the cooperative are terminated; and

(c) all contracts for the provision of secretarial or administrative services for the cooperative are terminated; and

(d) the administrator may terminate any contract for providing other services to the cooperative.

(2) An administrator of a cooperative has the functions of the board of the cooperative, including the board's powers of delegation.

(3) A director of a cooperative must not be appointed or elected while the administrator is in office except as provided by this Division.

329. Revocation of appointment

(1) An administrator holds office until the administrator's appointment is revoked.

(2) The Commissioner may, by written notice, revoke the appointment of an administrator.

(3) When a liquidator of a cooperative is appointed, the appointment of any administrator of the cooperative is automatically revoked.

(4) Immediately on the revocation of an administrator's appointment, the administrator must prepare and submit a report to the Commissioner showing how the administration was carried out, and for that purpose an administrator has access to the cooperative's records and documents.

(5) On providing the report and accounting fully in relation to the administration of the cooperative to the satisfaction of the Commissioner, the administrator is released from any further duty to account in relation to the administration of the cooperative other than on account of fraud, dishonesty, negligence or wilful failure to comply with this Act or the regulations.

(6) Before revoking the appointment of an administrator of a cooperative, the Commissioner must –

(a) appoint another administrator; or

(b) appoint a liquidator; or

(c) ensure that directors of the cooperative have been elected in accordance with the rules of the cooperative at a meeting convened by the administrator in accordance with those rules; or

(d) appoint directors of the cooperative.

(7) Directors elected or appointed under subsection (6) –

(a) take office on revocation of the administrator's appointment; and

(b) in the case of directors appointed under subsection (6), hold office until the next annual general meeting of the cooperative after the revocation of that appointment.

330. Expenses of administration

(1) The expenses of and incidental to the conduct of a cooperative's affairs by an administrator are payable from the cooperative's funds.

(2) The expenses of conducting a cooperative's affairs include –

(a) if the administrator is not a State Service officer or State Service employee, remuneration of the administrator at a rate approved by the Commissioner; or

(b) if the administrator is a State Service officer or State Service employee, the amount that the Commissioner certifies should be paid to the Commissioner as repayment of the administrator's remuneration.

(3) An amount certified under subsection (2)(b) may be recovered in a court of competent jurisdiction as a debt due to the Crown.

(4) An administrator has, in relation to the expenses specified in subsection (1), the same priority on the winding-up of a cooperative as the liquidator of the cooperative has.

331. Liabilities arising from administration

(1) If a cooperative incurs any loss because of any fraud, dishonesty, negligence or wilful failure to comply with this Act or the rules of the cooperative by an administrator, the administrator is liable for the loss.

(2) An administrator is not liable for any loss that is not a loss to which subsection (1) applies but must account for the loss in a report given under section 329.

332. Additional powers of Commissioner

(1) If the Commissioner appoints directors of a cooperative under section 329, the Commissioner may, by written notice given to the cooperative, specify –

(a) a time during which this section is to apply in relation to the cooperative; and

(b) the terms and conditions on which all or any of the directors hold office; and

(c) the rules that are to be the cooperative's rules.

(2) While this section applies to a cooperative, the Commissioner may –

(a) from time to time remove and appoint directors; and

(b) from time to time, vary, revoke or specify new terms and conditions in place of all or any of the terms and conditions specified under subsection (1); and

(c) amend all or any of the rules specified under subsection (1).

(3) The Commissioner may, by written notice given to the cooperative, extend the time for which this section is to apply in relation to a cooperative.

(4) A rule specified by the Commissioner under this section as a rule of a cooperative –

(a) is not to be altered except in the way set out in this section; and

(b) if it is inconsistent with any other rule of the cooperative, prevails over the other rule, and the other rule is to the extent of the inconsistency invalid; and

(c) has the same evidentiary value as is by this Act accorded to the cooperative's rules and to copies of them.

333. Stay of proceedings

(1) If the Commissioner appoints an administrator to conduct a cooperative's affairs, a person must not begin or continue any proceeding in a court against the cooperative until the administrator's appointment is revoked except with the leave of the Supreme Court and, if the Supreme Court grants leave, in accordance with any terms and conditions that the Supreme Court imposes.

(2) A person intending to apply for leave of the Supreme Court under subsection (1) must give the Commissioner not less than 10 days notice of intention to apply.

(3) On the hearing of an application under subsection (1), the Commissioner may be represented and may oppose the granting of the application.

334. Administrator to report to Commissioner

On the receipt of a request from the Commissioner, the administrator of a cooperative must, without delay, prepare and give to the Commissioner a report showing how the administration is being carried out.

Division 6 - Effect of merger, &c., on property, liabilities, &c.

335. How this Division applies to a merger

(1) This Division applies to a merger of cooperatives under this Part.

(2) In the application of this Division to a merger –

new body means the cooperative that results from the merger;

original body means each cooperative that is a party to the merger;

relevant day means the day on which the merged cooperative is registered under this Act.

336. How this Division applies to a transfer of engagements

(1) This Division applies to a transfer of the engagements of a cooperative to another cooperative under Division 1.

(2) In the application of this Division to a transfer of engagements –

new body means the cooperative to which the engagements are transferred;

original body means the cooperative that transfers its engagements;

relevant day means the day on which the transfer of engagements takes effect.

337. How this Division applies to a transfer of incorporation

(1) This Division applies to a transfer of incorporation under Division 2.

(2) In the application of this Division to such a transfer –

new body means the body corporate that results from the transfer;

original body means the cooperative that transfers its incorporation;

relevant day means the day on which the transfer takes effect.

338. Effect of merger, &c., on property, liabilities, &c.

(1) In this section –

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents;

instrument means an instrument (other than this Act) which creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order and process of a court;

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

(2) On and from the relevant day for an event to which this Division applies –

(a) the assets of the original body vest in the new body without the need for any conveyance, transfer, assignment or assurance; and

(b) the rights and liabilities of the original body become the rights and liabilities of the new body; and

(c) all proceedings by or against the original body that are pending immediately before the relevant day are taken to be proceedings pending by or against the new body; and

(d) any act, matter or thing done or omitted to be done by, to or in respect of the original body before the relevant day is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the new body; and

(e) a reference in an instrument or in any document of any kind to the original body is to be read as, or as including, a reference to the new body.

(3) The operation of this section is not to be regarded –

(a) as a breach of contract or confidence or otherwise as a civil wrong; or

(b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or

(c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.

Division 7 - Miscellaneous

339. Grounds for winding-up, transfer of engagements, appointment of administrator

(1) This section applies to the following actions:

(a) a direction by the Commissioner to a cooperative to transfer its engagements under section 307;

(b) the appointment of an administrator of a cooperative under Division 5;

(c) the winding-up of a cooperative on a certificate of the Commissioner under section 317.

(2) The necessary grounds for the taking of action to which this section applies exist if the Commissioner certifies –

(a) that the number of members is reduced to less than the minimum number of persons allowed, as referred to in section 67; or

(b) that the cooperative has not commenced business within one year of registration or has suspended business for a period of more than 6 months; or

(c) that the registration of the cooperative has been obtained by mistake or fraud; or

(d) that the cooperative exists for an illegal purpose; or

(e) that the cooperative has wilfully and after notice from the Commissioner violated the provisions of this Act or of the rules of the cooperative; or

(f) that the board of the cooperative has, after notice from the Commissioner, failed to ensure that the rules of the cooperative contain active membership provisions in accordance with Part 6; or

(g) that there are, and have been for a period of one month immediately before the date of the Commissioner's certificate, insufficient directors of the cooperative to constitute a quorum as provided by the rules of the cooperative; or

(h) following an inquiry pursuant to the provisions of this Act into the affairs of a cooperative or the working and financial condition of a cooperative, that in the interests of members or creditors of the cooperative or the public the action concerned should be taken.

(3) Alternatively, the necessary grounds for the winding-up of a cooperative on a certificate of the Commissioner exist if the Commissioner certifies –

(a) that the period, if any, fixed for the duration of the cooperative by its rules has expired; or

(b) that an event (to be specified in the certificate) has occurred on the occurrence of which the regulations or the rules provide that the cooperative is to be wound-up.

(4) The Commissioner must not certify under this section as to any matter unless the matter has been proved to the Commissioner's satisfaction.

340. Application of Corporations Act concerning insolvent cooperatives

A cooperative 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 Part 5.7B (other than section 588G) of the Corporations Act, subject to the following modifications:

(a) those provisions are to be read as if a cooperative were a company;

(b) a reference in those provisions to any provision of section 286 to 290 of the Corporations Act is to be read as a reference to the equivalent provisions of the regulations under section 238 of this Act;

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

341.

PART 13 - Arrangements and reconstructions

Division 1 - General requirements

342. Requirements for binding compromise or arrangement

(1) A compromise or arrangement is binding only if it is approved by order of the Supreme Court and it is agreed to –

(a) if the compromise or arrangement is between the cooperative and any of its creditors, at a court ordered meeting by a majority in number of the creditors concerned who are present and voting (in person or by proxy), being a majority whose debts or claims against the cooperative amount to at least 75% of the total of the debts and claims of all those creditors who are present and voting (in person or by proxy); or

(b) if the compromise or arrangement is between the cooperative and any of its members, by the members concerned by special resolution passed by means of a special postal ballot.

(2) The court ordered meeting referred to in subsection (1)(a) is a meeting convened in accordance with an order of the Supreme Court under this Part.

(3) The Supreme Court may grant its approval to a compromise or arrangement subject to such alterations or conditions as it thinks just.

(4) An order of the Supreme Court approving a compromise or arrangement does not have any effect until an office copy of the order is lodged with the Commissioner.

(5) On the copy being lodged, the order takes effect from the date of lodgment or such earlier date as the Supreme Court specifies in the order.

343. Supreme Court ordered meeting of creditors

(1) If a compromise or arrangement is proposed between a cooperative and any of its creditors, the Supreme Court may on application by an appropriate person order a meeting or meetings of the creditors concerned.

(2) An appropriate person to apply for an order is –

(a) the cooperative; or

(b) any member of the cooperative; or

(c) any of the creditors concerned; or

(d) in the case of a cooperative being wound-up, the liquidator.

(3) The meeting must be convened in the manner and be held in the place or places (in the State or elsewhere) that the Supreme Court directs.

(4) In considering whether to make an order for a meeting to be held in another jurisdiction, the Supreme Court may have regard to where creditors concerned reside.

344. Commissioner to be given notice and opportunity to make submissions

(1) The Supreme Court may make an order under this Division, if the Supreme Court is satisfied that –

(a) at least 14 days notice of the hearing of the application for the order, or such shorter period of notice as the Supreme Court or the Commissioner permits, has been given to the Commissioner; and

(b) the Commissioner has had a reasonable opportunity to examine the terms of and make submissions to the Supreme Court in relation to the proposed compromise or arrangement concerned and a draft explanatory statement relating to it.

(2) The draft explanatory statement referred to in subsection (1) is a statement –

(a) explaining the effect of the proposed compromise or arrangement and, in particular, stating –

(i) any material interests of the directors of the cooperative, whether as directors, as members or creditors of the cooperative or otherwise; and

(ii) the effect on those interests of the proposed compromise or arrangement in so far as that effect is different from the effect on the like interests of other persons; and

(b) setting out –

(i) any information that is prescribed; and

(ii) any other information that is material to the making of a decision by a creditor or member of the cooperative whether or not to agree to the proposed compromise or arrangement, being information that is within the knowledge of the directors of the cooperative and has not previously been disclosed to the creditors or members of the cooperative.

345. Results of 2 or more meetings

If the Supreme Court orders 2 or more meetings of creditors to be held in relation to a proposed compromise or arrangement –

(a) the meetings are to be considered to constitute a single meeting; and

(b) the votes in favour of the proposed compromise or arrangement cast at each of the meetings are to be aggregated; and

(c) the votes against the proposed compromise or arrangement cast at each of the meetings are to be aggregated.

346. Persons disqualified from administering compromise, &c.

(1) Except with the leave of the Supreme Court, a person must not be appointed to administer, and must not administer, a compromise or arrangement approved under this Act between a cooperative and any of its creditors or members, whether by the terms of that compromise or arrangement or pursuant to a power given by the terms of a compromise or arrangement, if the person –

(a) is a mortgagee of any property of the cooperative; or

(b) is an auditor or an officer of the cooperative; or

(c) is an officer of a body corporate that is a mortgagee of property of the cooperative; or

(d) is not a registered liquidator unless the person is a body corporate authorised by or under a law of the State to administer the compromise or arrangement concerned; or

(e) is an officer of a body corporate related to the cooperative; or

(f) unless the Commissioner directs in writing that this paragraph does not apply in relation to the person in relation to the cooperative, has at any time within the last 12 months been an officer or promoter of the cooperative or of a related body corporate.

(2) This section does not disqualify a person from administering a compromise or arrangement under an appointment validly made before the commencement of this section.

347. Adoption of provisions of Corporations Law and application to person appointed

(1) Clauses 16, 18(2) and (4), 19, 23 and 25 of Schedule 5 apply to a person appointed to administer a compromise or arrangement as if the appointment were an appointment of the person as a receiver and manager of property of the cooperative and as if a reference to a receiver were a reference to that person.

(2) A person appointed to administer a compromise or arrangement 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 section 536 of the Corporations Act as if –

(a) the appointment were an appointment as a liquidator of the cooperative; and

(b) a reference in those provisions to a liquidator were a reference to that person; and

(c) a reference in those provisions to ASIC were a reference to the Commissioner.

348. Copy of order to be attached to rules

(1) A cooperative must ensure that a copy of an order of the Supreme Court approving a compromise or arrangement is annexed to each copy of the rules of the cooperative issued after the order is made.

Penalty:

Fine not exceeding 20 penalty units.

(2) The Supreme Court may, by order, exempt a cooperative from compliance with this section or determine the period during which the cooperative must comply.

349. Directors to arrange for reports

(1) When a compromise or arrangement (whether or not for the purposes of or in connection with a scheme for the reconstruction of a cooperative or the merger of any 2 or more cooperatives) has been proposed, the directors of the cooperative must –

(a) if a meeting of the members of the cooperative by resolution so directs, instruct the accountants or Australian legal practitioners or both named in the resolution to report on the proposals and send their report or reports to the directors as soon as practicable; and

(b) make any report or reports so obtained available at the registered office of the cooperative for inspection by the members and creditors of the cooperative at least 7 days before the day of the meeting ordered by the Supreme Court or the holding of the special postal ballot, as appropriate.

(2) If this section is not complied with, each director of the cooperative concerned is guilty of an offence and liable on summary conviction to a fine not exceeding 20 penalty units.

350. Power of Supreme Court to restrain further proceedings

(1) If a proposed compromise or arrangement is between a cooperative and any of its creditors and no order has been made or resolution passed for the winding-up of the cooperative, the Supreme Court may restrain further proceedings in any action or other civil proceeding against the cooperative except by leave of the Supreme Court and subject to such terms as the Supreme Court imposes.

(2) The Supreme Court's power under this section is in addition to any of its other powers and must not be exercised except on application by the cooperative or of any creditor or member of the cooperative.

351. Supreme Court need not approve compromise or arrangement takeovers

(1) The Supreme Court need not approve a compromise or arrangement unless –

(a) it is satisfied that the compromise or arrangement has not been proposed for the purpose of enabling any person to avoid the operation of any of the provisions of Division 2 of Part 11; and

(b) there is produced to the Supreme Court a statement in writing by the Commissioner stating that the Commissioner has no objection to the compromise or arrangement.

(2) The Supreme Court need not approve a compromise or arrangement merely because a statement by the Commissioner stating that the Commissioner has no objection to the compromise or arrangement has been produced to the Supreme Court.

Division 2 - Explanatory statements

352. Explanatory statement required to accompany notice of meeting, &c.

(1) An explanatory statement must accompany every notice –

(a) that is sent to a creditor of a cooperative convening the court ordered meeting to obtain agreement to the compromise or arrangement; or

(b) that is sent to a member of a cooperative for the purpose of the conduct of the special postal ballot to obtain agreement to the compromise or arrangement.

(2) In every notice of a meeting referred to in subsection (1) that is given by advertisement there must be included either a copy of the explanatory statement or notification of the place at which and the manner in which creditors entitled to attend the meeting may obtain copies of the explanatory statement.

(3) The explanatory statement must –

(a) explain the effect of the compromise or arrangement and, in particular, state –

(i) any material interests of the directors, whether as directors, as members or creditors of the cooperative or otherwise; and

(ii) the effect on those interests of the compromise or arrangement in so far as that effect is different from the effect on the like interests of other persons; and

(b) set out –

(i) any information that is prescribed; and

(ii) any other information that is material to the making of a decision by a creditor or member whether or not to agree to the compromise or arrangement, being information that is within the knowledge of the directors and has not previously been disclosed to the creditors or members.

(4) Subsection (1)(a) does not apply in the case of a creditor whose debt does not exceed $200 unless the Supreme Court otherwise orders.

(5) The notice convening the meeting that is sent to a creditor referred to in subsection (4) must specify a place at which a copy of the explanatory statement can be obtained on request.

(6) The cooperative must comply with a request under subsection (5) as soon as practicable.

353. Requirements for explanatory statement

(1) An explanatory statement must be as approved by the Commissioner.

(2) If the compromise or arrangement affects the rights of debenture holders, the explanatory statement must specify –

(a) any material interests of the trustees for the debenture holders, whether as such trustees, as members or creditors of the cooperative or otherwise; and

(b) the effect on those interests of the compromise or arrangement to the extent that that effect is different from the effect on the like interests of other persons.

(3) If a notice given by advertisement includes a notification that copies of the explanatory statement can be obtained in a particular manner, the cooperative must furnish a copy of the statement free of charge to each creditor or member entitled to attend the meeting or vote in the ballot who applies for it in the appropriate manner.

(4) Each person who is a director or trustee for debenture holders must give notice to the cooperative of such matters relating to the person as are required to be included in the explanatory statement.

354. Contravention of Division – offence by cooperative

(1) If a provision of this Division is contravened, the cooperative concerned and any other person involved in the contravention is guilty of an offence and liable on summary conviction to a fine not exceeding 20 penalty units.

(2) It is a defence to a prosecution for an offence under subsection (1) if it is proved that the contravention was due to the failure of a person (other than the defendant), being a director of the cooperative or a trustee for debenture holders of the cooperative, to supply for the purposes of the explanatory statement particulars of the person's interests.

355. Provisions for facilitating reconstructions and mergers

(1) In this section,

cooperative includes a foreign cooperative registered, formed or incorporated under a law of another State or a Territory.

