Authorised Version No. 004

Co-operatives National Law Application Act 2013

No. 9 of 2013

Authorised Version incorporating amendments as at 30 August 2017

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The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purposes

The purposes of this Act are—

(a) to provide for the application of a national law relating to the formation, registration and operation of co-operatives; and

(b) to repeal the **Co-operatives Act 1996** and to make related amendments to other Acts.

2 Commencement

This Act comes into operation on a day or days to be proclaimed.

3 Definitions

(1) In this Act—

Co-operatives National Law (Victoria) means the provisions applying in relation to this jurisdiction because of section 4(1);

Co-operatives National Regulations means the Co-operative National Regulations made under the Co-operatives National Law;

Co-operatives National Regulations (Victoria) means the provisions applying in relation to this jurisdiction because of section 4(2);

local regulations means the regulations made under section 28 or 29;

Registrar means the Registrar of Co-operatives referred to in section 21;

this jurisdiction means the State of Victoria.

(2) Terms used in this Act and also in the Co-operatives National Law have the same meanings in this Act as they have in that Law.

Part 2—Application of Co-operatives National Law and Co-operatives National Regulations

4 Application of Co-operatives National Law and Co-operatives National Regulations

(1) The Co-operatives National Law, as in force from time to time, set out in the Appendix to the Co-operatives (Adoption of National Law) Act 2012 of New South Wales—

(a) subject to section 6, applies as a law of this jurisdiction; and

(b) as so applying, may be referred to as the Co-operatives National Law (Victoria); and

(c) as so applying has effect as if it were an Act.

(2) The Co-operatives National Regulations, as in force from time to time—

(a) apply as National Regulations in force for the purposes of the Co-operatives National Law (Victoria), subject to modifications prescribed by the local regulations; and

(b) as so applying may be referred to as the Co-operatives National Regulations (Victoria).

Note

The Co-operatives National Regulations as in force from time to time apply by virtue of this provision as National Regulations for the purposes of the Co-operatives National Law (Victoria). The regulations as so applying and referred to as the Co-operatives National Regulations (Victoria) are interpreted in accordance with that Law (and see in particular clauses 15 and 37 of Schedule 4 to that Law).

5 Meaning of certain terms in Co-operatives National Law for purposes of this jurisdiction

In the Co-operatives National Law (Victoria)—

S. 5 def. of *police officer* substituted by No. 37/2014 s. 10(Sch. item 21.1).

police officer has the same meaning as in the **Victoria Police Act 2013**;

public sector official means a public sector employee within the meaning of the **Public Administration Act 2004**;

Registrar has the same meaning as it has in this Act;

this jurisdiction means the State of Victoria.

6 Non-application of Co-operatives National Law to co-operative housing societies and other bodies

Except as provided by the local regulations, the Co-operatives National Law (Victoria) does not apply to or in respect of a co-operative housing society within the meaning of the **Co-operative Housing Societies Act 1958**.

7 Exclusion of legislation of this jurisdiction

The following Acts of this jurisdiction do not apply to the Co-operatives National Law (Victoria), the Co-operatives National Regulations (Victoria), the Co-operatives National Regulations or other instruments (excluding local regulations) made under that Law—

(a) the **Interpretation of Legislation Act 1984**;

(b) the **Subordinate Legislation Act 1994** (except to the extent provided by section 8).

8 Disallowance of Co-operatives National Regulations (Victoria)

Section 15(1) and Part 5 of the **Subordinate Legislation Act 1994** apply to the Co-operatives National Regulations (Victoria) as if—

(a) the Co-operatives National Regulations (Victoria) were a statutory rule within the meaning of that Act; and

(b) a reference in section 15(1) of that Act to the publication of notice of the making of the statutory rule in the Government Gazette under section 17(2) of that Act were a reference to the later of—

(i) the publication of the Co-operatives National Regulations under section 614(1) of the Co-operatives National Law;

(ii) the day this section comes into operation.

Note

Section 15(1) of the **Subordinate Legislation Act 1994** requires that a statutory rule be laid before each House of Parliament. Part 5 of that Act provides for the suspension or disallowance of statutory rules in certain circumstances.

Part 3—Some matters referred to in Co-operatives National Law (Victoria)

9 Designated authority

With respect to the definition of ***designated authority*** in the Co-operatives National Law (Victoria)—

(a) the Registrar is specified for the purposes of sections 15, 601 and 622 of that Law;

(b) the Minister is specified for the purposes of sections 492, 494 and 520 of that Law;

(c) a magistrate is specified for the purposes of sections 504 and 505 of that Law.