(2) This section applies when an application is made to the Supreme Court under this Part for the approval of a compromise or arrangement and it is shown to the Court that –

(a) the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of a cooperative or the merger of a cooperative with another cooperative or with another body corporate; and

(b) under the scheme the whole or any part of the undertaking or of the property of a cooperative concerned in the scheme ("the transferor") is to be transferred to another body corporate ("the transferee") except a company within the meaning of the Corporations Act.

(3) When this section applies, the Supreme Court may, either by the order approving the compromise or arrangement or by a later order, provide for any one or more of the following:

(a) the transfer to the transferee of the whole or a part of the undertaking and of the property or liabilities of the transferor;

(b) the allotting or appropriation by the transferee of shares, debentures, policies or other interests in the transferee that, under the compromise or arrangement, are to be allotted or appropriated by the transferee to or for any person;

(c) the continuation by or against the transferee of any legal proceedings pending by or against the transferor;

(d) the deregistration, without winding-up, of the transferor;

(e) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement;

(f) the transfer or allotment of any interest in property to any person concerned in the compromise or arrangement;

(g) such incidental, consequential and supplemental matters as are necessary to ensure that the reconstruction or merger is fully and effectively carried out.

(4) If an order made under this section provides for the transfer of property or liabilities, then, by virtue of the order –

(a) the property is transferred to and vests in the transferee, free, in the case of any particular property if the order so directs, from any charge that is by virtue of the compromise or arrangement to cease to have effect; and

(b) the liabilities are transferred to and become the liabilities of the transferee.

(5) If an order is made under this section, each body to which the order relates must, within 14 days after the making of the order, lodge with the Commissioner an office copy of the order.

(6) In this section –

liabilities includes duties of any description, including duties that are of a personal character or are incapable under the general law of being assigned or performed vicariously;

property includes rights and powers of any description, including rights and powers that are of a personal character and are incapable under the general law of being assigned or performed vicariously.

Division 3 - Acquisition of shares of dissenting shareholders

356. Interpretation: Division 3 of Part 13

In this Division –

dissenting shareholder, in relation to a scheme or contract, means a shareholder who has not assented to the scheme or contract or who has failed to transfer his, her or its shares in accordance with the scheme or contract;

excluded shares, in relation to a scheme or contract involving a transfer to a person of shares in a class of shares in a cooperative, means shares in that class that, when the offer relating to the scheme or contract is made, are held by –

(a) in any case, the person or a nominee of the person; or

(b) if the person is a body corporate, a subsidiary of the body.

357. Schemes and contracts to which Division applies

(1) This Division applies to a scheme or contract involving a transfer of shares in a cooperative ("the transferor") to a person ("the transferee") that has, within 4 months after the making of the offer relating to the scheme or contract by the transferee, been approved by the holders of at least 90% in nominal value of all the shares concerned (other than excluded shares).

(2) This Division does not apply to a scheme or contract arising out of the making of an offer to which Division 2 of Part 11 applies.

358. Acquisition of shares pursuant to notice to dissenting shareholder

(1) The transferee under the scheme or contract may, within 2 months after the offer is so approved, give notice as prescribed (a "compulsory acquisition notice") to a dissenting shareholder that the transferee wishes to acquire the shares held by that shareholder.

(2) When a compulsory acquisition notice is given, the dissenting shareholder may, by written notice given to the transferee within one month after the day on which the compulsory acquisition notice was given, ask for a statement in writing of the names and addresses of all other dissenting shareholders as shown in the register of members and the transferee must give that statement.

(3) Having given the compulsory acquisition notice, the transferee is, unless the Supreme Court orders to the contrary, entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee.

(4) The Supreme Court may give an order to the contrary only on the application of the dissenting shareholder made within 28 days after the compulsory acquisition notice was given or within 14 days after any statement asked for under subsection (2) was given, whichever is the later.

(5) If alternative terms are offered to the approving shareholders –

(a) the dissenting shareholder is entitled to elect which of those terms are preferred but must make that election within the time allowed for the making of an application to the Supreme Court under subsection (4); and

(b) if the dissenting shareholder fails to make the election within that time, the transferee may, unless the Supreme Court otherwise orders, determine which of those terms is to apply to the acquisition of the shares of the dissenting shareholder.

359. Restrictions when excluded shares exceed 10%

If the nominal value of excluded shares exceeds 10% of the aggregate nominal value of all the shares (including excluded shares) to be transferred under the scheme or contract, section 358 does not apply unless –

(a) the transferee offers the same terms to all holders of the shares (other than excluded shares) to be transferred under the scheme or contract; and

(b) the holders who approve the scheme or contract together hold at least 90% in nominal value of the shares (other than excluded shares) to be transferred under the scheme or contract and are also at least 75% in number of the holders of those shares (with joint owners of shares being counted as one person).

360. Remaining shareholders may require acquisition

(1) If, under a scheme or contract to which this Division applies, the transferee becomes beneficially entitled to shares in the transferor which, together with any other shares in the transferor to which the transferee or a body corporate related to the transferee is beneficially entitled, comprise or include 90% in nominal value of the shares concerned –

(a) the transferee must, within 28 days after becoming beneficially entitled to those shares, give notice of the fact as prescribed to the holders of the remaining shares concerned who, when the notice was given, had not assented to the scheme or contract or been given a compulsory acquisition notice by the transferee under this Division; and

(b) such a holder may, within 3 months after being given that notice, by notice to the transferee require the transferee to acquire the holder's share and, if alternative terms were offered to the approving shareholders, elect which of those terms the holder will accept.

(2) If a shareholder gives notice under this section with respect to the shareholder's shares, the transferee is entitled and bound to acquire those shares –

(a) on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to the transferee and, if alternative terms were offered to those shareholders, on the terms for which the shareholder has elected or, if no election is made, for whichever of the terms the transferee determines; or

(b) on such other terms as are agreed or as the Supreme Court, on the application of the transferee or of the shareholder, thinks fit to order.

361. Transfer of shares pursuant to compulsory acquisition

(1) A transferee who has given a compulsory acquisition notice must –

(a) send a copy of the notice to the transferor together with an instrument of transfer that relates to the shares that the transferee is entitled to acquire under this Division and that is executed, on the shareholder's behalf, by a person appointed by the transferee and, on the transferee's own behalf, by the transferee; and

(b) pay, allot or transfer to the transferor the consideration for the shares.

(2) The transferee must comply with subsection (1) within 14 days after whichever of the following happens last:

(a) the period of 28 days after the day on which the compulsory acquisition notice was given expires;

(b) the period of 14 days after a statement of the names and addresses of dissenting shareholders is supplied under this Division expires;

(c) if an application has been made to the Supreme Court by a dissenting shareholder, the application is disposed of.

(3) When the transferee has complied with this section, the transferor must register the transferee as the holder of the shares.

(4) This section does not apply if the Supreme Court, on the application of the dissenting shareholder, orders to the contrary.

362. Disposal of consideration for shares compulsorily acquired

(1) All sums received by the transferor under this Division must be paid into a separate bank, building society or credit union account and those sums, and any other consideration so received, are to be held by the transferor in trust for the several persons entitled to the shares in respect of which they were respectively received.

(2) If a sum or other property received by the transferor under this Division has been held in trust by the transferor for a person for at least 2 years, the transferor must pay the sum or transfer the consideration, and any accretions to it and any property that may become substituted for it or for part of it, to the Commissioner.

(3) Any sum paid or consideration transferred to the Commissioner under subsection (2) is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to Part 9.7 of the Corporations Act, subject to the following modifications:

(a) a reference in that Part to unclaimed property includes any such sum or consideration;

(b) a reference in that Part to ASIC is to be read as a reference to the Commissioner;

(c) a reference in that Part to the Commonwealth is to be read as a reference to Tasmania;

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

(4) The transferor must comply with subsection (2) before the end of 10 years after the day on which the sum was paid, or the consideration was allotted or transferred, to the transferor.

Division 4 - Miscellaneous

363. Notification of appointment of scheme manager

Within 14 days after being appointed to administer a compromise or arrangement approved under this Part, a person must lodge with the Commissioner a written notice of the appointment.

Penalty:

Fine not exceeding 10 penalty units.

364. Power of Supreme Court to require reports

When an application is made to the Supreme Court under this Part in relation to a proposed compromise or arrangement, the Supreme Court may –

(a) before making any order on the application, require the Commissioner or any other person to give to the Court a report as to –

(i) the terms of the compromise or arrangement or of the scheme for the purposes of or in connection with which the compromise or arrangement has been proposed; and

(ii) the conduct of the officers of the body or bodies concerned; and

(iii) any other matters that, in the opinion of the Commissioner or that person, ought to be brought to the attention of the Court; and

(b) in deciding the application, have regard to anything contained in the report; and

(c) make such order or orders as to the payment of the costs of preparing and giving the report as the Court thinks fit.

365. Effect of out-of-jurisdiction compromise or arrangement

(1) A compromise or arrangement that is binding on any creditors of a foreign cooperative because of a provision of the law of another State or a Territory that corresponds to this Part is also binding on the creditors of the foreign cooperative whose debts are recoverable by action in a court of this State.

(2) If the Supreme Court of another State or a Territory makes an order under a provision of the law of that State or Territory that is prescribed as corresponding to a provision of this Part, the order is to be considered to have been made by the Supreme Court of Tasmania under that corresponding provision of this Act and has effect and may be enforced accordingly.

366. Jurisdiction to be exercised in harmony with Corporations Law jurisdiction

The jurisdiction of the Supreme Court under this Part is intended to complement the Supreme Court's jurisdiction under the Corporations Act (as applied under this Act) and should be exercised in harmony with that jurisdiction.

367. Commissioner may appear, &c.

In any proceedings before the Supreme Court under this Part, the Commissioner is entitled to appear and be heard, either in person or by the Commissioner's duly appointed representative.

PART 14 - Foreign cooperatives

Division 1 - Introductory

368. Interpretation: Part 14

In this Part –

cooperatives law means a law that under an order in force under section 369 is declared to be a cooperatives law for the purposes of this Part;

non-participating cooperative means a foreign cooperative other than a participating cooperative;

participating cooperative means a foreign cooperative that is registered, incorporated or formed under, or subject to, a cooperatives law;

participating State means any State in which a cooperatives law is in force;

State includes the Australian Capital Territory and the Northern Territory.

369. Cooperatives law

(1) The Governor, by order, may declare a law of the State other than Tasmania to be a cooperatives law for the purposes of this Part if satisfied that the law –

(a) substantially corresponds to the provisions of this Act; and

(b) contains provisions that are referred to in this Part as provisions of a cooperatives law that correspond to specified provisions of this Act.

(2) The Governor, by order, may vary or revoke a declaration under subsection (1).

Division 2 - Registration of foreign cooperatives

370. Operation of foreign cooperatives in Tasmania

A foreign cooperative must not carry on business in Tasmania unless it is registered under this Part.

Penalty:

Fine not exceeding 240 penalty units.

371. What constitutes carrying on business

(1) A foreign cooperative carries on business in Tasmania if it –

(a) solicits for members in Tasmania; or

(b) seeks share capital in Tasmania; or

(c) provides any goods or services within Tasmania.

(2) A foreign cooperative is not to be regarded as carrying on business in Tasmania only by reason that in Tasmania it –

(a) is or becomes a party to any action or suit or arbitration proceeding or effects settlement of an action, suit or proceeding or of any claim or dispute; or

(b) holds meetings of its directors or members or carries on other activities concerning its internal affairs; or

(c) maintains any bank, building society or credit union account; or

(d) effects any sale through an independent contractor; or

(e) solicits or procures any offer that becomes a binding contract only if the offer is accepted outside Tasmania; or

(f) creates evidence of any debt or creates a charge on real and personal property; or

(g) secures or collects any of its debts or enforces its rights in regard to any securities relating to the debts; or

(h) conducts an isolated transaction that is completed within a period of 31 days, not being one of a number of similar transactions repeated from time to time.

372. Application for registration of participating cooperative

(1) A participating cooperative that proposes to carry on business as a cooperative in Tasmania may apply to the Commissioner in the prescribed manner to be registered as a foreign cooperative.

(2) An application by a participating cooperative must be accompanied by –

(a) a certificate, not more than 2 months old, from the Registrar of the participating State, in which the participating cooperative is registered, incorporated or formed stating that the cooperative is complying with the provisions of the cooperatives law of that State prescribed for the purpose of the section of that law that corresponds with section 381; and

(b) the documents prescribed for the purpose of the section of the cooperatives law of that State that corresponds with section 381; and

(c) a copy of the current rules of the cooperative; and

(d) a statement, verified as prescribed, setting out –

(i) the full name and address of each person who will act as agent of the cooperative in Tasmania; and

(ii) the address of the proposed registered office of the cooperative in Tasmania; and

(iii) a copy of an instrument appointing a person resident in Tasmania (other than a body corporate incorporated outside Tasmania) as a person on whom all notices and legal process may be served on behalf of the cooperative; and

(e) any other documents or information that are prescribed; and

(f) the prescribed fee.

373. Application for registration of non-participating cooperative

(1) A non-participating cooperative that proposes to carry on business as a cooperative in Tasmania may apply to the Commissioner in the prescribed manner to be registered as a foreign cooperative.

(2) An application by a non-participating cooperative must be accompanied by –

(a) a copy of the current rules of the cooperative; and

(b) a statement, verified as prescribed, setting out –

(i) the full name and address of each person who will act as agent of the cooperative in Tasmania; and

(ii) the address of the proposed registered office of the cooperative in Tasmania; and

(iii) a copy of an instrument appointing a person resident in Tasmania (other than a body corporate incorporated outside Tasmania) as a person on whom all notices and legal process may be served on behalf of the cooperative; and

(c) any other documents or information that are prescribed; and

(d) the prescribed fee.

374. Commissioner to approve rules of non-participating cooperative

A non-participating cooperative is not eligible for registration unless the Commissioner is satisfied that the rules of the cooperative –

(a) comply with cooperative principles; and

(b) include acceptable active membership provisions; and

(c) provide procedures acceptable to the Commissioner for disclosure of information; and

(d) provide that a member has one vote only; and

(e) make adequate provision for the duties of directors; and

(f) provide for acceptable accounting standards for the cooperative.

375. Name of foreign cooperative

(1) A foreign cooperative is eligible for registration under this Part if the name under which it proposes to carry on business in Tasmania is not such as is likely to be confused with the name of a body corporate or a registered business name.

(2) If the Commissioner advises the foreign cooperative that the name under which it proposes to carry on business in Tasmania is likely to be confused with the name of a body corporate or registered business name, the cooperative may amend its application by substituting another name.

376. Registration of foreign cooperative

If, on due application, the Commissioner is satisfied that the foreign cooperative is eligible for registration, the Commissioner must register the foreign cooperative as a foreign cooperative and issue a certificate of registration in accordance with the regulations.

377. Application of Act and regulations to foreign cooperatives

The prescribed provisions of this Act apply, with all necessary modifications and any prescribed modifications, to a foreign cooperative which is registered under this Part as if the foreign cooperative were a cooperative.

378. Commissioner to be notified of certain changes

Within 28 days of any alteration affecting –

(a) the rules or constitution of a foreign cooperative registered under this Part; or

(b) the directors of the foreign cooperative; or

(c) the agents (or their addresses) of the foreign cooperative; or

(d) the person appointed as the person on whom notices and legal process may be served on behalf of the foreign cooperative; or

(e) the address of the registered office in Tasmania of the foreign cooperative; or

(f) the address of the registered office in the participating State of a participating cooperative registered under this Part; or

(g) the name under which the participating cooperative carries on business in the participating State; or

(h) the address of the registered office of a non-participating cooperative registered under this Part in the State or country in which it is registered, incorporated or formed; or

(i) the name under which a non-participating cooperative registered under this Part carries on business in the State or country in which it is registered, incorporated or formed –

the foreign cooperative must lodge with the Commissioner particulars of the alteration accompanied by any prescribed documents.

379. Balance sheets

(1) A foreign cooperative registered under this Part must, within 6 months (or such longer period as the Commissioner may allow) of the end of each of its financial years, lodge with the Commissioner –

(a) in the case of a participating cooperative, a copy of the balance sheet relating to its financial affairs as at the end of the financial year, in the form and with any accompanying documents required by the cooperatives law of the participating State concerned; and

(b) in the case of a non-participating cooperative, a copy of the balance sheet relating to its financial affairs as at the end of the financial year, in the form and with any accompanying documents required by the Commissioner.

Penalty:

Fine not exceeding 20 penalty units.

(2) If the Commissioner is of the opinion that a balance sheet lodged with the Commissioner under this section does not sufficiently disclose the financial affairs of the foreign cooperative, the Commissioner may, by written notice, require the foreign cooperative to give the Commissioner further information or documents.

(3) A foreign cooperative must comply with a notice given to it under subsection (2) within the period specified in the notice.

Penalty:

Fine not exceeding 60 penalty units.

380. Cessation of business

(1) A foreign cooperative registered under this Part must, within 7 days of ceasing to carry on business as a cooperative in Tasmania, notify the Commissioner in writing of that fact.

Penalty:

Fine not exceeding 60 penalty units.

(2) On notifying the Commissioner that it has ceased to carry on business as a cooperative in Tasmania, a foreign cooperative is no longer obliged to comply with this Part.

(3) Unless the Commissioner has been notified in writing that the foreign cooperative has resumed carrying on business as a cooperative in Tasmania, the Commissioner must, one year after receiving a notification under subsection (1), cancel the registration of the foreign cooperative.

381. Cooperative proposing to register as a foreign cooperative

(1) A cooperative that proposes to apply to be registered as a foreign cooperative in another participating State may apply to the Commissioner for a certificate that it is complying with all prescribed provisions of this Act including, if the Commissioner has varied a requirement in relation to that cooperative, the provision as varied.

(2) The Commissioner must issue the certificate to the cooperative unless he or she is of the opinion that the cooperative is not complying with the prescribed provisions.

(3) If the Commissioner issues the certificate, he or she must also give to the cooperative the prescribed documents.

Division 3 - Mergers and transfers of engagements

382. Who is the appropriate Registrar?

In this Division –

appropriate Registrar, in relation to a proposed merger or transfer of engagements, means –

(a) the Tasmanian Registrar, if the merger is to result in a Tasmanian cooperative or the transfer is to a Tasmanian cooperative; or

(b) the Registrar for the participating State concerned, if the merger is to result in a cooperative under the cooperatives law of that participating State or the transfer is to such a cooperative;

Registrar, in relation to a participating State, means the person for the time being holding the office of Registrar under the cooperatives law of the participating State;

Tasmanian Registrar means the Commissioner.