10 Designated instrument

With respect to the definition of ***designated instrument*** in the Co-operatives National Law (Victoria)—

(a) an order in writing in the approved form is specified for the purposes of the provisions of that Law referred to in Column 2 of Schedule 1 for the person or class (if any) or in the circumstances (if any) specified opposite in Column 3 of Schedule 1;

(b) a notice in the Government Gazette in the approved form is specified for the purposes of the provisions of that Law referred to in Column 2 of Schedule 1 for the person or class (if any) or in the circumstances (if any) specified opposite in Column 4 of Schedule 1;

(c) a written notice in the approved form is specified for the purposes of section 443(5) of that Law.

11 Designated tribunal

S. 11 amended by No. 12/2015 s. 18(2) (ILA s. 39B(1)).

(1) With respect to the definition of ***designated tribunal*** in the Co-operatives National Law (Victoria)—

S. 11(1)(a) amended by No. 12/2015 s. 18(1).

(a) the Magistrates' Court is specified for the purposes of the provisions of that Law in which the term is used, except Part 7.3 of that Law;

(b) the VCAT is specified for the purposes of Part 7.3 of that Law.

S. 11(2) inserted by No. 12/2015 s. 18(2).

(2) In any proceeding under this Act in relation to which the Magistrates' Court is the designated tribunal, the Magistrates' Court may, on its own initiative or on application by a party to the proceeding—

(a) transfer the proceeding to the Supreme Court on the ground that the proceeding raises a complex question or matter of general importance; or

(b) reserve a question of law for determination by the Supreme Court.

S. 11(3) inserted by No. 12/2015 s. 18(2).

(3) If a proceeding has been transferred to the Supreme Court under subsection (2)(a), it may be continued and completed as if steps taken in the proceeding prior to the transfer had been taken in the Supreme Court.

12 Adjustment of date referred to in Corporations Act as applied

For the purposes of section 201(b) of the Co-operatives National Law (Victoria), the reference to 23 June 1993 is to be read as the date on which this section comes into operation.

13 Transfer or payment to the Registrar of consideration for shares compulsorily acquired

(1) This section applies in relation to an amount or other property paid or transferred to the Registrar under section 436(2) of the Co-operatives National Law (Victoria).

(2) The transferor of the amount or property must provide to the Registrar any details of the amount or property required by the Registrar to comply with the **Unclaimed Money Act 2008**.

(3) For the purposes of section 436(3)(b)(i) of the Co-operatives National Law (Victoria), references in section 1339 of the Corporations Act to crediting an amount to the Companies and Unclaimed Moneys Special Account are to be read as references to dealing with the amount or property in accordance with subsection (4).

(4) Anything paid or transferred to the Registrar under section 436(2) of the Co-operatives National Law (Victoria) is to be held on trust by the Registrar until such time as it is—

(a) dealt with in accordance with the **Unclaimed Money Act 2008**; or

(b) paid or transferred to a person under subsection (6).

(5) For the purposes of section 436(3)(b)(ii) of the Co-operatives National Law (Victoria), sections 1341(1) and (2) of the Corporations Act are taken to be replaced by subsection (6).

(6) If a person claims to be entitled to an amount or property held in trust by the Registrar under subsection (4) and the Registrar is satisfied that the person is entitled to that amount or property, the Registrar must pay the amount or transfer the property to the person.

(7) The Registrar is, following the payment of an amount or the transfer of property to a claimant under subsection (6), discharged from any further liability with respect to that amount or that property.

(8) If a person (the ***subsequent claimant***) claims to be the owner of an amount or property subsequent to that amount or property being paid or transferred to another person (the ***first claimant***) under subsection (6), the subsequent claimant may have recourse against the first claimant for that amount or property.

14 Deregistration

(1) For the purposes of section 453(d) of the Co-operatives National Law (Victoria), references in section 601AD to 601AF of the Corporations Act to the Commonwealth are to be read as references to the State of Victoria.

(2) For the purposes of section 453(e) of the Co-operatives National Law (Victoria), references in section 601AE of the Corporations Act to crediting an amount to a Special Account (within the meaning of the Financial Management and Accountability Act 1997 of the Commonwealth) are to be read as references to crediting the amount to the Consolidated Fund.

15 Warrants

(1) Warrants under Part 6.4 of the Co-operatives National Law (Victoria) must be issued in accordance with Division 3 of Part 4 of the **Magistrates' Court Act 1989**.

(2) Part 6.4 of the Co-operatives National Law (Victoria) does not apply to the extent of any inconsistency with that Act.

16 Costs of inquiry

For the purposes of section 530(3)(b) of the Co-operatives National Law (Victoria), the prescribed entity is the State of Victoria.

17 Secrecy

(1) For the purposes of section 537(4)(c) of the Co-operatives National Law (Victoria), information may be divulged to—

(a) the Treasurer;

(b) the Commissioner of the State Revenue Office of Victoria;

(c) the Minister;

(d) the Auditor-General;

(e) a Victorian court, within the meaning of the **Evidence Act 2008**;

(f) a Royal Commission or a board to which Division 5 of Part I of the **Evidence (Miscellaneous Provisions) Act 1958** applies;

(g) the Independent Broad-based Anti-corruption Commission established under the **Independent Broad-based Anti-corruption Commission Act 2011**;

(h) the person who, for the time being, is employed as Director of Consumer Affairs Victoria under the **Public Administration Act 2004**;

(i) the person who, for the time being, is employed as the Registrar of Incorporated Associations under the **Public Administration Act 2004**.

(2) For the purposes of the definition of ***former Act*** in section 537(6) of the Co-operatives National Law (Victoria), the **Co-operatives Act 1996** is specified.

18 Pecuniary penalty orders

(1) For the purposes of section 556(2) of the Co-operatives National Law (Victoria), a pecuniary penalty ordered to be paid in this jurisdiction is to be paid and treated in accordance with this section.

(2) The penalty is a civil debt payable to the Registrar on behalf of the State.

(3) The Registrar or the State may enforce the order as if it were an order made in civil proceedings against the person to recover a debt due by the person in a court of competent jurisdiction.

(4) The debt arising from the order is taken to be a judgment debt.

19 Duty on transfer of incorporation

(1) This section applies if—

(a) a co-operative that transfers its incorporation under Division 2 of Part 4.3 of the Co-operatives National Law (Victoria) was, before its registration as a co-operative under that Law, a company under the Corporations Act or any corresponding previous law of this jurisdiction; and

(b) duty had been paid on its incorporation as such a company in respect of the amount of the nominal capital of the company (or, if subsequently increased on the amount of its nominal capital, as so increased).

(2) Any duty so paid is to be taken into account and included in assessing the duty payable on the incorporation or registration of the new body pursuant to the transfer.

20 Registration fees

No fee is chargeable under any Act for registration of an instrument executed or registered for or with respect to a transfer of any property to give effect to section 413 or 481 of the Co-operatives National Law (Victoria) in respect of—

(a) a merger of co-operatives; or

(b) a transfer of engagements; or

(c) a transfer of incorporation.

Part 4—Registrar

21 Registrar of Co-operatives

(1) Subject to the **Public Administration Act 2004**, there is to be a Registrar of Co-operatives for the purposes of—

(a) this Act; and

(b) the Co-operatives National Law (Victoria); and

(c) the Co-operatives National Regulations (Victoria); and

(d) the local regulations.

(2) The person employed as the Registrar of Co-operatives under the **Public Administration Act 2004** is a body corporate under the name "Registrar of Co-operatives".

(3) By that name, the Registrar of Co-operatives—

(a) has perpetual succession; and

(b) has an official seal; and

(c) may sue and be sued; and

(d) may acquire, hold and dispose of real and personal property; and

(e) may do and suffer all things that a body corporate may by law do and suffer.

22 Official seal

(1) The official seal of the Registrar—

(a) must be kept as directed by the Registrar; and

(b) must not be used except as authorised by the Registrar.

(2) All courts, tribunals and other persons acting judicially—

(a) must take judicial notice of the official seal of the Registrar on a document; and

(b) until the contrary is proved, must presume that it was duly affixed.

23 Agents of the Registrar

The Registrar may enter into arrangements or agreements with any person or body to act as the agent of the Registrar in the performance of the Registrar's functions under this Act.

Part 5—General

24 Orders and other instruments published in Gazette

A copy of an order, notice, exemption or other instrument published in the Government Gazette purporting to have been given or issued under this Act, the Co-operatives National Law (Victoria), the Co-operatives National Regulations (Victoria) or the local regulations is evidence of the giving or issuing of the order, notice, exemption or other instrument of which it purports to be a copy.