383. Authority for merger or transfer of engagements

(1) A Tasmanian cooperative and a participating cooperative may consolidate all or any of their assets, liabilities and undertakings by way of merger or transfer of engagements approved under this Division.

(2) A Tasmanian cooperative and a non-participating cooperative may consolidate all or any of their assets, liabilities and undertakings by way of merger or transfer of engagements approved under this Division if –

(a) the merger is to result in a Tasmanian cooperative; or

(b) the transfer is to a Tasmanian cooperative.

384. Requirements before application can be made

(1) Before a Tasmanian cooperative and a participating cooperative can apply for approval under this Division of a merger or transfer of engagements, the proposed merger or transfer must have been approved by each of the cooperatives by –

(a) a special resolution passed by special postal ballot; or

(b) if permitted by subsection (3) –

(i) a special resolution; or

(ii) a resolution of the board of the cooperative.

(2) Before a Tasmanian cooperative and a non-participating cooperative can apply for approval under this Division of a merger or transfer of engagements, the proposed merger or transfer of engagements –

(a) must have been approved –

(i) in the case of the non-participating cooperative, by a special resolution of the cooperative; and

(ii) in the case of the Tasmanian cooperative, by a special resolution passed by special postal ballot; or

(b) if permitted by subsection (3), must have been approved by –

(i) for the non-participating cooperative, a resolution of the board of the cooperative; and

(ii) for the Tasmanian cooperative, a special resolution, or a resolution of the board, of the cooperative.

(3) The proposed merger or transfer of engagements may be approved by a special resolution, or by a resolution of the board, of a cooperative if –

(a) the Tasmanian Registrar consents to that procedure applying in the particular case; and

(b) in the case of a merger or transfer affecting a participating cooperative, the Registrar for the participating State concerned also consents to that procedure applying in the particular case.

(4) The Tasmanian Registrar's consent may be on conditions.

385. Disclosure statement required

(1) A special resolution of the Tasmanian cooperative or foreign cooperative is not effective for the purposes of this Division unless this section has been complied with.

(2) Each cooperative must send to each of its members a disclosure statement approved by the appropriate Registrar specifying –

(a) the financial position of the Tasmanian cooperative and the foreign cooperative as shown in financial statements that have been prepared as at a date that is not more than 6 months before the date of the statement; and

(b) any interest that any officer of the Tasmanian cooperative or the foreign cooperative has in the proposed merger or transfer of engagements; and

(c) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to any officer or member of the Tasmanian cooperative or foreign cooperative in relation to the proposed merger or transfer of engagements; and

(d) whether the proposal is a merger or transfer of engagements and the reason for the merger or transfer of engagements; and

(e) in the case of a transfer of engagements, whether it is a total or partial transfer of engagements; and

(f) in the case of a merger, whether the merged cooperative will result in a Tasmanian cooperative or a cooperative under the cooperatives law of the participating State concerned; and

(g) any other information that the Registrar directs.

(3) The disclosure statement must be sent to the members of the Tasmanian cooperative or foreign cooperative so that it will in the ordinary course of post reach each member who is entitled to vote on the special resolution not later than –

(a) where the resolution is to be decided at a meeting, 21 days before the date of the meeting; or

(b) where the resolution is to be decided by a postal ballot, 21 days before the day on or before which the ballot papers must be returned by members voting in the ballot.

(4) The appropriate Registrar may exempt the Tasmanian cooperative or foreign cooperative from complying with this section.

(5) The appropriate Registrar may grant an exemption, or approve a disclosure statement, subject to any conditions it considers appropriate.

386. Making an application

(1) An application for approval of a merger or transfer of engagements under this Division must be made to the Tasmanian Registrar and, if the merger or transfer affects a participating cooperative, to the Registrar for the participating State concerned in the manner and form required by the Registrar concerned.

(2) An application for approval of a merger must be accompanied by –

(a) 2 copies of the proposed rules of the merged cooperative; and

(b) in the case of a non-participating cooperative, details of voting on the special resolution (if any) of the cooperative; and

(c) any other information required by the Registrar to whom the application is made.

387. Approval of merger

(1) If the Tasmanian Registrar is the appropriate Registrar, he or she must approve a merger pursuant to an application under this Division if satisfied that –

(a) this Division has been complied with in relation to the application; and

(b) the proposed rules of the merged cooperative are adequate; and

(c) the certificate of registration of the Tasmanian cooperative has been surrendered to the Tasmanian Registrar or has been lost or destroyed; and

(d) in the case of a merger with a participating cooperative, the certificate of registration of the participating cooperative has been surrendered to the Registrar for the participating State concerned; and

(e) in the case of a merger with a non-participating cooperative, the merged cooperative will comply with this Act; and

(f) there is no good reason why the merged cooperative and its rules should not be registered.

(2) If the Tasmanian Registrar is not the appropriate Registrar, he or she must approve a merger pursuant to an application under this Division if satisfied that the merger has been approved under the provision of the cooperatives law of the participating State that corresponds with subsection (1).

(3) On approving an application for merger, the Tasmanian Registrar must –

(a) cancel the registration of the Tasmanian cooperative involved in the merger; and

(b) if the merger is to result in a Tasmanian cooperative, register the merged cooperative and its rules and issue to it a certificate of registration under this Act.

(4) A merger takes effect on the issue of the certificate of registration for the merged cooperative (whether under this Act or under the cooperatives law of the participating State concerned).

388. Approval of transfer of engagements

(1) If the Tasmanian Registrar is the appropriate Registrar, he or she must approve a transfer of engagements pursuant to an application under this Division if satisfied that –

(a) this Division has been complied with in relation to the application; and

(b) the rules or proposed rules of the transferee cooperative are adequate; and

(c) in the case of a total transfer of engagements from a participating cooperative, the certificate of registration of the participating cooperative has been surrendered to the Registrar for the participating State concerned or has been lost or destroyed; and

(d) in the case of a total transfer of engagements from a non-participating cooperative, the certificate of registration of the non-participating cooperative has been surrendered to the Tasmanian Registrar or has been lost or destroyed; and

(e) in the case of a transfer of engagements by a non-participating cooperative, the transferee cooperative will comply with this Act; and

(f) there is no good reason why the transfer of engagements should not take effect.

(2) If the Tasmanian Registrar is not the appropriate Registrar, he or she must approve a transfer of engagements pursuant to an application under this Division if satisfied that the transfer has been approved under the provision of the cooperatives law of the participating State that corresponds with subsection (1).

(3) A transfer of engagements takes effect on the day specified in the approval of the Tasmanian Registrar.

389. Effect of merger or transfer of engagements

(1) In this section –

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money) and includes securities, choses in action and documents;

instrument means an instrument (other than this Act) which creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law) and includes any judgment, order and process of a court;

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

original cooperative means –

(a) in the case of a transfer of engagements, the transferor cooperative; or

(b) in the case of a merger, each of the cooperatives that are merging;

successor cooperative means –

(a) in the case of a transfer of engagements, the transferee cooperative; or

(b) in the case of a merger, the cooperative formed by the merger.

(2) When a merger or transfer of engagements takes effect under this Division ("the transfer day"), the following provisions apply to the extent necessary to give effect to the merger or transfer:

(a) persons who were members of the original cooperative immediately before the transfer day are members of the successor cooperative in accordance with its rules;

(b) the assets of the original cooperative vest in the successor cooperative without the need for any conveyance, transfer, assignment or assurance;

(c) the rights and liabilities of the original cooperative become the rights and liabilities of the successor cooperative;

(d) all proceedings by or against the original cooperative that are pending immediately before the transfer day are taken to be proceedings pending by or against the successor cooperative;

(e) any act, matter or thing done or omitted to be done by, to or in respect of the original cooperative before the transfer day is (to the extent to which that act, matter or thing has any force or effect) to be taken to have been done or omitted by, to or in respect of the successor cooperative;

(f) a reference in an instrument or in any document of any kind to the original body is to be read as, or as including, a reference to the new body.

(3) The operation of this section is not to be regarded –

(a) as a breach of contract or confidence or otherwise as a civil wrong; or

(b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or

(c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.

390. Division applies instead of certain other provisions of this Act

(1) This Division applies instead of Division 1 of Part 12 in respect of the merger of a Tasmanian cooperative with a foreign cooperative.

(2) This Division applies instead of Division 1 of Part 12 in respect of a transfer of engagements between a Tasmanian cooperative and a foreign cooperative.

PART 15 - Supervision and protection of cooperatives

Division 1 - Supervision and inspection

391. Interpretation: Division 1

In this Part –

cooperative venture means –

(a) any body corporate or unit trust formed by a cooperative or in the formation of which a cooperative participated; or

(b) any partnership, joint venture or association of persons or bodies formed or entered into by a cooperative;

premises includes any structure, building, aircraft, vehicle, vessel and place (whether built on or not) and any part of such a structure, building, aircraft, vehicle, vessel or place;

relevant documents means records or other documents that relate to the promotion, formation, membership, control, transactions, dealings, business or property of a cooperative.

392. "Cooperative" includes subsidiaries, foreign cooperatives and cooperative ventures

A reference in this Part to a cooperative includes a reference to each of the following:

(a) a foreign cooperative;

(b) a subsidiary of a cooperative or foreign cooperative;

(c) a cooperative venture;

(d) a cooperative or foreign cooperative, or a subsidiary of either, or a cooperative venture, that is in the course of being wound-up or has been deregistered.

393. Appointment of inspectors

The Commissioner may appoint persons to be inspectors for the purposes of this Act.

394. Commissioner and investigators have functions of inspectors

The Commissioner, and any investigator exercising functions under Division 2, have and may exercise all the functions of an inspector and for that purpose are to be considered to be inspectors.

395. Inspector's identity card

(1) The Commissioner must provide each inspector with an identity card.

(2) An inspector must produce his or her identity card on request on applying for admission to any premises.

396. Inspectors may require certain persons to appear, answer questions and produce documents

(1) An inspector may by notice in the prescribed form –

(a) require a cooperative to produce to the inspector at a time and place specified in the notice specified relevant documents relating to the cooperative; and

(b) require any person who is involved in the activities of a cooperative to produce to the inspector at a time and place specified in the notice specified relevant documents relating to the cooperative; and

(c) require any person who is involved in the activities of a cooperative –

(i) to attend before the inspector at a time and place specified in the notice; and

(ii) to answer any questions put to the person by the inspector relating to the promotion, formation, membership, control, transactions, dealings, business or property of the cooperative.

(2) A person is considered to be involved in the activities of a cooperative if the person –

(a) is or has been an officer or employee of, or an agent, banker, Australian legal practitioner, auditor or other person acting in any capacity for or on behalf of, the cooperative; or

(b) is a person who has any relevant documents relating to the cooperative in his or her possession or control; or

(c) is a person who was a party to the creation of any relevant documents relating to the cooperative.

(3) A person is not subject to any liability by reason of complying with a requirement made or purportedly made under this section.

397. Inspectors' powers of entry

(1) An inspector has power to enter any of the following premises:

(a) any premises on which the affairs or activities of a cooperative are managed or conducted;

(b) any premises on which the inspector suspects on reasonable grounds there is evidence of the commission of an offence under this Act;

(c) any premises on which the inspector suspects on reasonable grounds there are relevant documents.

(2) Despite subsection (1), the consent of the occupier or the authority of a search warrant is required to enter –

(a) any part of premises not used for the management or conduct of the affairs or activities of a cooperative; and

(b) any part of premises used for residential purposes (whether or not the part is also used for the management or conduct of the affairs or activities of a cooperative).

398. Powers of inspectors on premises entered

An inspector has the following powers on premises that the inspector is authorised to enter:

(a) power to search for evidence of any contravention of this Act;

(b) power to search for relevant documents and to require any person on the premises to produce to the inspector any relevant documents in the person's custody or under the person's control;

(c) power to require any person on the premises who is apparently involved in the management or conduct of the affairs or activities of a cooperative to answer questions or provide information;

(d) power to exercise the powers of an inspector under section 399 in relation to any relevant documents found on the premises or produced to the inspector.

399. Powers of inspectors in relation to relevant documents

(1) An inspector has the following powers in relation to relevant documents found by an inspector on premises entered by the inspector or produced to the inspector pursuant to a requirement made under this Division:

(a) power to take possession of the documents or secure them against interference;

(b) power to make copies, or take extracts from, the documents;

(c) power to require any person who was party to the creation of the documents to make a statement providing any explanation that the person is able to provide as to any matter relating to the creation of the documents or as to any matter to which the documents relate;

(d) power to retain possession of the documents for such period as is necessary to enable the documents to be inspected, and copies of, or extracts from, the documents to be made or taken.

(2) While an inspector retains possession of a document, the inspector must permit a person who would be entitled to inspect the document were it not in the possession of the inspector to inspect the document at any reasonable time and make a copy of, or take extracts from, the document.

(3) If an inspector takes possession of or secures against interference any relevant document and a person has a lien on the document, the inspector's actions do not prejudice the lien.

400. Offence – failing to comply with requirements of inspector

(1) A person who fails to comply with any requirement made of the person by an inspector under the authority of this Part is guilty of an offence and liable on summary conviction to a fine not exceeding 120 penalty units or imprisonment for a term not exceeding 12 months, or both, unless the person establishes that he or she had a reasonable excuse for failing to comply.

(2) A person who in purported compliance with a requirement under this Division furnishes information or makes a statement that is false or misleading in a material particular is guilty of an offence and liable on summary conviction to a fine not exceeding 120 penalty units or imprisonment for a term not exceeding 12 months, or both, unless the person establishes that he or she believed on reasonable grounds that it was true and not misleading.

(3) A person must not without reasonable excuse obstruct or hinder an inspector exercising functions under this Act.

Penalty:

Fine not exceeding 120 penalty units or imprisonment for a term not exceeding 12 months, or both.

(4) The occupier or person in charge of any premises must provide a person who enters the premises under the authority of this Part or pursuant to a search warrant referred to in section 402 with all reasonable facilities and assistance for the effective exercise of the person's powers under this Part or under the warrant.

Penalty:

Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 6 months, or both.

401. Protection from incrimination

(1) A person is not excused from making a statement pursuant to a requirement under this Division on the ground that the statement might tend to incriminate him or her.

(2) If the person claims before making a statement that the statement might tend to incriminate him or her, the statement is not admissible in evidence against him or her in criminal proceedings other than proceedings under this Division.

(3) Except as provided by subsection (2), a statement made by a person in compliance with a requirement under this Division may be used in evidence in any criminal or civil proceedings against the person.

402. Search warrants

(1) An inspector may apply to a justice of the peace for the issue of a search warrant in respect of premises if the inspector believes on reasonable grounds –

(a) that the affairs or activities of a cooperative are being managed or conducted on the premises; or

(b) that there is evidence on the premises of the commission of an offence under this Act; or

(c) that there are relevant documents on the premises.

(2) If a justice of the peace is satisfied by the evidence on oath, whether oral or by affidavit, that there are reasonable grounds for doing so, the justice of the peace may issue a search warrant authorising an inspector named in the warrant and any assistants the inspector considers necessary to enter the premises and exercise all or specified functions of an inspector on the premises.

(3) In addition to any other requirement, a search warrant issued under this section must state –

(a) the grounds for the issue of the warrant; and

(b) the premises to be searched; and

(c) any conditions to which the warrant is subject; and

(d) whether entry is authorised to be made at any time or during stated hours; and

(e) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.

(4) A police officer may accompany an inspector executing a search warrant issued under this section and may take all reasonable steps to assist in the exercise of the functions of the inspector under this Act.

(5) Before executing a search warrant, the inspector named in the warrant or a person assisting the inspector must announce that he or she is authorised by the warrant to enter the premises and give any person at the premises an opportunity to allow entry to the premises.

(6) The inspector or a person assisting the inspector need not comply with subsection (5) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure that the effective execution of the search warrant is not frustrated.

(7) If an occupier or another person who apparently represents the occupier is present at premises when a search warrant is being executed, the inspector must –

(a) identify himself or herself to that person by producing his or her identity card for inspection by that person; and

(b) give to that person a copy of the warrant.

403. Copies or extracts of records to be admitted in evidence

(1) Subject to this section, in any legal proceedings (whether proceedings under this Act or otherwise), a copy of or extract from a record relating to affairs of a cooperative is admissible in evidence as if it were the original record or the relevant part of the original record.

(2) A copy of or extract from a record is not admissible in evidence under subsection (1) unless it is proved that the copy or extract is a true copy of the record or of the relevant part of the record.

(3) For the purposes of subsection (2), evidence that a copy of or extract from a record is a true copy of the record or of a part of the record may be given either orally or by an affidavit or statutory declaration by a person who has compared the copy or extract with the record or the relevant part of the record.

404. Privilege

(1) An Australian legal practitioner is entitled to refuse to comply with a requirement under section 396 or 399 relating to a relevant document if –

(a) the document contains a privileged communication made by or on behalf of or to the Australian legal practitioner in his or her capacity as an Australian legal practitioner; or

(b) the Australian legal practitioner is not able to comply with the requirement without disclosing a privileged communication made by or on behalf of or to the Australian legal practitioner in his or her capacity as an Australian legal practitioner.

(2) The Australian legal practitioner is not entitled to refuse to comply with the requirement to the extent that he or she is able to comply with it without disclosing the privileged communication.

(3) The Australian legal practitioner is also not entitled to refuse to comply with the requirement if the person by or on behalf of whom the communication was made or (if the person is under administration under Part 5.3A of the Corporations Act, as applying under this Act, or in the course of being wound-up) the administrator or the liquidator agrees to the Australian legal practitioner complying with the requirement.

(4) If the Australian legal practitioner refuses to comply with the requirement, he or she must immediately furnish in writing to the Commissioner –

(a) the name and address of the person to whom or by or on behalf of whom the communication was made (if known to the Australian legal practitioner); and

(b) sufficient particulars to identify the document containing the communication (if the communication was made in writing).

Penalty:

Fine not exceeding 60 penalty units.

405. Police aid for inspectors

(1) An inspector may call to his or her aid a police officer if he or she is obstructed, or believes on reasonable grounds that he or she will be obstructed, in the exercise of his or her functions as an inspector.

(2) A police officer has, while acting in aid of an inspector, all the functions of an inspector.

Division 2 - Inquiries

406. Interpretation: Division 2

In this Division –

affairs, in relation to a cooperative, includes –

(a) the promotion, formation, membership, control, transactions, dealings, business and property of the cooperative; and

(b) loans made to the cooperative; and

(c) matters that are concerned with identifying people who are, or have been, financially interested in the success or failure, or apparent success or failure, of the cooperative or who are, or have been, able to control or influence materially the policies of the cooperative; and

(d) the circumstances in which a person placed, withdrew or disposed of funds with, or loans to, the cooperative;

costs, in relation to an inquiry under this Division, includes –

(a) the expenses of, and incidental to, the inquiry; and

(b) the expenses payable by the Commissioner in any proceedings instituted by the Commissioner under this Division in the name of the cooperative the subject of the inquiry; and

(c) so much of the remuneration of an officer or employee of the Crown as is determined by the Treasurer to be attributable to matters connected with the inquiry;

investigator means a person appointed under section 407;

involved person, in relation to an inquiry into the affairs of a cooperative, means –

(a) an officer of the cooperative; or

(b) a person who acts, or has at any time acted, as banker, Australian legal practitioner, auditor or actuary, or in any other capacity, for the cooperative; or

(c) a person who has, or at any time had, in his or her possession any property of the cooperative; or

(d) a person who is indebted to the cooperative; or

(e) a person who is capable of giving information relating to the affairs of the cooperative; or

(f) a person who an investigator believes on reasonable grounds to be a person referred to in paragraphs (a) to (e).

407. Appointment of investigators

(1) The Minister may appoint a person or persons to hold an inquiry into the affairs of a cooperative if the Minister considers that it is desirable to do so for the protection or otherwise in the interests of the public or of the members or creditors of the cooperative.

(2) The Minister may vary the terms and conditions of appointment of an investigator if the investigator agrees to the variation.

(3) In the course of an inquiry into the affairs of a cooperative, an investigator may inquire into the affairs of a subsidiary of the cooperative that, if the subsidiary were the cooperative, would be affairs of the cooperative.

(4) An inquiry into the affairs of a subsidiary of a cooperative may be conducted as if the subsidiary were the cooperative.

408. Powers of investigators

(1) An investigator inquiring into the affairs of a cooperative may, by giving an involved person a notice in the prescribed form, require the person –

(a) to produce any document of which the person has custody or control and which relates to those affairs; or

(b) to give the investigator all reasonable assistance in connection with the inquiry; or

(c) to appear before the investigator for examination on oath or affirmation.

(2) An investigator may administer an oath or affirmation to an involved person given a notice under subsection (1).

(3) An investigator may take possession of a document produced by an involved person under subsection (1) and may retain it for the period that the investigator decides is necessary for the inquiry.

(4) While an investigator retains possession of a document, the investigator must permit a person who would be entitled to inspect the document were it not in the possession of the investigator to inspect the document at any reasonable time and make a copy of, or take extracts from, the document.

409. Examination of involved person

(1) An Australian legal practitioner acting for an involved person –

(a) may attend an examination of the involved person by an investigator; and

(b) may, to the extent that the investigator permits, address the investigator and examine the involved person.

(2) An involved person is not excused from answering a question asked by the investigator even if seeking to be excused on the ground of possible self-incrimination.

(3) If an involved person answers a question of an investigator after having claimed possible self-incrimination by doing so, neither the question nor the answer is admissible in evidence in any criminal proceedings other than –

(a) proceedings under section 411 for giving a false or misleading answer to the question; or

(b) proceedings on a charge of perjury in respect of the answer.

(4) An involved person who attends for examination by an investigator is entitled to be paid the prescribed allowance and the prescribed expenses.

410. Privilege

(1) An involved person who is an Australian legal practitioner is entitled to refuse to produce a document to an investigator if the document contains a privileged communication made by or on behalf of or to the Australian legal practitioner in his or her capacity as an Australian legal practitioner.

(2) The Australian legal practitioner is not entitled to refuse to produce the document if the person by or on behalf of whom the communication was made or (if the person is under administration under Part 5.3A of the Corporations Act, as applying under this Act, or in the course of being wound-up) the administrator or the liquidator agrees to the Australian legal practitioner producing the document.

(3) If the Australian legal practitioner refuses to comply with the requirement to produce a document, he or she must immediately furnish in writing to the investigator –

(a) the name and address of the person to whom or by or on behalf of whom the communication was made (if known to the Australian legal practitioner); and

(b) sufficient particulars to identify the document.

Penalty:

Fine not exceeding 60 penalty units.

411. Offences by involved person

(1) An involved person must not –

(a) refuse or fail to comply with a lawful requirement of an investigator without showing reasonable cause for the refusal or failure; or

(b) give an investigator information knowing the information to be false or misleading in a material particular; or

(c) when appearing before an investigator –

(i) make a statement knowing the statement to be false or misleading in a material particular; or

(ii) fail to be sworn or to make an affirmation.

Penalty:

Fine not exceeding 240 penalty units or imprisonment for a term not exceeding 2 years, or both.

(2) If an investigator considers that a refusal or failure by a person to comply with a requirement of the investigator is an offence under subsection (1)(a), the investigator may certify the refusal or failure to the Supreme Court and the Supreme Court may then –

(a) order the involved person to comply with the requirement of the investigator within a stated period; or

(b) instead of, or in addition to, making that order, punish the involved person as for a contempt of the Supreme Court if satisfied that there was no lawful excuse for the refusal or failure to comply with the requirement of the investigator.

412. Offences relating to documents

If an inquiry into the affairs of a cooperative is being held under this Division, a person who –

(a) conceals, destroys, mutilates or alters a document relating to the cooperative; or

(b) sends, or causes to be sent, out of the State any document or other property that belongs to, or is under the control of, the cooperative –

is guilty of an offence and liable on summary conviction to a fine not exceeding 120 penalty units or imprisonment for a term not exceeding 12 months, or both, unless it is established that the person charged did not intend to defeat, delay or obstruct the inquiry.

413. Record of examination

(1) Except as provided by section 409, a record of an examination may be used in proceedings against the person examined, but this does not preclude the admission of other written or oral evidence.

(2) A person examined is, on written application made to the investigator, entitled to a free copy of the record of examination.

(3) The Commissioner may provide an Australian legal practitioner with a copy of a record of examination made by an investigator if the Commissioner is satisfied that the Australian legal practitioner is conducting, or is in good faith contemplating, legal proceedings in respect of affairs of the cooperative to which the record relates.

(4) An Australian legal practitioner must not –

(a) use a copy of a record of examination otherwise than in connection with the preparation for, institution of, or conduct of, legal proceedings; or

(b) publish or communicate the record or any part of it for any other purpose.

Penalty:

Fine not exceeding 60 penalty units.

414. Report of investigator

(1) An investigator may, and if directed by the Commissioner to do so must, make interim reports to the Commissioner on any inquiry being held by the investigator.

(2) As soon as practicable after the end of an inquiry, the investigator must report to the Commissioner –

(a) the opinion of the investigator in relation to the affairs of the cooperative the subject of the inquiry; and

(b) the findings on which the opinion is based.

(3) An investigator's report may include a recommendation as to whether –

(a) an order should be made under section 417(3); or

(b) an application should be made under section 417(4); or

(c) an order and an application should both be made.

(4) A report by an investigator may be accompanied by any document of which the investigator has taken possession after being produced under this Division, in which case the Commissioner –

(a) may retain the document for the period that the Commissioner considers necessary in order to decide whether legal proceedings should be instituted as a result of the inquiry; and

(b) may retain the document for any further period that the Commissioner considers to be necessary to enable legal proceedings to be instituted and prosecuted; and

(c) may permit the use of the document for any legal proceedings instituted as a result of the inquiry; and

(d) must permit inspection of the document by a person who would be entitled to inspect it if it were returned to its former custody; and

(e) may permit inspection of the document by another person while it is in the possession of the Commissioner but only if the Commissioner considers that the person has an interest in the inquiry and, because of that interest, refusal of the inspection would be unjust.

415. Proceedings following inquiry

(1) If legal proceedings are to be, or have been, instituted by the Commissioner as a result of an inquiry under this Division, the Commissioner may, by order, require a person who, in relation to the inquiry, was an involved person to give all such assistance in connection with the proceedings as the person is reasonably able to give.

(2) The Supreme Court may, on the application of the Commissioner, order a person to comply with an order under subsection (1) if the person has refused or failed to do so.

(3) If the Commissioner considers that, as a result of an inquiry under this Division, legal proceedings should, in the public interest, be instituted by a cooperative for the recovery of –

(a) damages in respect of fraud or other misconduct in connection with the affairs of the cooperative; or

(b) property of the cooperative –

the proceedings may be instituted and prosecuted in the name of the cooperative.

416. Admission of investigator's report as evidence

(1) A document certified by the Commissioner as being a copy of a report of an inquiry under this Division is admissible as evidence of any findings made by the investigator.

(2) Subsection (1) does not authorise the admission of evidence that is inadmissible under section 409.

417. Costs of inquiry

(1) Subject to this section, the costs of an inquiry under this Division are to be paid by the Commissioner.

(2) If legal proceedings are instituted by the Commissioner under section 415 as a result of an inquiry under this Division, the Commissioner may make one or more of the following orders:

(a) an order that a specified person pay all or part of the costs of the inquiry;

(b) if the costs of the inquiry have been paid by the Commissioner, an order that a specified person reimburse the Commissioner;

(c) an order that a specified person pay or reimburse the Commissioner in respect of all or part of the costs of the inquiry.

(3) If the Commissioner is of the opinion that all or any part of the costs of an inquiry under this Division into the affairs of a cooperative should be paid by the cooperative, the Commissioner may, by order in writing, direct the cooperative to pay all or part of the costs of the inquiry.

(4) If a person is convicted of an offence in proceedings certified by the Commissioner to be the result of an inquiry under this Division into the affairs of a cooperative, the court may, on the application of the Commissioner made at the time of the conviction or not more than 14 days later, order the convicted person to pay to the Crown all or part of the costs of the inquiry.

(5) An order under this section must state –

(a) the amount to be paid; and

(b) the time or times for payment; and

(c) the manner of payment.

(6) An amount that has not been paid by a person or cooperative in accordance with an order under this section may be recovered by the Commissioner as a debt by action in a court of competent jurisdiction.

Division 3 - Prevention of fraud, &c.

418. Falsification of records

A person must not make, order or allow to be made any entry or erasure in, or any omission from –

(a) any accounts or accounting records of a cooperative or of a subsidiary of a cooperative; or

(b) any return, document or other record required to be sent, kept or delivered for the purposes of this Act –

with intent to falsify them or it, or to evade any of the provisions of this Act.

Penalty:

Fine not exceeding 60 penalty units.

419. Fraud or misappropriation

(1) A person must not –

(a) by false representation or imposition, obtain possession of any property of a cooperative; or

(b) having any property of a cooperative in his or her possession, withhold or misapply it or wilfully apply any part of it to purposes other than those authorised by the rules of the cooperative or by this Act.

Penalty:

Fine not exceeding 60 penalty units.

(2) A person who is found guilty of an offence under subsection (1) must, if ordered to do so by the court, deliver up all such property and repay all money improperly applied.

Penalty:

Fine not exceeding 60 penalty units or imprisonment for a term not exceeding 6 months, or both.

420. Offering or paying commission

A person must not offer or pay any commission, fee or reward, whether pecuniary or otherwise, to an officer of a cooperative for or in connection with a transaction or proposed transaction between the person and the cooperative.

Penalty:

Fine not exceeding 60 penalty units or imprisonment for a term not exceeding 6 months, or both.

421. Accepting commission

(1) An officer of a cooperative must not accept any commission, fee or reward, whether pecuniary or otherwise, from any person for or in connection with a transaction or proposed transaction between the person and the cooperative.

Penalty:

Fine not exceeding 60 penalty units or imprisonment for a term not exceeding 6 months, or both.

(2) An officer of a cooperative who is guilty of any offence under subsection (1) is also liable to make good to the cooperative double the value or amount of the commission, fee or reward.

422. False statements in loan application, &c.

(1) A person must not, in or in relation to any application, request or demand for money made to or of any cooperative –

(a) give any information or make any statement to the cooperative or an officer, employee or agent of the cooperative knowing it to be false or misleading in a material particular; or

(b) proffer to the cooperative or an officer, employee or agent of the cooperative any information or statement provided by any other person knowing it to be false or misleading in a material particular.

Penalty:

Fine not exceeding 60 penalty units or imprisonment for a term not exceeding 6 months, or both.

(2) If a person is convicted of an offence under subsection (1), a cooperative from which money has been obtained by the person in relation to the commission of the offence may exercise all such rights under a mortgage or other security given to it by the person to secure the repayment of money as it could exercise if there were a breach of a covenant or of a term of any contract by which the security was given.

(3) The cooperative may exercise those rights whether the mortgage or other security was executed by the person alone or by the person and another person or other persons.

Division 4 - Miscellaneous powers of the Commissioner

423. Application for special meeting or inquiry

(1) The Commissioner must, on the application of a majority of the members of the board or of not less than one-third in number of the members of a cooperative –

(a) call a special meeting of the cooperative; or

(b) hold, or appoint an inspector to hold, an inquiry into the affairs of the cooperative or of a subsidiary of the cooperative.

(2) An application must be supported by such evidence as the Commissioner directs for the purpose of showing that the applicants have good reason for requiring the meeting or inquiry and that the application is made without malicious motive.

(3) Notice of the application must be given to the cooperative as the Commissioner directs.

(4) The applicants must give such security for the expenses of the meeting or inquiry as the Commissioner directs.

424. Holding of special meeting

(1) The Commissioner may direct the time and place at which the special meeting is to be held and the matters that are to be discussed and determined at the meeting.

(2) The Commissioner must give such notice to members of the holding of the special meeting as the Commissioner considers appropriate (despite any provision in the cooperative's rules as to the giving of notice).

(3) The special meeting has all the powers of a meeting called in accordance with the rules of the cooperative and has power to appoint its own chairperson (despite any rule of the cooperative to the contrary).

(4) The Commissioner or any person nominated by the Commissioner for the purpose may attend and address the meeting.

425. Expenses of special meeting or inquiry

The expenses of and incidental to a meeting called or an inquiry held under this Division (including under section 426) must be defrayed in such proportions as the Commissioner directs –

(a) by the applicants (if any); or

(b) out of the funds of the cooperative to which the meeting or inquiry related or whose subsidiary was the subject of the inquiry; or

(c) by any officer, member, former officer or former member of the cooperative.

426. Power to hold special inquiry into cooperative

The Commissioner may without any application hold, or appoint an inspector to hold, an inquiry into the working and financial condition of a cooperative or a subsidiary of a cooperative.

427. Special meeting following inquiry

(1) On completion of any inquiry under this Division, the Commissioner may call a special meeting of the cooperative.

(2) Sections 424 and 425 apply to such a meeting.

428. Information and evidence

(1) On any application for registration of a cooperative or registration or approval of any rule or document under this Act, the Commissioner may require from the applicant such information and evidence as may be reasonable in order to show that the application should be granted.

(2) The Commissioner may require from any cooperative such information and evidence as may be reasonable in order to show that the cooperative is bona fide carrying on business in accordance with the provisions of this Act.

(3) The Commissioner may require from a cooperative such evidence as the Commissioner thinks proper of all matters required to be done and of the entries in any document required to be furnished to the Commissioner under this Act.

429. Extension or abridgment of time

(1) The Commissioner may grant an extension of, or may abridge, any time for doing anything required to be done by a cooperative by this Act or the rules of a cooperative on such terms (if any) as the Commissioner determines.

(2) The Commissioner may grant an extension of time even if the time for doing the thing has expired.

430. Power of Commissioner to intervene in proceedings

(1) The Commissioner may intervene in any proceedings relating to a matter arising under this Act.

(2) When the Commissioner intervenes in proceedings, the Commissioner is taken to be a party to the proceedings and, subject to this Act, has all the rights, duties and liabilities of such a party.

(3) The Commissioner may appear and be represented in any proceedings in which the Commissioner wishes to intervene pursuant to this section –

(a) by a person to whom the Commissioner has delegated the Commissioner's functions under this Act or such of those functions as relate to a matter to which the proceedings relate; or

(b) by a State Service officer or State Service employee who is engaged in the administration of this Act; or

(c) by an Australian legal practitioner.

PART 16 - Administration of this Act

Division 1 - The Commissioner

431. Registers

(1) The Register of Cooperatives kept by the Commissioner for the purposes of the *Co-operative Industrial Societies Act 1928* continues in existence under and for the purposes of this Act.

(2) The Commissioner may keep such other registers as the Commissioner considers necessary or desirable for the purposes of this Act.

(3) A register must be kept in the form and contain the particulars that the Commissioner thinks fit.

432. Disposal of records by Commissioner

Subject to the *Archives Act 1983*, the Commissioner may, if in the opinion of the Commissioner it is no longer necessary or desirable to retain them, destroy or dispose of any of the following:

(a) any annual return or balance sheet lodged more than 7 years ago;

(b) any document creating or evidencing a charge, or the complete or partial satisfaction of a charge, if a memorandum of satisfaction of the charge was registered more than 7 years ago;

(c) any other document (except the rules or any document affecting the rules of a cooperative) that was lodged, furnished or registered more than 15 years ago;

(d) any document lodged, furnished or registered in relation to a cooperative that was deregistered or ceased to be registered more than 15 years ago;

(e) any document a transparency or electronic image of which has been incorporated with a register kept by the Commissioner or is otherwise kept in the office of the Commissioner.

433. Inspection of Register

(1) A person may –

(a) inspect the Register on payment of the prescribed fee (if any); and

(b) inspect prescribed documents or documents of a prescribed class kept by the Commissioner relating to a cooperative on payment of the prescribed fee (if any); and

(c) obtain, on payment of the prescribed fee, a certified copy of a document that the person may inspect under paragraph (b); and

(d) obtain, on payment of the prescribed fee, a copy of a document that the person may inspect under paragraph (b).

(2) If a reproduction or transparency of a document or an extract of information contained in a document and recorded in the Register is produced for inspection, a person is not entitled under subsection (1) to require the production of the original of that document.

434. Approvals by Commissioner

(1) This section applies to any provision of this Act which imposes a requirement for the Commissioner's approval of any action or thing.

(2) The Commissioner may indicate in writing to an applicant for such an approval that the approval is to be considered to have been granted at the end of a specified period unless the

Commissioner informs the applicant in writing within that period that the approval has not been granted or is still being considered.

435. Lodgment of documents

A document is not to be taken to have been lodged under this Act unless –

(a) all information required to be provided in or with the document is provided; and

(b) the prescribed fee (if any) has been paid.