25 Proceedings for offences

(1) Proceedings for an offence may be commenced—

(a) no later than 5 years after the alleged commission of the offence; and

(b) only by the Registrar or a person authorised in writing by the Registrar to commence proceedings.

(2) In this section—

offence means an offence under—

(a) this Act; or

(b) the local regulations; or

(c) the Co-operatives National Law (Victoria); or

(d) the Co-operatives National Regulations (Victoria).

26 Proceedings for recovery of fines or penalties under co-operatives rules

Proceedings for the recovery of any fine or penalty imposed by the rules of a co-operative may be commenced in the Magistrates' Court on application by the co-operative.

27 Infringement notices

(1) An authorised officer may serve an infringement notice on any person who the officer has reason to believe has committed an offence against this Act, the Co-operatives National Law (Victoria), the Co-operatives National Regulations (Victoria) or the local regulations that is prescribed for the purposes of this subsection.

(2) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.

(3) The infringement penalty for an offence prescribed for the purposes of subsection (1) is the prescribed infringement penalty.

(4) In this section, ***authorised officer*** means—

(a) an inspector;

S. 27(4)(b) substituted by No. 37/2014 s. 10(Sch. item 21.2).

(b) a police officer;

(c) a person authorised in writing by the designated authority.

28 Local regulations

(1) The Governor in Council may make regulations (the ***local regulations***), for or with respect to—

(a) the administration of the Co-operatives National Law (Victoria);

(b) procedural matters relating to any aspects of the Co-operatives National Law (Victoria);

(c) without limiting paragraphs (a) and (b), administrative matters relating to the supervision and inspection of co-operatives;

(d) fees for the purposes of the Co-operatives National Law (Victoria) or the Co-operatives National Regulations (Victoria);

(e) any matter or thing—

(i) that is required or permitted to be prescribed or that is necessary to be prescribed to give effect to this Act; or

(ii) that by the Co-operatives National Law (Victoria) is required or permitted to be prescribed by the local regulations.

(2) The local regulations may—

(a) impose a penalty not exceeding the penalty specified in section 612(5) of the Co-operatives National Law (Victoria) for a contravention of the local regulations;

(b) prescribe offences against this Act, the Co-operatives National Law (Victoria), the Co-operatives National Regulations (Victoria) or the local regulations to be infringement offences;

(c) in relation to each infringement offence, prescribe the penalty that is payable to expiate the offence.

(3) The local regulations may—

(a) be of general or limited application;

(b) differ according to differences in time, place or circumstances;

(c) confer a discretionary authority or impose a duty on a specified person or a specified class of person.

(4) A power conferred by this Act to make local regulations providing for the imposition of fees may be exercised by providing for all or any of the following matters—

(a) specific fees;

(b) the payment of fees either generally or under specified conditions or in specified circumstances;

(c) the reduction, waiver or refund, in whole or in part, of the fees.

S. 28A inserted by No. 57/2013 s. 8.

28A Model rules for co-operatives in respect of which a government guarantee exists

(1) The model rules of government guarantee co-operatives (the ***local model rules***) are the model rules prescribed under the Co-operatives National Law (Victoria) for non-distributing co-operatives with share capital subject to the modifications prescribed by the local regulations for the purposes of this section.

(2) The Co-operatives National Law (Victoria) applies to the local model rules as if they were model rules to which section 64 of that Law refers except that in section 66 of that Law a reference to the amendment of model rules is to be read as including a reference to any amendment to the local model rules made by the local regulations.

(3) In this section—

government guarantee co-operative means a co-operative in respect of which a government guarantee exists under Division 6 of Part 3 of the **Co-operatives Act 1996**;

Note

The operation of Division 6 of Part 3 of the **Co-operatives Act 1996** is preserved by virtue of section 37.

Part 6—Transitional and savings provisions

29 Regulations dealing with transitional matters

(1) The Governor in Council may make local regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of this Act or any other Act that amends this Act.

(2) Regulations made under this section may—

(a) subject to subsection (3), have retrospective effect to the day on which this Act receives the Royal Assent;

(b) be of limited or general application;

(c) leave any matter or thing to be decided by a specified person or class of person;

(d) provide for the exemption of persons or things or a class of persons or things from any of the regulations made under this section.

(3) Regulations under this section have effect despite anything to the contrary—

(a) in any Act (other than the **Charter of Human Rights and Responsibilities Act 2006**); or

(b) in any subordinate instrument.