436. Method of lodgment

(1) Subject to section 435, it is sufficient compliance with a requirement under this Act that a document be lodged with the Commissioner if the Commissioner receives a copy of the document by facsimile or electronic transmission.

(2) If the Commissioner receives from a person a copy of a document under subsection (1), the Commissioner may require that person to produce and lodge the original within the time specified by the Commissioner.

(3) If the person does not comply with a requirement of the Commissioner within the specified time, the person is to be taken not to have lodged the document.

437. Power of Commissioner to refuse to register or reject documents

(1) The Commissioner may refuse to register or may reject a document submitted to the Commissioner if the Commissioner considers that the document –

(a) contains matter contrary to law; or

(b) contains matter that, in a material particular, is false or misleading in the form or context in which it is included; or

(c) by reason of an omission or misdescription, has not been duly completed; or

(d) does not comply with the requirements of this Act; or

(e) contains any error, alteration or erasure.

(2) If the Commissioner refuses to register or rejects a document under subsection (1), the Commissioner may request –

(a) that the document be appropriately amended; or

(b) that a fresh document be submitted in its place; or

(c) if the document has not been duly completed, that a supplementary document in the form approved by the Commissioner be submitted.

Division 2 - Evidence

438. Certificate of registration

(1) A certificate of registration of a cooperative issued under this Act is conclusive evidence that the cooperative is incorporated under this Act and that all the requirements of this Act in respect of registration have been complied with.

(2) This section does not affect any provisions of this Act for the winding-up or deregistration of the cooperative or the cancellation of its registration.

439. Certificate evidence

(1) If a function under this Act is conferred or imposed on the Commissioner as a consequence of something being done or omitted to be done within a specified period, the Commissioner may certify –

(a) that the thing had or had not been done within that period; or

(b) that the thing had or had not been done by a specified date.

(2) The Commissioner may issue a certificate stating that a requirement of this Act specified in the certificate –

(a) had, or had not, been complied with at a date or within a period specified in the certificate; or

(b) had been complied with at a date specified in the certificate but not before that date.

(3) The Commissioner may issue a certificate stating that on a date specified in the certificate a body specified in the certificate was not or had ceased to be registered as a cooperative under this Act.

(4) A certificate given by the Commissioner under this section is evidence of the matters stated in the certificate.

440. Orders published in the *Gazette*

A copy of an order, notice, exemption or other instrument published in the *Gazette* purporting to have been given or issued under this Act is evidence of the giving or issuing of the order, notice, exemption or other instrument of which it purports to be a copy.

441. Records kept by cooperatives

(1) A record kept by a cooperative under a requirement of this Act is admissible in evidence in any proceedings and is evidence of any matter stated or recorded in the record.

(2) A document purporting to be a record kept by a cooperative is, unless the contrary is proved, to be considered to be a record kept by the cooperative under a requirement of this Act.

(3) A copy of any entry in a record regularly kept by a cooperative in the course of its business is, if verified by statutory declaration of the secretary to be a true copy of the entry, to be received in evidence in any case where and to the same extent as the original entry itself is admissible.

442. Minutes

(1) Every entry in the minutes purporting to be a minute of the business transacted at a meeting of a cooperative or of the board, and purporting to have been signed by the chairperson at a subsequent meeting, is evidence that the business recorded in the minute was transacted at the meeting and that the meeting was duly convened and held.

(2) An entry in the minutes of a meeting of a cooperative to the effect that a resolution was carried or carried unanimously, or was lost, is evidence of the fact without proof of the number or proportion of votes recorded for or against the resolution.

443. Official certificates

(1) A certificate of registration given by the Commissioner must be received in evidence as if it were the original certificate.

(2) A certificate of registration or other official document relating to a cooperative signed by or bearing the seal of the Commissioner is to be received in evidence without further proof.

(3) A copy of rules certified by the Commissioner to be a true copy of the rules of a cooperative is evidence of the registered rules of the cooperative.

444. The Commissioner and proceedings

(1) Judicial notice must be taken of the signature or the facsimile of the signature (by whatever process it is produced) and seal of any person who holds or has held the office of Commissioner, if the signature or facsimile signature or seal purports to be attached to any certificate or other official document.

(2) This section extends to any copy of the rules of a cooperative certified by the Commissioner to be a true copy of its registered rules.

(3) In any proceedings, no proof is required (until evidence is given to the contrary) of the appointment of the Commissioner or any former Commissioner.

445. Rules

A printed copy of the rules of a cooperative verified by statutory declaration of the secretary of the cooperative to be a true copy of its registered rules is in any proceedings evidence of the rules.

446. Register of directors, members and shares

The register of directors, members and shares of a cooperative is evidence of the particulars directed or authorised by or under this Act to be inserted in the register.

PART 17 - Offences and proceedings

447. Offences by officers of cooperatives

(1) If a cooperative contravenes a provision of this Act –

(a) any person who is a director of the cooperative or concerned in its management is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention; and

(b) any other officer of the cooperative who by a wilful act or omission is the cause of the contravention is taken to have contravened the same provision.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the cooperative has been proceeded against or convicted under that provision.

(3) This section does not affect any liability imposed on a cooperative for an offence committed by the cooperative against this Act.

448. Notice to be given of conviction for offence

If a cooperative or an officer of a cooperative is convicted of an offence against a provision of this Act or the regulations, the cooperative must, not later than 28 days after the conviction is recorded, give to each member of the cooperative notice of –

(a) the conviction; and

(b) any penalty imposed in respect of the offence to which the conviction relates; and

(c) the nature of the offence to which the conviction relates.

449. Secrecy

(1) A person –

(a) who is, or at any time was, engaged in the administration of this Act or the former Act; and

(b) who, except as provided by this section, records, makes use of or divulges any information obtained in the course of that administration –

is guilty of an offence and liable on summary conviction to a fine not exceeding 60 penalty units.

(2) Subsection (1) does not apply to –

(a) the recording, making use of or divulging of information in the course of the administration of this Act; or

(b) the recording or making use of information for the purpose of divulging it as permitted by subsection (3) or (4); or

(c) the divulging of information as permitted by subsection (3) or (4).

(3) Information may be divulged –

(a) for the purposes of criminal proceedings; or

(b) for the purposes of any proceedings under this Act or of an inquiry authorised by an Act; or

(c) with the consent of the person to whom the information relates; or

(d) in accordance with a requirement imposed under the *Ombudsman Act 1978*; or

(e) in accordance with a reciprocal arrangement under section 458.

(4) Information may be divulged to –

(a) the Minister; or

(b) the Treasurer; or

(c) the Commissioner of Taxes; or

(d) the Auditor-General; or

(e) the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation holding office under a law of the Commonwealth; or

(f) the Australian Securities and Investments Commission; or

(g) the person who, under a law of another State or of a Territory, administers a law of the State or Territory that relates to taxation or the imposition of a duty; or

(h) a commission of inquiry under the *Commissions of Inquiry Act 1995* if –

(i) the Commissioner has received a written request in writing for information from the commission of inquiry; and

(ii) the Minister has given written approval to the Commissioner of the communication of that information; and

(iii) the Commissioner has given to that person written approval of the communication of that information; or

(i) a person seeking information under a reciprocal arrangement under section 458; or

(j) a police officer performing a function as a police officer; or

(k) a person nominated by a person referred to in paragraphs (a) to (g); or

(l) any person to whom, in the opinion of the Commissioner, it is in the public interest that the information be divulged.

(5) For the purposes of this section, a person is, or was, engaged in the administration of this Act or the former Act if the person performs or exercises, or at any time performed or exercised, a function or power as –

(a) the Commissioner or person referred to in section 6E of the *Commissioner for Corporate Affairs Act 1980*; or

(b) an inspector appointed under this Act or the former Act; or

(c) an investigator appointed under this Act; or

(d) a person appointed or employed for the purposes of this Act or the former Act.

(6) In this section –

divulge, in relation to information, means –

(a) communicate the information verbally; or

(b) make available a document containing the information; or

(c) make available anything from which, by electronic process or otherwise, the information may be obtained; or

(d) communicate the information in any other manner;

former Act means the *Co-operative Industrial Societies Act 1928*.

450. False or misleading statements

(1) A person who, in a document required for the purposes of this Act or lodged with the Commissioner, makes, or authorises the making of, a statement knowing it to be false or misleading in a material particular is guilty of an offence and liable on summary conviction to a fine not exceeding 120 penalty units.

(2) A person who, from a document required for the purposes of this Act or lodged with the Commissioner, omits, or authorises the omission of, anything knowing that the omission makes the document misleading in a material particular is guilty of an offence and liable on summary conviction to a fine not exceeding 120 penalty units.

(3) A person who, in a document required for the purposes of this Act or lodged with the Commissioner, makes, or authorises the making of, a statement that is false or misleading in a material particular is guilty of an offence and liable on summary conviction to a fine not exceeding 60 penalty units unless it is proved that the person had taken reasonable precautions aimed at avoiding the making or authorising of false or misleading statements in such a document.

(4) If an omission makes a document required for the purposes of this Act or lodged with the Commissioner misleading in a material respect, a person who made or authorised the omission is guilty of an offence and liable on summary conviction to a fine not exceeding 60 penalty units unless it is proved that the person had taken reasonable precautions aimed at avoiding the making or authorising of omissions that would make such a document false or misleading.

451. Further offence for continuing failure to do required act

(1) If a provision of this Act requires an act to be done and it has not been done, the obligation to do the act continues until the act is done –

(a) even if a person has been convicted of an offence in relation to the failure to do the act; and

(b) even if the provision required the act to be done within a particular period or before a particular time and that period has ended or that time has passed.

(2) If a person is convicted of an offence ("a primary conviction") for a failure to do the act (whether it is the first or a second or subsequent offence in relation to the failure) and the failure to do the act continues after the time of the conviction, the person is guilty of a further offence for that continuing failure.

(3) The further offence is constituted by the failure to do the act during the period ("the further offence period") that begins with the primary conviction and ends when proceedings for the further offence are commenced or the act concerned is done (whichever happens first).

(4) Proceedings for the further offence are to be considered to have been commenced on the day on which the complaint for the further offence is made or on such earlier day as the complaint may specify for that purpose.

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

452. Civil remedies

(1) If a cooperative in making, guaranteeing or raising any loan or receiving any deposit contravenes any provision of this Act or any rule of the cooperative, the civil rights and liabilities of the cooperative or any other person in respect of the recovery of the loan or deposit are not affected or prejudiced by the contravention but the money becomes immediately payable.

(2) The same remedies may be had for the recovery of the loan or deposit and for the enforcement of any security for it as if there had not been a contravention of this Act or of the rules of the cooperative.

453. Injunctions

(1) This section applies to conduct that constituted, constitutes or would constitute –

(a) a contravention of this Act; or

(b) attempting to contravene this Act; or

(c) aiding, abetting, counselling or procuring a person to contravene this Act; or

(d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act; or

(e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act; or

(f) conspiring with others to contravene this Act.

(2) On the application of –

(a) the Commissioner; or

(b) a person whose interests have been, are or would be affected by conduct that another person has engaged, is engaging or is proposing to engage in –

the Supreme Court, if satisfied that conduct is conduct to which this section applies, may grant an injunction on such terms as the Supreme Court thinks appropriate, restraining that other person from engaging in the conduct and, if in the opinion of the Supreme Court it is desirable to do so, requiring that other person to do any act or thing.

(3) If in the opinion of the Supreme Court it is desirable to do so, the Court may grant an interim injunction pending determination of the application.

(4) The Supreme Court may discharge or vary an injunction granted under this section.

(5) The power of the Supreme Court to grant an injunction restraining a person from engaging in conduct may be exercised –

(a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and

(b) whether or not the person has previously engaged in conduct of that kind; and

(c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

(6) The power of the Supreme Court to grant an injunction requiring a person to do an act or thing may be exercised –

(a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and

(b) whether or not the person has previously refused or failed to do that act or thing; and

(c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

(7) If the Supreme Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.

454. Proceedings for offences, &c.

(1) Proceedings for an offence under this Act may be instituted at any time before the expiration of 2 years after the alleged commission of the offence.

(2) Proceedings for an offence may be instituted by the Commissioner or any aggrieved person.

PART 18 - General

455. Cooperative ceasing to exist

(1) As soon as practicable after a cooperative ceases to exist, other than on deregistration of the cooperative under section 319, the Commissioner must deregister the cooperative by registering the cessation and cancelling the registration of the cooperative.

(2) The Commissioner may remove from any register kept by the Commissioner the name of any cooperative that has been deregistered or otherwise ceased to exist.

(3) A cooperative that has transferred its engagements to another cooperative is to be considered to have ceased to exist.

456. Service of documents on cooperative

(1) A document may be served on a cooperative by post or by leaving it at the registered office of the cooperative with a person who appears to be aged 16 or more.

(2) A document may be served on a foreign cooperative –

(a) by post; or

(b) by leaving it with a person who appears to be aged 16 or more and is at a place where the foreign cooperative carries on business in Tasmania; or

(c) by leaving it at the registered office in Tasmania of the foreign cooperative registered under Part 14.

(3) For the purpose of serving a document under this section by post, it is properly addressed if –

(a) in the case of a cooperative, it is addressed to the registered office of the cooperative; or

(b) in the case of a foreign cooperative, it is addressed to a place in Tasmania where the foreign cooperative carries on business or to the registered office of the foreign cooperative in its place of registration, incorporation or formation.

(4) This section does not affect the operation of any provision of a law or of the rules of a court authorising a document to be served on a cooperative or a foreign cooperative in any other way.

457. Service on member of cooperative

(1) A notice required under this Act to be given to a member of a cooperative must be in writing.

(2) A notice or other document required under this Act to be given to a member of a cooperative may be given –

(a) personally; or

(b) by post; or

(c) by publishing the notice in a newspaper circulating generally in Tasmania or in the area served by the cooperative, if –

(i) the cooperative is a non-trading cooperative; or

(ii) the member's whereabouts are unknown to the cooperative; or

(iii) the Commissioner permits notice to be given to members of the cooperative in that manner.

458. Reciprocal arrangements

(1) If a reciprocal arrangement with another State or a Territory is in force, the Commissioner –

(a) may, at the request of the appropriate official of the State or Territory, provide the official with information or documents relating to a cooperative; and

(b) may request the appropriate official of the State or Territory to provide the Commissioner with documents or information relating to an organisation that, under the arrangement, is an organisation corresponding to a cooperative.

(2) A reciprocal arrangement with another State or a Territory is an arrangement made between the Minister and a representative of the government of the other State or the Territory under which it is agreed –

(a) that the Commissioner will comply with a request referred to in subsection (1)(a); and

(b) that a request made by the Commissioner to an official designated in the arrangement as the appropriate official for the purposes of subsection (1)(b) will be complied with.

459. Translations of documents

A requirement imposed by or under this Act to furnish or lodge a document or make a document available for inspection is, in the case of a document that is not in the English language, to be considered to include a requirement that a translation of the document be furnished, lodged or made available for inspection at the same time.

460. Regulations

(1) The Governor may make regulations for the purposes of this Act.

(2) Without affecting the generality of subsection (1), regulations may be made for or with respect to the following:

(a) the making of applications for the exercise of a function by the Commissioner, including the use of a form approved by the Commissioner;

(b) the manner of lodgment of documents with the Commissioner (including electronic lodgment and lodgment by facsimile);

(c) fees to be paid in connection with the administration of this Act, including fees for lodgment of any documents under this Act and additional fees for late lodgment of any documents under this Act.

(3) Regulations relating to fees –

(a) may prescribe different fees for different classes of cases; and

(b) may authorise the Commissioner to waive, reduce or refund fees in particular cases or classes of cases.

(4) Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

(5) Regulations may –

(a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and

(b) in respect of such an offence, provide for the imposition of a fine not exceeding 20 penalty units and, in the case of a continuing offence, a further fine not exceeding 2 penalty units for each day during which the offence continues.

(6) Regulations may authorise any matter to be from time to time determined, applied or regulated by the Commissioner.

461. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

(a) the administration of this Act is assigned to the Minister for Justice and Industrial Relations; and

(b) the department responsible to the Minister for Justice and Industrial Relations in relation to the administration of this Act is the Department of Justice and Industrial Relations.

PART 19 - Repeals, amendments, savings and transitional

462. Savings and transitional provisions

Schedule 6 has effect.

463.

The amendment effected by this section has been incorporated into the authorised version of the *Co-operative Industrial Societies Act 1928*.

464.

See Schedule 7.

SCHEDULE 1 - Relevant interests, associates and related bodies

Section 3

PART 1 - Relevant interests

1. Terminology used in this Schedule

(1) This clause applies for the purposes of this Part.

(2) Power to vote in respect of a right to vote is power to exercise, or to control the exercise of, the right to vote.

(3) A reference to power to dispose of a share includes a reference to power to exercise control over the disposal of the share.

(4) A reference to power or control includes a reference to power or control that is direct or indirect or is, or can be, exercised as a result of, by means of, in breach of, or by revocation of, trusts, agreements and practices, or any of them, whether or not they are enforceable.

(5) Power to vote in respect of a right to vote, or power to dispose of a share, that is exercisable by 2 or more persons jointly is taken to be exercisable by either or any of those persons.

(6) A reference to a controlling interest includes a reference to an interest that gives control.

2. Basic rules – relevant interests

(1) A person who has power to vote in respect of a right to vote has a relevant interest in the right to vote.

(2) A person who has power to dispose of a share has a relevant interest in the share.

3. Control of body corporate having power in relation to a share

If a body corporate has, or is by this Part taken to have –

(a) power to vote in respect of a right to vote; or

(b) power to dispose of a share –

a person is taken for the purposes of this Part to have in relation to the right to vote or share the same power as the body has, or is taken to have, if –

(c) the body is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person in relation to the exercise of the power referred to in paragraph (a) or (b); or

(d) the person has a controlling interest in the body.

4. Control of 20% of voting power in body corporate having power in relation to a share

If a body corporate or an associate of a body corporate has, or is by this Part (other than this clause) taken to have –

(a) power to vote in respect of a right to vote; or

(b) power to dispose of a share –

a person is taken for the purposes of this Part to have in relation to the right to vote or share the same power as the body or associate has, or is taken to have, if –

(c) the person has; or

(d) an associate of the person has; or

(e) associates of the person together have; or

(f) the person and an associate or associates of the person together have –

power to vote in respect of the right to vote attached to not less than 20% of the voting shares in the body.

5. Deemed relevant interest in advance of performance of agreement that will give rise to a relevant interest

If a person –

(a) has entered into an agreement with another person with respect to an issued share or right to vote in which the other person has a relevant interest; or

(b) has a right enforceable against another person in relation to an issued share or right to vote in which the other person has a relevant interest, whether the right is enforceable presently or in the future and whether or not on the fulfilment of a condition; or

(c) has an option granted by another person, or has granted to another person an option, with respect to an issued share or right to vote in which the other person has a relevant interest –

and, on performance of the agreement, enforcement of the right, or exercise of the option, the first-mentioned person would have a relevant interest in the share or right to vote, the first-mentioned person is taken for the purposes of this Part to have that relevant interest in the share or right to vote.

6. Control of body corporate having a relevant interest by virtue of clause 5

If a body corporate is by clause 5 to be considered to have a relevant interest in a share in or right to vote at meetings of a cooperative, a person is taken for the purposes of this Part to have a relevant interest in the share or right to vote if –

(a) the body corporate is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person in relation to the exercise of power to vote in respect of that right to vote or power to dispose of those shares; or

(b) the person has a controlling interest in the body corporate; or

(c) the person has power to vote in respect of the right to vote attached to not less than 20% of the voting shares in the body corporate.

7. Matters not affecting application of Schedule

(1) It is immaterial for the purposes of this Part whether or not power to vote in respect of a right to vote, or power to dispose of a share –

(a) is express or implied or formal or informal; or

(b) is exercisable by a person alone or jointly with any other person or persons; or

(c) cannot be related to a particular share; or

(d) is, or can be made, subject to restraint or restriction.

(2) A relevant interest in a share or right to vote is not to be disregarded merely because of either or both of the following:

(a) its remoteness;

(b) how it arose.

8. Body corporate may have a relevant interest in its own shares

A body corporate may, by virtue of this Part, be taken to have a relevant interest in a share in or right to vote arising from membership of the body itself.

9. Exclusions – moneylenders

A relevant interest of a person in a share or right to vote is to be disregarded if the person's ordinary business includes lending money and the person has authority to exercise powers as the holder of the relevant interest only because of a security given for the purposes of a transaction entered into in the ordinary course of business in connection with lending money, other than a transaction entered into with an associate of the person.

10. Exclusions – certain trustees

A relevant interest of a person in a share or right to vote is to be disregarded if –

(a) the share or right is subject to a trust; and

(b) the person has the relevant interest as a trustee of the trust; and

(c) either –

(i) a beneficiary under the trust is by clause 5 taken to have a relevant interest in the share or right because the beneficiary has a presently enforceable and unconditional right referred to in clause 5(b); or

(ii) the person is a bare trustee.

11. Exclusions – instructions to securities dealer to dispose of share

A relevant interest of a person in a share or right to vote is to be disregarded if –

(a) the person's ordinary business includes dealing in securities; and

(b) the person has authority to exercise powers as the holder of the relevant interest only because of instructions given to the person, by or on behalf of another person, to dispose of the share on the other person's behalf in the ordinary course of that business.

12. Exclusions – honorary proxies

A relevant interest of a person in a share or right to vote is to be disregarded if the person has it only because of having been appointed, otherwise than for valuable consideration given by the person or an associate of the person, to vote as a proxy or representative at a meeting of members, or of a class of members, of a body corporate.

13. Exclusions – holders of prescribed offices

A relevant interest of a person in a share or right to vote is to be disregarded if the person has it because of holding a prescribed office.

14. Prescribed exclusions

The regulations may provide that specified relevant interests in specified shares are, in specified circumstances and subject to specified conditions (if any), to be disregarded for the purposes of specified provisions of this Act.

15. Effect of Schedule

(1) Nothing in this Schedule limits the generality of anything else in it.

(2) A person does not have a relevant interest in a share of a cooperative or right to vote in respect of a cooperative except as provided in this Schedule.

16. Relevant interest – body corporate other than cooperative

A reference in this Act (including in this Schedule) to a relevant interest in a share of a body corporate other than a cooperative or a right to vote in respect of a body corporate other than a cooperative is to be construed in accordance with the Corporations Act.

PART 2 - Associates

17. Effect of Part

A person is not an associate of another person except as provided by this Part.

18. Associates of a body corporate

The associates of a body corporate include the following:

(a) a director or secretary of the body;

(b) a related body corporate;

(c) a director or secretary of a related body corporate.

19. Matters relating to voting rights

(1) If a reference to an associate of a person relates to –

(a) the extent of power to exercise, or to control the exercise of, the voting power attached to voting shares in or arising from membership of a body corporate; or

(b) the person's entitlement to shares in a body corporate; or

(c) an offer to purchase shares to which Division 2 of Part 11 of this Act applies –

the reference includes a reference to another person with whom the person has, or proposes to enter into, an agreement referred to in subclause (2).

(2) Subclause (1) applies to an agreement –

(a) because of which one of the persons referred to in subclause (1) has or will have power (even if it is in any way qualified) –

(i) to exercise; or

(ii) to control, directly or indirectly, the exercise of; or

(iii) to influence substantially the exercise of –

any voting power attached to shares in the body; or

(b) for the purpose of controlling or influencing –

(i) the composition of the body's board; or

(ii) the conduct of affairs of the body; or

(c) under which one of those persons –

(i) will or may acquire; or

(ii) may be required by the other to acquire –

shares in the body in which the other has a relevant interest; or

(d) under which one of those persons may be required to dispose of shares in the body in accordance with the other's directions.

(3) Subclause (1) applies despite any other effect the agreement may have.

(4) In relation to a matter relating to shares in a body corporate, a person may be an associate of the body and the body may be an associate of a person.

20. General

(1) A reference to an associate of a person includes a reference to –

(a) any other person in concert with whom the person is acting or proposes to act; and

(b) any other person who, under the regulations, is, for the purposes of the provision in which the reference occurs, an associate of the person; and

(c) any other person with whom the person is or proposes to become associated, whether formally or informally, in any other way –

in respect of the matter to which the reference relates.

(2) If a person has entered, or proposes to enter, into a transaction, or has done, or proposes to do, any act or thing, in order to become associated with another person as mentioned in an applicable provision of this Part, a reference to an associate of the person includes a reference to that other person.

21. Exclusions

A person is not an associate of another person by virtue of clause 19 or 20(1), or by virtue of clause 20(2) as it applies in relation to clause 19 or 20(1), merely because of one or more of the following:

(a) one gives advice to the other, or acts on the other's behalf, in the proper performance of the functions attaching to a professional capacity or a business relationship;

(b) one, a client, gives specific instructions to the other, whose ordinary business includes dealing in securities, to acquire shares on the client's behalf in the ordinary course of that business;

(c) one has made, or proposes to make, to the other an offer to which Division 2 of Part 11 of this Act applies, in relation to shares held by the other;

(d) one has appointed the other, otherwise than for valuable consideration given by the other or by an associate of the other, to vote as a proxy or representative at a meeting of members, or of a class of members, of a body corporate.

PART 3 - Related bodies

22. Related bodies corporate

For the purposes of this Act, a body corporate is to be taken to be related to –

(a) another body corporate that is its subsidiary; and

(b) another body corporate of which it is a subsidiary; and

(c) another body corporate if both it and that other body corporate are subsidiaries of the same body corporate.

SCHEDULE 2 - Cooperative principles

Section 5

1.	**Voluntary and open membership** Cooperatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.

2.	**Democratic member control** Cooperatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary cooperatives members have equal voting rights (one member, one vote) and cooperatives at other levels are organised in a democratic manner.
3.	**Member economic participation** Members contribute equitably to, and democratically control, the capital of their cooperative. At least part of that capital is usually the common property of the cooperative. They usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing the cooperative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the cooperative; and supporting other activities approved by the membership.
4.	**Autonomy and independence** Cooperatives are autonomous, self-help organisations controlled by their members. If they enter into agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their cooperative autonomy.
5.	**Education, training and information** Cooperatives provide education and training for their members, elected representatives, managers and employees so they can contribute effectively to the development of their cooperatives. They inform the general public, particularly young people and opinion leaders, about the nature and benefits of cooperation.
6.	**Cooperation among cooperatives** Cooperatives serve their members most effectively and strengthen the cooperative movement by working together through local, national, regional and international structures.
7.	**Concern for the community** While focusing on member needs, cooperatives work for the sustainable development of their communities through policies accepted by their members.

SCHEDULE 3 - Matters for which rules must make provision

Section 100

1. Requirements for all cooperatives

The rules of all cooperatives must set out or make provision for each of the following:

(a) the name of the cooperative;

(b) active membership provisions (within the meaning of Part 6);

(c) the mode and conditions of admission to membership, and the payment to be made or the share or interest to be acquired before rights of membership are exercised;

(d) the rights and liabilities of members, and of the estates of deceased members, and the rights and liabilities of representatives of members under bankruptcy or mental incapacity;

(e) the circumstances in which members may be expelled or suspended, and the rights and liabilities of expelled and suspended members;

(f) the circumstances in which membership ceases;

(g) any charges or subscriptions which are to be payable by a member to the cooperative;

(h) the circumstances in which fines and forfeitures may be imposed on members of the cooperative, and the amount of the fines, not exceeding the prescribed maximum amount;

(i) the grievance procedures for settling disputes under the rules between the cooperative and any of its members as defined in section 81, or between a member and any other member;

(j) the restrictions, if any, on the powers of the cooperative and the board;

(k) the number of directors, the qualification of directors, and the manner of electing, remunerating and removing directors and filling a vacancy, the period for which directors are to hold office, and whether directors are to retire by rotation or otherwise and for the holding of annual elections;

(l) the quorum for meetings, and the procedure at meetings, of the board;

(m) the device, custody and use of the seal of the cooperative;

(n) the manner in which the funds of the cooperative are to be managed, and in particular the mode of drawing and signing cheques, drafts, bills of exchange, promissory notes and other negotiable instruments for and on behalf of the cooperative;

(o) provision for the custody of securities belonging to the cooperative;

(p) the manner in which debentures may be transferred;

(q) the date on which the financial year of the cooperative concludes;

(r) provision for the accounts of the cooperative to be audited annually or more frequently and the manner of appointment of the auditor;

(s) the manner in which any loss which may result from the transactions of the cooperative is to be provided for;

(t) the manner of calling general and special meetings, the requisite notices of meetings, and the quorum for meetings, of the cooperative;

(u) the procedure at meetings of the cooperative, including the rights of members in voting at meetings, the manner of voting, and the majority necessary for carrying resolutions;

(v) the method of conducting postal ballots and special postal ballots, including the sending and lodgment of information and votes by facsimile or electronic means;

(w) the manner of altering the rules;

(x) the manner in which the cooperative may be wound-up;

(y) any matters that may be prescribed, whether in addition to or in substitution for any matter specified in this clause;

(z) any other matters that to the cooperative appear necessary or desirable.

2. Additional matters – cooperatives with share capital

In addition to the matters specified in clause 1, the rules of a cooperative with a share capital must set out or make provision for each of the following:

(a) the nominal value of each share in the cooperative;

(b) the amount of the contingent liability, if any, attaching to shares;

(c) the terms on which shares, not including bonus shares, but including shares, if any, with a contingent liability attached to them, are to be issued;

(d) the periodic subscriptions by which or the manner in which shares are to be paid for;

(e) in the case of a trading cooperative, the manner in which any surplus may be distributed;

(f) the allocation of a deficiency on the winding-up of a cooperative;

(g) provision for the forfeiture of shares on expulsion or on failure to pay any subscription or call, the extent to which members whose shares have been forfeited are to remain liable for any amount still unpaid in respect of them, and the sale or cancellation of forfeited shares;

(h) the manner in which shares may be transferred;

(i) any matters that may be prescribed, whether in addition to or in substitution for any matter specified in this clause.

3. Additional matters – non-trading cooperatives

In addition to the matters specified in clauses 1 and 2, the rules of a non-trading cooperative must provide –

(a) that there must be no return or distribution on surplus or share capital to members other than the nominal value of shares (if any) at winding-up; and

(b) for the manner of distribution of the surplus property at winding-up.

SCHEDULE 4 - . . . .

PART 1

PART 2 - . . . .

Division 1

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Division 2

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Division 3

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Division 6

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Division 7

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PART 3 - . . . .

Division 1

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Division 2

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SCHEDULE 5 - Receivers, and other controllers, of property of cooperatives

Sections 272 and 347

1. Interpretation: Schedule 5

In this Schedule –

administrator, in relation to a deed of arrangement, means an administrator of the deed appointed under Part 5.3A of the Corporations Act, as applying under this Act;

control day, in relation to a controller of property of a cooperative, means –

(a) unless paragraph (b) applies –

(i) in the case of a receiver, or receiver and manager, of that property, the day when the receiver, or receiver and manager, was appointed; or

(ii) in the case of any other person who is in possession, or has control, of that property for the purpose of enforcing a charge, the day when the person entered into possession, or took control, of property of the cooperative for the purpose of enforcing that charge; or

(b) if the controller became a controller of property of the cooperative –

(i) to act with an existing controller of that property; or

(ii) in place of a controller of that property who has died or ceased to be a controller of that property –

the day that is, because of any other application or applications of this definition, the control day in relation to the controller referred to in subparagraph (i) or (ii);

controller, in relation to property of a cooperative, means –

(a) a receiver, or receiver and manager, of that property; or

(b) any other person who (whether or not as agent for the cooperative) is in possession, or has control, of that property for the purpose of enforcing a charge;

cooperative includes a foreign cooperative registered under Part 14;

daily newspaper means a newspaper that is ordinarily published on each day that is a business day in the place where the newspaper is published, whether or not the newspaper is ordinarily published on other days;

managing controller, in relation to property of a cooperative, means –

(a) a receiver and manager of that property; or

(b) any other controller of that property who has functions or powers in connection with managing the cooperative;

national newspaper means a daily newspaper that circulates generally in each State, the Australian Capital Territory and the Northern Territory;

officer, in relation to a cooperative that is a foreign cooperative, includes a local agent of the foreign cooperative;

property, in relation to a cooperative, means property –

(a) in the case of a cooperative that is not a foreign cooperative, within or outside Australia; or

(b) in the case of a cooperative that is a foreign cooperative, within Australia or an external Territory;

receiver, in relation to property of a cooperative, includes a receiver and manager.

2. Application of Schedule

Except in so far as the contrary intention appears, this Schedule applies in relation to a receiver of property of a cooperative who is appointed after the commencement of this Schedule, even if the appointment arose out of a transaction entered into, or an act or thing done, before that commencement.

3. Persons not to act as receivers

(1) A person is not qualified to be appointed, and must not act, as receiver of property of a cooperative if the person –

(a) is a mortgagee of property of the cooperative; or

(b) is an auditor or an officer of the cooperative; or

(c) is an officer of a body corporate that is a mortgagee of property of the cooperative; or

(d) is not a registered liquidator under the Corporations Act; or

(e) is an officer of a body corporate related to the cooperative; or

(f) unless the Commissioner directs in writing that this paragraph does not apply in relation to the person in relation to the cooperative, has at any time within the last 12 months been an officer or promoter of the cooperative or of a related body corporate.

(2) In subclause (1),

officer, in relation to a body corporate, does not include a receiver, appointed under an instrument whether before or after the commencement of this clause, of property of the body.

(3) Subclause (1)(d) does not apply in relation to a body corporate authorised by or under a law of the Commonwealth, of a State or of a Territory to act as receiver of property of the cooperative concerned.

(4) Nothing in this clause prevents a person from acting as receiver of property of a cooperative under an appointment validly made before the commencement of this clause.

4. Supreme Court may declare whether controller is validly acting

(1) If there is doubt, on a specific ground, about –

(a) whether a purported appointment of a person, after the commencement of this clause, as receiver of property of a cooperative is valid; or

(b) whether a person who has entered into possession, or assumed control, of property of a cooperative after the commencement of this clause did so validly under the terms of a charge on that property –

the person, the cooperative or any of the cooperative's creditors may apply to the Supreme Court for an order under subclause (2).

(2) On an application, the Supreme Court may make an order declaring whether or not –

(a) the purported appointment was valid; or

(b) the person entered into possession, or assumed control, validly under the terms of the charge –

as the case may be, on the ground specified in the application or on some other ground.

5. Liability of controller

(1) A receiver, or any other authorised person, who, whether as agent for the cooperative concerned or not, enters into possession or assumes control of any property of a cooperative for the purpose of enforcing any charge is, despite any agreement to the contrary, but without prejudice to the person's rights against the cooperative or any other person, liable for debts incurred by the person in the course of the receivership, possession or control for services rendered, goods purchased or property hired, leased, used or occupied.

(2) Subclause (1) does not constitute the person entitled to the charge a mortgagee in possession.

(3) If –

(a) a person (the "controller") enters into possession or assumes control of property of a cooperative; and

(b) the controller purports to have been properly appointed as a receiver in respect of that property under a power contained in an instrument, but has not been properly so appointed; and

(c) civil proceedings in a federal court or a court of a State or Territory arise out of an act alleged to have been done by the controller –

the court may, if it is satisfied that the controller believed on reasonable grounds that the controller had been properly so appointed, order that –

(d) the controller be relieved in whole or in part of a liability that the controller has incurred but would not have incurred if the controller had been properly so appointed; and

(e) a person who purported to appoint the controller as receiver be liable in respect of an act, matter or thing in so far as the controller has been relieved under paragraph (d) of liability in respect of that act, matter or thing.

6. Liability of controller under pre-existing agreement about property used by cooperative

(1) This clause applies if –

(a) under an agreement made before the control day in relation to a controller of property of a cooperative, the cooperative continues after that day to use or occupy, or to be in possession of, property ("third party property") of which another person is the owner or lessor; and

(b) the controller is controller of the third party property.

(2) Subject to subclauses (4) and (7), the controller is liable for so much of the rent or other amounts payable by the cooperative under the agreement as is attributable to a period –

(a) that begins more than 7 days after the control day; and

(b) throughout which –

(i) the cooperative continues to use or occupy, or to be in possession of, the third party property; and

(ii) the controller is controller of the third party property.

(3) Within 7 days after the control day, the controller may give to the owner or lessor a notice that specifies the third party property and states that the controller does not propose to exercise rights in relation to that property as controller of the property, whether on behalf of the cooperative or any other person.

(4) Despite subclause (2), the controller is not liable for so much of the rent or other amounts payable by the cooperative under the agreement as is attributable to a period during which a notice under subclause (3) is in force, but such a notice does not affect a liability of the cooperative.