30 General savings

Subject to this Act and the Co-operatives National Law (Victoria), each person, thing and circumstance appointed or created under the **Co-operatives Act 1996** or existing or continuing under that Act immediately before the commencement of relevant provisions of the Co-operatives National Law (Victoria) continues

to have the same status, operation and effect as it would have had if this Act had not been enacted.

31 Registration of co-operatives

(1) A co-operative whose registration under the **Co-operatives Act 1996** is in force immediately before the commencement of this section is taken to be registered under the Co-operatives National Law (Victoria).

(2) A co-operative referred to in subsection (1) that was a trading co-operative immediately before the commencement of this section is taken to be a distributing co-operative.

(3) A co-operative referred to in subsection (1) that was a non-trading co-operative immediately before the commencement of this section is taken to be a non-distributing co-operative.

(4) A co-operative referred to in subsection (1) that was an association or federation immediately before the commencement of this section is taken to be a co-operative group.

32 Rule of certain co-operatives formed to carry on club may restrict voting rights

(1) Subject to subsection (2), the rules of a co-operative may provide for different classes of membership and restrict the voting rights attaching to membership of those different classes, but only if—

(a) the co-operative has as a primary activity the operation, maintenance and carrying on of a club; and

(b) the membership of the class or classes entitled to full voting rights constitutes at least 40% of the total membership of the co-operative; and

(c) the NSW Registrar approves the provisions concerned.

Note

Under clause 5(3) of Schedule 1 to the Co-operatives (Adoption of National Law) Act 2012 of New South Wales, an approval that was given under section 177 of the Co-operatives Act 1992 of New South Wales by the Co-operatives Council constituted under that Act and that was effective immediately before the commencement of that clause has effect as if given by the NSW Registrar.

Note to s. 32(1) amended by No. 70/2013 s. 3(Sch. 1 item 8).

(2) Subsection (1) applies only to a co-operative registered in NSW and operating in Victoria as a participating co-operative under Part 5 of the Co-operatives National Law (Victoria) that—

(a) holds a club licence under the Liquor Act 2007 of New South Wales, whether the co-operative was registered under—

(i) the Co-operatives Act 1992 of New South Wales; or

(ii) the Co-operatives National Law (NSW); or

(b) was registered under the Co-operatives Act 1992 of New South Wales before 17 December 1997 (being the date of assent to the Statute Law (Miscellaneous Provisions) Act (No 2) 1997 of New South Wales).

S. 32(2)(b) amended by No. 38/2017 s. 77.

(3) In this section—

Co-operatives National Law (NSW) means the Co-operatives National Law as applied as a law of New South Wales by section 4 of the Co-operatives (Adoption of National Law) Act 2012 of New South Wales;

NSW Registrar means the Registrar within the meaning of the Co-operatives National Law (NSW).

33 Entitlements of former members of trading co-operatives

A reference in Division 5 of Part 2.6 of the Co-operatives National Law (Victoria) to the period of 2 years is taken to be a reference to a period of 5 years in a case where the cancellation of membership occurred before the commencement of that Division.

34 Entitlement to distribution from business for reserves of co-operative

Any entitlement that a member or former member of a co-operative had immediately before the commencement of this section in relation to a surplus arising from the business of the co-operative or a part of the reserves of the co-operative continues in force until satisfied.

35 Minimum paid up amount of shares

Section 78 of the Co-operatives National Law (Victoria) does not affect shares issued before the commencement of that section.

36 Personal property security interests

The repeal of the **Co-operatives Act 1996** does not affect the operation of Division 2 of Part 19 of that Act on and after the date of the repeal, and that Division so operates as if that Act had not been repealed.

37 Government guarantees for co-operatives

(1) The repeal of the **Co-operatives Act 1996** does not affect the operation of Division 6 of Part 3 of that Act on and after the date of the repeal, and, subject to subsection (3), that Division so operates as if that Act had not been repealed.

(2) Despite section 242(1) of the Co-operatives National Law (Victoria), if a government guarantee executed under Division 6 of Part 3 of the **Co-operatives Act 1996** applies in respect of the borrowings of a co-operative, a special resolution relating to further borrowings has no effect until it is registered.

(3) On or after the commencement of this section, a reference in section 63 of the **Co-operatives Act 1996** to section 306 of that Act is to be read as a reference to section 403 of the Co-operatives National Law (Victoria).

38 Inspectors

A person whose appointment as an inspector under Part 15 of the **Co-operatives Act 1996** is in force immediately before the commencement of this section is taken to have been appointed as an inspector under section 492 of the Co-operatives National Law (Victoria).