(5) A notice under subclause (3) ceases to have effect if –

(a) the controller revokes it by writing given to the owner or lessor; or

(b) the controller exercises, or purports to exercise, a right in relation to the third party property as controller of the property, whether on behalf of the cooperative or any other person.

(6) For the purposes of subclause (5), the controller does not exercise, or purport to exercise, a right referred to in subclause (5)(b) merely because the controller continues to be in possession, or to have control, of the third party property, unless the controller –

(a) also uses the property; or

(b) asserts a right, as against the owner or lessor, so to continue.

(7) Subclause (2) does not apply in so far as the Supreme Court, by order, excuses the controller from liability, but an order does not affect a liability of the cooperative.

(8) The controller is not taken because of subclause (2) –

(a) to have adopted the agreement; or

(b) to be liable under the agreement otherwise than as mentioned in subclause (2).

7. Powers of receiver

(1) Subject to this clause, a receiver of property of a cooperative has power to do, in Australia and elsewhere, all things necessary or convenient to be done for or in connection with, or as incidental to, the attainment of the objectives for which the receiver was appointed.

(2) Without limiting the generality of subclause (1), but subject to any provision of the court order by which, or the instrument under which, the receiver was appointed, being a provision that limits the receiver's powers in any way, a receiver of property of a cooperative has, in addition to any powers conferred by that order or instrument, as the case may be, or by any other law, power, for the purpose of attaining the objectives for which the receiver was appointed –

(a) to enter into possession and take control of property of the cooperative in accordance with the terms of that order or instrument; and

(b) to lease, let on hire or dispose of property of the cooperative; and

(c) to grant options over property of the cooperative on such conditions as the receiver thinks fit; and

(d) to borrow money on the security of property of the cooperative; and

(e) to insure property of the cooperative; and

(f) to repair, renew or enlarge property of the cooperative; and

(g) to convert property of the cooperative into money; and

(h) to carry on any business of the cooperative; and

(i) to take on lease or on hire, or to acquire, any property necessary or convenient in connection with the carrying on of a business of the cooperative; and

(j) to execute any document, bring or defend any proceedings or do any other act or thing in the name of and on behalf of the cooperative; and

(k) to draw, accept, make and endorse a bill of exchange or promissory note; and

(l) to use a seal of the cooperative; and

(m) to engage or discharge employees on behalf of the cooperative; and

(n) to appoint an Australian legal practitioner, accountant or other appropriately professionally qualified person to assist the receiver; and

(o) to appoint an agent to do any business that the receiver is unable to do, or that it is unreasonable to expect the receiver to do, in person; and

(p) if a debt or liability is owed to the cooperative, to prove the debt or liability in a bankruptcy, insolvency or winding-up and, in that connection, to receive dividends and to assent to a proposal for a composition or a scheme of arrangement; and

(q) if the receiver was appointed under an instrument that created a charge on uncalled capital or uncalled premiums of the cooperative –

(i) in the name of the cooperative, to make a call in respect of money unpaid on shares in the cooperative (whether on account of the nominal value of the shares or by way of premium); or

(ii) on the giving of a proper indemnity to a liquidator of the cooperative, in the name of the liquidator, to make a call in respect of money unpaid on account of the nominal value of shares in the cooperative; and

(r) to enforce payment of any call that is due and unpaid, whether the calls were made by the receiver or otherwise; and

(s) to make or defend an application for the winding-up of the cooperative; and

(t) to refer to arbitration any question affecting the cooperative.

(3) The conferring by this clause on a receiver of powers in relation to property of a cooperative does not affect any rights in relation to that property of any other person other than the cooperative.

(4) In this clause, a reference, in relation to a receiver, to property of a cooperative is, unless the contrary intention appears, a reference to the property of the cooperative in relation to which the receiver was appointed.

8. Controller's duty of care in exercising power of sale

(1) In exercising a power of sale in respect of property of a cooperative, a controller must take all reasonable care to sell the property for –

(a) if, when it is sold, it has a market value, not less than that market value; or

(b) otherwise, the best price that is reasonably obtainable, having regard to the circumstances existing when the property is sold.

(2) Nothing in subclause (1) limits the generality of anything in Division 3 of Part 9 of this Act.

9. Supreme Court may authorise managing controller to dispose of property despite prior charge

(1) On the application of a managing controller of property of a cooperative, the Supreme Court may by order authorise the controller to sell, or to dispose of in some other specified way, specified property of the cooperative, even though it is subject to a charge (the "prior charge") that has priority over a charge (the "controller's charge") on that property that the controller is enforcing.

(2) The Supreme Court may make an order if satisfied that –

(a) apart from the existence of the prior charge, the controller would have power to sell, or to so dispose of, the property; and

(b) the controller has taken all reasonable steps to obtain the consent of the holder of the prior charge to the sale or disposal, but has not obtained that consent; and

(c) sale or disposal of the property under the order is in the best interests of the cooperative's creditors and of the cooperative; and

(d) sale or disposal of the property under the order will not unreasonably prejudice the rights or interests of the holder of the prior charge.

(3) The Supreme Court may have regard to the need to protect adequately the rights and interests of the holder of the prior charge.

(4) If the property would be sold or disposed of together with other property that is subject to the controller's charge, the Supreme Court may have regard to –

(a) the amount (if any) by which it is reasonable to expect that the net proceeds of selling or disposing of that other property otherwise than together with the first-mentioned property would be less than so much of the net proceeds of selling or disposing of all the property together as would be attributable to that other property; and

(b) the amount (if any) by which it is reasonable to expect that the net proceeds of selling or disposing of the first-mentioned property otherwise than together with the other property would be greater than so much of the net proceeds of selling or disposing of all the property together as would be attributable to the first-mentioned property.

(5) Nothing in subclause (3) or (4) limits the matters to which the Supreme Court may have regard for the purposes of subclause (2).

(6) An order may be made subject to conditions, including (but without limitation) –

(a) a condition that –

(i) the net proceeds of the sale or disposal; and

(ii) the net proceeds of the sale or disposal of such other property (if any) as is specified in the condition and is subject to the controller's charge –

or a specified part of those net proceeds, be applied in payment of specified amounts secured by the prior charge; or

(b) a condition that the controller apply a specified amount in payment of specified amounts secured by the prior charge.

10. Receiver's power to carry on cooperative's business during winding-up

(1) A receiver of property of a cooperative that is being wound-up may –

(a) with the written approval of the cooperative's liquidator or with the approval of the Supreme Court, carry on the cooperative's business either generally or as otherwise specified in the approval; and

(b) do whatever is necessarily incidental to carrying on that business under paragraph (a).

(2) Subclause (1) does not –

(a) affect a power that the receiver has otherwise than under that subclause; or

(b) empower the receiver to do an act that he or she would not have power to do if the cooperative were not being wound-up.

(3) A receiver of property of a cooperative who carries on the cooperative's business under subclause (1) does so –

(a) as agent for the cooperative; and

(b) in his or her capacity as receiver of property of the cooperative.

(4) The consequences of subclause (3) include, but are not limited to, the following:

(a) for the purposes of clause 5(1), a debt that the receiver incurs in carrying on the business as mentioned in subclause (3) of this clause is incurred in the course of the receivership;

(b) a debt or liability that the receiver incurs in so carrying on the business is not a cost, charge or expense of the winding-up.

11. Controller's duties in relation to accounts and accounting records

(1) A controller of property of a cooperative must –

(a) open and maintain an account, with an Australian bank, building society or credit union, bearing –

(i) the controller's own name; and

(ii) in the case of a receiver of the property, the title "receiver"; and

(iii) otherwise, the title "controller"; and

(iv) the cooperative's name –

or 2 or more such accounts; and

(b) within 3 business days after money of the cooperative comes under the control of the controller, pay that money into such an account that the controller maintains; and

(c) ensure that no such account that the controller maintains contains money other than money of the cooperative that comes under the control of the controller; and

(d) keep such accounting records as correctly record and explain all transactions that the controller enters into as the controller.

(2) Any director, creditor or member of a cooperative may, unless the Supreme Court otherwise orders, personally or by an agent, inspect records kept by a controller of property of the cooperative for the purposes of subclause (1)(d).

12. Managing controller to report within 2 months about cooperative's affairs

(1) A managing controller of property of a cooperative must prepare a report about the cooperative's affairs that is in the form approved by the Commissioner and is made up to a day not later than 28 days before the day when it is prepared.

(2) The managing controller must prepare the report and lodge it with the Commissioner within 2 months after the control day.

(3) As soon as practicable, and in any event within 14 days, after lodging the report with the Commissioner, the managing controller must cause to be published in a national newspaper, or in each State and Territory in a daily newspaper that circulates generally in that State or Territory, a notice stating –

(a) that the report has been prepared; and

(b) that a person can, on paying the prescribed fee, inspect the report at specified offices of the Commissioner.

(4) If, in the managing controller's opinion, it would seriously prejudice –

(a) the cooperative's interests; or

(b) the achievement of the objectives for which the controller was appointed, or entered into possession or assumed control of property of the cooperative, as the case requires –

if particular information that the controller would otherwise include in the report were made available to the public, the controller need not include the information in the report.

(5) If the managing controller omits information from the report as permitted by subclause (4), the controller must include instead a notice –

(a) stating that certain information has been omitted from the report; and

(b) summarising what the information is about, but without disclosing the information itself.

13. Reports by receiver

(1) If it appears to the receiver of property of a cooperative that –

(a) a past or present officer, or a member, of the cooperative may have been guilty of an offence under any law of the Commonwealth or of a State or Territory in relation to the cooperative; or

(b) a person who has taken part in the formation, promotion, administration, management or winding-up of the cooperative –

(i) may have misapplied or retained, or may have become liable or accountable for, any money or property (whether the property is within or outside Australia) of the cooperative; or

(ii) may have been guilty of any negligence, default, breach of duty or breach of trust in relation to the cooperative –

the receiver must –

(c) lodge with the Commissioner as soon as practicable a report about the matter; and

(d) give to the Commissioner such information, and such access to and facilities for inspecting and taking copies of any documents, as the Commissioner requires.

(2) The receiver may also lodge further reports specifying any other matter that, in the receiver's opinion, it is desirable to bring to the notice of the Commissioner.

(3) If it appears to the Supreme Court –

(a) that a past or present officer, or a member, of a cooperative in respect of property of which a receiver has been appointed has been guilty of an offence under a law referred to in subclause (1)(a) in relation to the cooperative; or

(b) that a person who has taken part in the formation, promotion, administration, management or winding-up of a cooperative in respect of property of which a receiver has been appointed has engaged in conduct referred to in subclause (1)(b) in relation to the cooperative –

and that the receiver has not lodged a report with the Commissioner about the matter, the Court may, on the application of a person interested in the appointment of the receiver or of its own motion, direct the receiver to lodge such a report.

14. Supervision of controller

(1) If –

(a) it appears to the Supreme Court or to the Commissioner that a controller of property of a cooperative has not faithfully performed, or is not faithfully performing, the controller's functions or has not observed, or is not observing, a requirement of –

(i) in the case of a receiver, the order by which, or the instrument under which, the receiver was appointed; or

(ii) otherwise, an instrument under which the controller entered into possession, or took control, of that property; or

(iii) in any case, the Supreme Court; or

(iv) in any case, this Act or the rules of court; or

(b) a person complains to the Supreme Court or to the Commissioner about an act or omission of a controller of property of a cooperative in connection with performing or exercising any of the controller's functions and powers –

the Supreme Court or the Commissioner, as the case may be, may inquire into the matter and, where the Supreme Court or Commissioner so inquires, the Supreme Court may take such action as it thinks fit.

(2) The Commissioner may report to the Supreme Court any matter that in the Commissioner's opinion is a misfeasance, neglect or omission on the part of a controller of property of a cooperative and the Court may –

(a) order the controller to make good any loss that the estate of the cooperative has sustained thereby; and

(b) make any other order or orders that it thinks fit.

(3) The Supreme Court may at any time –

(a) require a controller of property of a cooperative to answer questions about the performance or exercise of any of the controller's functions and powers as controller; or

(b) examine a person about the performance or exercise by such a controller of any of the controller's functions and powers as controller; or

(c) direct an investigation to be made of such a controller's books.

15. Controller may apply to Supreme Court

(1) A controller of property of a cooperative may apply to the Supreme Court for directions in relation to any matter arising in connection with the performance or exercise of any of the controller's functions and powers as controller.

(2) In the case of a receiver of property of a cooperative, subclause (1) applies only if the receiver was appointed under a power contained in an instrument.

16. Power of Supreme Court to fix receiver's remuneration

(1) The Supreme Court may by order fix the amount to be paid by way of remuneration to any person who, under a power contained in an instrument, has been appointed as receiver of property of a cooperative.

(2) The power of the Supreme Court to make an order under this clause –

(a) extends to fixing the remuneration for any period before the making of the order or the application for the order; and

(b) is exercisable even if the receiver has died, or ceased to act, before the making of the order or the application for the order; and

(c) if the receiver has been paid or has retained for the receiver's remuneration for any period before the making of the order any amount in excess of that fixed for that period, extends to requiring the receiver or the receiver's personal representatives to account for the excess or such part of the excess as is specified in the order.

(3) The power conferred by subclause (2)(c) must not be exercised in respect of any period before the making of the application for the order unless, in the opinion of the Supreme Court, there are special circumstances making it proper for the power to be so exercised.

(4) The Supreme Court may from time to time vary or amend an order under this clause.

(5) An order under this clause may be made, varied or amended on the application of –

(a) a liquidator of the cooperative; or

(b) an administrator of the cooperative; or

(c) an administrator of a deed of arrangement executed by the cooperative; or

(d) the Commissioner.

(6) An order under this clause may be varied or amended on the application of the receiver concerned.

(7) An order under this clause may be made, varied or amended only as provided in subclauses (5) and (6).

17. Controller has qualified privilege in certain cases

A controller of property of a cooperative has qualified privilege in respect of –

(a) a matter contained in a report that the controller lodges under clause 12 or 13; or

(b) a comment that the controller makes under clause 20(2)(c).

18. Notification of matters relating to controller

(1) A person who obtains an order for the appointment of a receiver of property of a cooperative, or who appoints such a receiver under a power contained in an instrument, must –

(a) within 7 days after obtaining the order or making the appointment, lodge notice that the order has been obtained, or that the appointment has been made, as the case requires; and

(b) within 21 days after obtaining the order or making the appointment, cause notice that the order has been obtained, or that the appointment has been made, as the case requires, to be published in the *Gazette*.

(2) A person who appoints another person to enter into possession, or take control, of property of a cooperative (whether or not as agent for the cooperative) for the purpose of enforcing a charge otherwise than as receiver of that property must –

(a) within 7 days after making the appointment, lodge notice of the appointment with the Commissioner; and

(b) within 21 days after making the appointment, cause notice of the appointment to be published in the *Gazette*.

(3) A person who enters into possession, or takes control, as mentioned in subclause (2) must –

(a) within 7 days after so entering into possession or taking control, lodge notice with the Commissioner that the person has done so; and

(b) within 21 days after so entering into possession or taking control, cause to be published in the *Gazette* notice that the person has done so –

unless another person –

(c) appointed the first-mentioned person so to enter into possession or take control; and

(d) complies with subclause (2) in relation to the appointment.

(4) Within 14 days after becoming a controller of property of a cooperative, a person must lodge with the Commissioner notice in the form approved by the Commissioner of the address of the person's office.

(5) A controller of property of a cooperative must, within 14 days after a change in the situation of the controller's office, lodge with the Commissioner notice in the form approved by the Commissioner of the change.

(6) A person who ceases to be a controller of property of a cooperative must –

(a) within 7 days after so ceasing, lodge with the Commissioner notice that the person has so ceased; and

(b) within 21 days after so ceasing, cause notice that the person has so ceased to be published in the *Gazette*.

19. Statement that receiver appointed or other controller acting

(1) If a receiver of property (whether within or outside this State or within or outside Australia) of a cooperative has been appointed, the cooperative must set out, in every public document, and in every eligible negotiable instrument, of the cooperative, after the name of the cooperative where it first appears, a statement that a receiver, or a receiver and manager, as the case requires, has been appointed.

(2) If there is a controller (other than a receiver) of property (whether within Australia or elsewhere) of a cooperative, the cooperative must set out, in every public document, and in every eligible negotiable instrument, of the cooperative, after the cooperative's name where it first appears, a statement that a controller is acting.

20. Officers to report to controller about cooperative's affairs

(1) In this clause,

reporting officer, in relation to a cooperative in respect of property of which a person is controller, means a person who was on the control day –

(a) in the case of a cooperative other than a foreign cooperative, a director or secretary of the cooperative; or

(b) in the case of a foreign cooperative, a local agent of the foreign cooperative.

(2) If a person becomes a controller of property of a cooperative –

(a) the person must serve on the cooperative as soon as practicable notice that the person is a controller of property of the cooperative; and

(b) within 14 days after the cooperative receives the notice, the reporting officers must make out and submit to the person a report in the form approved by the Commissioner about the affairs of the cooperative as at the control day; and

(c) the person must, within 28 days after receipt of the report –

(i) lodge with the Commissioner a copy of the report and a notice setting out any comments the person sees fit to make relating to the report or, if the person does not see fit to make any comment, a notice stating that the receiver does not see fit to make any comment; and

(ii) send to the cooperative a copy of the notice lodged in accordance with subparagraph (i); and

(d) the person must, within 28 days after receipt of the report, if the person became a controller of the property –

(i) because of an appointment as receiver of the property that was made by or on behalf of the holder of debentures of the cooperative; or

(ii) by entering into possession, or taking control, of the property for the purpose of enforcing a charge securing such debentures –

and there are trustees for the holders of those debentures, send to the trustees a copy of the report and a copy of the notice lodged under paragraph (c)(i).

(3) If notice has been served on a cooperative under subclause (2)(a), the reporting officers may apply to the controller or to the Supreme Court to extend the period within which the report is to be submitted and –

(a) if application is made to the controller, if the controller believes that there are special reasons for so doing, the controller may, by written notice given to the reporting officers, extend that period until a specified day; and

(b) if application is made to the Supreme Court, if the Court believes that there are special reasons for so doing, the Court may, by order, extend that period until a specified day.

(4) As soon as practicable after granting an extension under subclause (3)(a), the controller must lodge a copy of the notice with the Commissioner.

(5) As soon as practicable after the Supreme Court grants an extension under subclause (3)(b), the reporting officers must lodge a copy of the order with the Commissioner.

(6) Subclauses (2), (3) and (4) do not apply in a case where a person becomes a controller of property of a cooperative –

(a) to act with an existing controller of property of the cooperative; or

(b) in place of a controller of the property who has died or ceased to be a controller of the property.

(7) If subclause (2) applies in a case where a controller of property of a cooperative dies, or ceases to be a controller of property of the cooperative, before subclause (2) is fully complied with, then –

(a) the references in subclause (2)(b), (c) and (d) to the person; and

(b) the references in subclauses (3) and (4) to the controller –

include references to the controller's successor and to any continuing controller.

(8) If a cooperative is being wound-up, this clause (including subclause (7)) and clause 21 apply even if the controller and the liquidator are the same person, but with any necessary modifications arising from that fact.

21. Controller may require reports

(1) A controller of property of a cooperative may, by notice given to the person or persons, require one or more persons included in one or more of the following classes of persons to make out as required by the notice, verify by a statement in writing in the form approved by the Commissioner, and submit to the controller, a report, containing such information as is specified in the notice as to the affairs of the cooperative or as to such of those affairs as are specified in the notice, as at a date specified in the notice:

(a) persons who are or have been officers of the cooperative;

(b) if the cooperative was incorporated within one year before the control day, persons who have taken part in the formation of the cooperative;

(c) persons who are employed by the cooperative or have been so employed within one year before the control day and are, in the opinion of the controller, capable of giving the information required;

(d) persons who are, or have been within one year before the control day, officers of, or employed by, a cooperative that is, or within that year was, an officer of the cooperative.

(2) Without limiting the generality of subclause (1), a notice under that subclause may specify the information that the controller requires as to affairs of the cooperative by reference to information that this Act requires to be included in any other report, statement or notice under this Act.

(3) A person making a report and verifying it as required by subclause (1) must, subject to the regulations, be allowed, and must be paid by the receiver (or the controller's successor) out of the controller's receipts, any costs and expenses incurred in and about the preparation and making of the report and the verification of the report that the controller (or the controller's successor) considers reasonable.

(4) A person must comply with a requirement made under subclause (1).

(5) A reference in this clause to the controller's successor includes a reference to a continuing controller.

22. Controller may inspect books

A controller of property of a cooperative is entitled to inspect at any reasonable time any books of the cooperative that relate to that property and a person must not fail to allow the controller to inspect those books at such a time.

23. Lodging controller's accounts

(1) A controller of property of a cooperative must lodge with the Commissioner an account –

(a) within 28 days after the end of –

(i) 6 months, or such shorter period as the controller determines, after the day when the controller became a controller of property of the cooperative; and

(ii) each subsequent period of 6 months throughout which the controller is a controller of property of the cooperative; and

(b) within 28 days after the controller ceases to be a controller of property of the cooperative.

(2) An account must be in the form approved by the Commissioner and show –

(a) the controller's receipts and payments during –

(i) in the case of an account under subclause (1)(a), the 6 months or shorter period, as the case requires; or

(ii) in the case of an account under subclause (1)(b), the period beginning at the end of the period to which the last account related, or on the control day, as the case requires, and ending on the day when the controller so ceased; and

(b) except in the case of an account lodged under subclause (1)(a)(i), the respective aggregates of the controller's receipts and payments since the control day.

(3) In the case of –

(a) a receiver appointed under a power contained in an instrument; or

(b) another person who is in possession, or has control, of property of the cooperative for the purpose of enforcing a charge –

the accounts must also show the following:

(c) the amount (if any) owing under that instrument or charge –

(i) in the case of an account lodged under subclause (1)(a)(i), at the end of the control day and at the end of the period to which the account relates; or

(ii) otherwise, at the end of the period to which the account relates;

(d) the controller's estimate of the total value, at the end of the period to which the account relates, of the property of the cooperative that is subject to the instrument or charge.

(4) The Commissioner may, of the Commissioner's own motion or on the application of the cooperative or a creditor of the cooperative, cause the accounts lodged in accordance with subclause (1) to be audited by a registered company auditor appointed by the Commissioner.

(5) For the purpose of the audit, the controller must furnish the auditor with any books and information that the auditor requires.

(6) If the Commissioner causes the accounts to be audited on the request of the cooperative or a creditor, the Commissioner may require the cooperative or creditor, as the case may be, to give security for the payment of the cost of the audit.

(7) The costs of an audit under subclause (3) are to be fixed by the Commissioner.

(8) The Commissioner may, if the Commissioner thinks fit, make an order declaring that, for the purposes of clause 5(1), the costs of the audit are taken to be a debt incurred by the controller as mentioned in clause 5(1) and, if such an order is made, the controller is liable accordingly.

(9) A person must comply with a requirement made under this clause.

24. Payment of certain debts, out of property subject to floating charge, in priority to claims under charge

(1) This clause applies if –

(a) a receiver is appointed on behalf of the holders of any debentures of a cooperative that are secured by a floating charge, or possession is taken or control is assumed, by or on behalf of the holders of any debentures of a cooperative, of any property comprised in or subject to a floating charge; and

(b) at the date of the appointment or of the taking of possession or assumption of control (the "relevant date") –

(i) the cooperative has not commenced to be wound-up voluntarily; and

(ii) the cooperative has not been ordered to be wound-up by the Supreme Court.

(2) The receiver or other person taking possession or assuming control of property of the cooperative must pay, out of the property coming into his, her or its hands, the following debts or amounts in priority to any claim for principal or interest in respect of the debentures:

(a) first, any amount that in a winding-up is payable in priority to unsecured debts pursuant to section 556 of the Corporations Act (as applying under this Act);

(b) next, if an auditor of the cooperative had applied to the Commissioner for consent to his, her or its resignation as auditor and the Commissioner had refused that consent before the relevant date, the reasonable fees and expenses of the auditor incurred during the period beginning on the day of the refusal and ending on the relevant date;

(c) subject to subclauses (4) and (5), next, any debt or amount that in a winding-up is payable in priority to other unsecured debts pursuant to section 556(1)(e), (g) or (h) or 560 of the Corporations Act (as applying under this Act).

(3) The receiver or other person taking possession or assuming control of property must pay debts and amounts payable pursuant to subclause (2)(c) in the same order of priority as is prescribed by Division 6 of Part 5.6 of the Corporations Act (as applying under this Act) in respect of those debts and amounts.

(4) If an auditor of the cooperative had applied to the Commissioner for consent to his, her or its resignation as auditor and the Commissioner had, before the relevant date, refused that consent, a receiver must, when property comes to the receiver's hands, before paying any debt or amount referred to in subclause (2)(c), make provision out of that property for the reasonable fees and expenses of the auditor incurred after the relevant date but before the date on which the property comes into the receiver's hands, being fees and expenses in respect of which provision has not already been made under this subclause.

(5) If an auditor of the cooperative applies to the Commissioner for consent to his, her or its resignation as auditor and, after the relevant date, the Commissioner refuses that consent, the receiver must, in relation to property that comes into the receiver's hands after the refusal, before paying any debt or amount referred to in subclause (2)(c), make provision out of that property for the reasonable fees and expenses of the auditor incurred after the refusal and before the date on which the property comes into the receiver's hands, being fees and expenses in respect of which provision has not already been made under this subclause.

(6) A receiver must make provision in respect of reasonable fees and expenses of an auditor in respect of a particular period as required by subclause (4) or (5) whether or not the auditor has made a claim for fees and expenses for that period, but where the auditor has not made a claim, the receiver may estimate the reasonable fees and expenses of the auditor for that period and make provision in accordance with the estimate.

(7) For the purposes of this clause, the references in Division 6 of Part 5.6 of the Corporations Act (as applying under this Act) to the relevant date are to be read as references to the date of the appointment of the receiver, or of possession being taken or control being assumed, as the case may be.

25. Enforcement of controller's duty to make returns

(1) If a receiver of property of a cooperative –

(a) who has made default in making or lodging any return, account or other document or in giving any notice required by law fails to make good the default within 14 days after the service on the controller, by any member or creditor of the cooperative or trustee for debenture holders, of a notice requiring the controller to do so; or

(b) who has become a controller of property of the cooperative otherwise than by being appointed a receiver of the property by a court and who has, after being required at any time by the liquidator of the cooperative so to do, failed to render proper accounts of, and to vouch, the controller's receipts and payments and to pay over to the liquidator the amount properly payable to the liquidator –

the Supreme Court may make an order directing the controller to make good the default within the time specified in the order.

(2) An application under subclause (1) may be made –

(a) if subclause (1)(a) applies, by a member or creditor of the cooperative or by a trustee for debenture holders; and

(b) if subclause (1)(b) applies, by the liquidator of the cooperative.

26. Supreme Court may remove controller for misconduct

If, on the application of a cooperative, the Supreme Court is satisfied that a controller of property of the cooperative has been guilty of misconduct in connection with performing or exercising any of the controller's functions and powers, the Court may order that, on and after a specified day, the controller cease to act as receiver or give up possession or control, as the case requires, of property of the cooperative.

27. Supreme Court may remove redundant controller

(1) The Supreme Court may order that, on and after a specified day, a controller of property of a cooperative –

(a) cease to act as receiver, or give up possession or control, as the case requires, of property of the cooperative; or

(b) act as receiver, or continue in possession or control, as the case requires, only of specified property of the cooperative.

(2) The Supreme Court may make an order under subclause (1) if it is satisfied that the objectives for which the controller was appointed, or entered into possession or took control of property of the cooperative, as the case requires, have been achieved, so far as is reasonably practicable, except in relation to any property specified in the order under subclause (1)(b).

(3) For the purposes of subclause (2), the Supreme Court may have regard to –

(a) the cooperative's interests; and

(b) the interests of the holder of the charge that the controller is enforcing; and

(c) the interests of the cooperative's other creditors; and

(d) any other relevant matter.

(4) The Supreme Court may make an order under subclause (1) on the application of a liquidator appointed for the purposes of winding-up the cooperative in insolvency.

(5) An order under subclause (1) may also prohibit the holder of the charge from doing any or all of the following, except with the leave of the Supreme Court:

(a) appointing a person as receiver of property of the cooperative under a power contained in an instrument relating to the charge;

(b) entering into possession, or taking control, of the property for the purpose of enforcing the charge;

(c) appointing a person so to enter into possession or take control (whether as agent for the chargee or for the cooperative).

28. Effect of clauses 26 and 27

(1) Except as expressly provided in clause 26 or 27, an order under clause 26 or 27 does not affect a charge on property of a cooperative.

(2) Nothing in clause 26 or 27 limits any other power of the Supreme Court to remove, or otherwise deal with, a controller of property of a cooperative (including the Supreme Court's powers under clause 14).

SCHEDULE 6 - Savings and transitional provisions

Section 462

1. Definitions

In this Schedule –

repealed Act means the *Co-operative Industrial Societies Act 1928*;

transferred cooperative means a body corporate which is taken under clause 3, 4 or 5 to be a cooperative registered under this Act.

2. General savings

Unless the contrary intention appears in this Act or the regulations, all persons, things and circumstances appointed or created by or under the repealed Act, or existing or continuing under that Act immediately before the commencement of this clause continue, under and subject to this Act, to have the same status, operation and effect as they respectively would have had if this Act had not been enacted.

3. Saving of existing cooperatives

(1) On the commencement of this clause, any existing society or association which was registered as a co-operative society under the repealed Act immediately before that commencement is taken to be a cooperative registered under this Act.

(2) Each transferred cooperative under this clause is the same legal entity as it was before the commencement of this clause with the same name, rules, directors and membership as it had immediately before that commencement.

4. Cooperative started to be formed before commencement

(1) If, before the commencement of this clause, a form referred to in section 33(4) of the repealed Act had been submitted by a society to the Attorney-General for approval but the society had not been registered as a cooperative under that Act –

(a) the provisions of sections 4, 5, 6, 7, 8 and 10(1) of the repealed Act continue to apply to the registration of the society as a cooperative society; and

(b) on the registration of the cooperative under the repealed Act, the cooperative is taken to be a cooperative registered under this Act.

(2) Each transferred cooperative under this clause is the same legal entity as it was before it became a cooperative under this Act with the same name, rules, directors and membership as it had immediately before it became a cooperative under this Act.

(3) A certificate issued by the Commissioner under the repealed Act as continuing in force for the purposes of this clause is, for the purposes of this Act, taken to be a certificate issued under this Act.

5. Cooperatives in process of amalgamation before commencement

(1) If, before the commencement of this clause, 2 or more cooperatives registered under the repealed Act had passed special resolutions resolving to amalgamate the cooperatives and an application for their amalgamation was duly made under the repealed Act but the proposed cooperative had not been registered under that Act –

(a) sections 45, 46, 47, 50 and 51 of the repealed Act continue to apply to the registration of the proposed cooperative; and

(b) on the registration of the cooperative formed by the amalgamation, the cooperative is taken to be a cooperative registered under this Act.

(2) Each transferred cooperative under this clause is the same legal entity as it was before it became a cooperative under this Act with the same name, rules, directors and membership as it had immediately before it became a cooperative under this Act.

(3) A certificate of registration issued by the Commissioner under the repealed Act as continuing in force for the purposes of this clause is, for the purposes of this Act, taken to be a certificate of registration issued under this Act.

6. Rules of transferred cooperative to conform with Act

(1) The rules of a transferred cooperative have effect subject to this Act and the regulations.

(2) A transferred cooperative must bring its rules into conformity with this Act –

(a) within 2 years after the commencement of this Act; or

(b) within such further period as may be approved by the Commissioner in respect of that cooperative.

7. Modification of certain rules

(1) This clause applies if in the opinion of the Commissioner the rules of a transferred cooperative should be altered to achieve conformity with any requirement of this Act.

(2) The Commissioner may, by instrument served on the transferred cooperative, require it within a period specified in the instrument to alter its rules –

(a) in a manner specified in the instrument; or

(b) in a manner approved by the Commissioner.

(3) If within the period specified in the instrument the cooperative fails to alter its rules as required by the instrument, the Commissioner may by notation on the registered copy of the rules alter the rules.

(4) The Commissioner must give written notice to a cooperative of any alteration of its rules made by him or her under this clause.

(5) Any alteration made by the Commissioner to the rules under this clause is as valid and effectual as an alteration made and registered under Part 5.

8. Rules of cooperative in process of amendment before commencement

(1) If, before the commencement of this clause, a cooperative registered under the repealed Act had passed a special resolution resolving to amend its rules and the amendment to the rules was registered under the repealed Act but the Commissioner had not issued a certificate under that Act –

(a) the provisions of section 10 of the repealed Act continue to apply to the amendment of the rules of the cooperative; and

(b) on the issue of a certificate by the Commissioner under section 10 of the repealed Act, the amendment is taken to be an amendment registered under this Act.

(2) A certificate issued by the Commissioner under section 10(3) of the repealed Act as continuing in force for the purposes of this clause is, for the purposes of this Act, taken to be a certificate issued under this Act.

9. Rules to contain active membership provisions

The board of directors of a transferred cooperative must comply with Division 2 of Part 6 of this Act –

(a) within 2 years of the commencement of this clause; or

(b) within any further period approved by the Commissioner in respect of a particular cooperative.

10. Special resolutions and majority resolutions

A special resolution passed by a transferred cooperative under the repealed Act and not registered under that Act before the commencement of this clause may be registered by the Commissioner under this Act.

11. Documents

A certificate or other document, relating to a transferred cooperative, issued or registered by, filed or lodged with or given to the Commissioner under the repealed Act has effect as if it were a certificate or other document issued or registered by, filed or lodged with or given to the Commissioner under this Act.

12. Existing accounts provisions to apply to transferred cooperatives

(1) Despite anything to the contrary in this Act, sections 12A, 13 and 14 of the repealed Act apply and continue to apply to a transferred cooperative until the end of the financial year of that cooperative next following the commencement of this clause.

(2) Divisions 6 and 7 of Part 9 of this Act do not apply to a transferred cooperative during the period that sections 12A, 13 and 14 of the repealed Act apply to it under subclause (1).

13. Receivers and managers

If, immediately before the commencement of this clause, there was a receiver or manager, or an administrator or official manager, of a transferred cooperative, section 51A of the repealed Act continues to apply to the transferred cooperative and the appointment of the receiver or manager, or the administrator or official manager, despite the enactment of this Act.

14. Winding-up

(1) If, before the commencement of this clause, a transferred cooperative had commenced to be wound-up under section 52 of the repealed Act, that section continues to apply to that winding-up.

(2) A cooperative mentioned in subclause (1) whose registration has been cancelled is taken to be a deregistered cooperative.

(3) . . . .

(4) . . . .

15. Investigation and inspection

If, before the commencement of this clause, an investigation or inspection had commenced in respect of a transferred cooperative under sections 19, 20 or 20A of the repealed Act, those sections continue to apply in relation to that investigation or inspection.

16. Commissioner

Unless the contrary intention appears in this Act, all acts, matters and things of a continuing nature done or commenced before the commencement of this clause by or on behalf of or in relation to the Commissioner under the repealed Act are not affected and, under and subject to this Act, continue to have the same status, operation and effect as they would have had if the repealed Act had not been repealed.

17. Superseded references

On and from the commencement of this clause, any reference in any other Act, or regulation or any other document –

(a) to the repealed Act may, if the context permits, be taken to be a reference to this Act; and

(b) to a society or co-operative society within the meaning of the repealed Act may, if the context permits, be taken to be a reference to a cooperative registered under this Act.

18. Regulations

The Governor may make regulations of a savings or transitional nature consequent on the enactment or commencement of this Act.

SCHEDULE 7

The amendments effected by Section 464 and this Schedule have been incorporated into authorised versions of the following Acts:

(a) *Co-operative Housing Societies Act 1963;*

(b) *Co-operative Industrial Societies Act 1928;*

(c) *Cooperatives Act 1999;*

(d) *Land and Income Taxation Act 1910;*

(e) *State Loans and Loan Guarantees Act 1976.*

Table Of Amendments

Act	Number and year	Date of commencement
Cooperatives Act 1999	No. 85 of 1999	24.5.2000
Corporations (Consequential Amendments) Act 2001	No. 42 of 2001	15.7.2001
Statute Law Revision Act 2003	No. 9 of 2003	16.4.2003
Police Service (Consequential Amendments) Act 2003	No. 76 of 2003	1.1.2004
Relationships (Consequential Amendments) Act 2003	No. 45 of 2003	1.1.2004
Legal Profession (Miscellaneous and Consequential Amendments) Act 2007	No. 66 of 2007	31.12.2008
Personal Property Securities (National Uniform Legislation) Implementation Act 2011	No. 2 of 2011	30.1.2012