Part 7—Repeal and amendment of other Acts

Division 1—Repeal of Co-operatives Act 1996

39 Repeal

The **Co-operatives Act 1996** is **repealed**.

Division 2—Amendment of Unclaimed Money Act 2008

40 Definitions

In section 3(1) of the **Unclaimed Money Act 2008**, in the definition of ***business***, in paragraph (d) for "**Co-operatives Act 1996**" **substitute** "Co-operatives National Law (Victoria)".

41 New Division 2A of Part 3 inserted

After Division 2 of Part 3 of the **Unclaimed Money Act 2008 insert**—

"**Division 2A—Consideration obtained by compulsory acquisition of shares under Co-operatives National Law (Victoria)**

16A Divisions 1 and 2 do not apply to consideration obtained by co-operative

Divisions 1 and 2 do not apply to consideration that has been obtained by a co-operative, within the meaning of the Co-operatives National Law (Victoria), through a compulsory acquisition of shares while that consideration is held by the co-operative.

Note

Under section 436 of the Co-operatives National Law (Victoria), consideration obtained by a co-operative through a compulsory acquisition of shares in the co-operative that has been held in trust by the co-operative for at least 2 years must be paid or transferred to the Registrar of Co-operatives.

16B Application of Act to Registrar of Co-operatives

(1) Division 1 applies to an amount paid to the Registrar of Co-operatives under section 436 of the Co-operatives National Law (Victoria) as if a reference in that Division to a business were a reference to the Registrar of Co-operatives.

(2) Division 2 applies to consideration (other than money) transferred to the Registrar of Co-operatives under section 436 of the Co-operatives National Law (Victoria) as if a reference in that Division to a trustee were a reference to the Registrar of Co-operatives.

(3) For the purposes of section 14(1) as applied by subsection (2), the Registrar of Co-operatives may deduct out of the unclaimed money payable to the Registrar an amount equivalent to the reasonable expenses incurred in holding or selling the property that constitutes the consideration referred to in subsection (2).

(4) This section does not operate to make the Registrar of Co-operatives subject to any penalty that would otherwise apply to a business or trustee or to impose any obligation or duty on the Registrar of Co-operatives other than an obligation or duty imposed by, or under, Division 1 or 2.

(5) The Registrar of Co-operatives cannot make an application under section 29 for repayment of unclaimed money paid to the Registrar under section 12 or 14.

_____".

Division 3—Consequential amendments of other Acts

42 Consequential amendments of other Acts

An Act specified in the heading to an item in Schedule 2 is amended as set out in that item.

Schedules

Schedule 1—Designated instrument

Section 10

Column 1 *Item*	*Column 2* *Provision of Co-operatives National Law (Victoria)*	*Column 3* *Designated instrument is an order in writing*	*Column 4* *Designated instrument is a notice in the Government Gazette*
1	section 33(1) (certificate of registration)	—	for all cases
2	section 35(5) (exemption from special postal ballot for amendment of rules of conversion)	for individual co-operative	for class of co-operatives
3	section 60(2) (specifying rule amendments requiring prior approval by Registrar)	—	for all cases
4	section 71(1) (exemption from requirements of Division 2 of Part 2.4)	for individual co-operative	for class of co-operatives
5	section 92(6) (exemption from complying with disclosure direction)	for all cases	—
6	section 171(1) (exemption from requirements of Division 5 of Part 2.6)	for individual co-operative	for class of co-operatives
7	section 221(1) (approval of omission of "Limited" or "Ltd" from name)	—	for all cases

Column 1 *Item*	*Column 2* *Provision of Co-operatives National Law (Victoria)*	*Column 3* *Designated instrument is an order in writing*	*Column 4* *Designated instrument is a notice in the Government Gazette*
8	section 226(6) (exemption from requirement to display location notice)	for individual small co-operative	for class of co-operatives or all small co-operatives
9	section 316(1) (exemption for individual co-operative from accounting and auditing provisions)	for all cases	—
10	section 317(1) (exemption for class of co-operatives from accounting and auditing provisions)	—	for all cases
11	section 319(1) (exemption for non-auditor members and former members of audit firms, and former employees of audit companies from accounting and auditing provisions)	—	for all cases
12	section 320(1) (exemption for classes of non-auditor members etc from accounting and auditing provisions)	—	for all cases
13	section 322(1) (exemption from National Regulations made under Part 3.3)	—	for all cases
14	section 338(6) (exemption from compliance with section 338)	for individual co-operative	for class of co-operatives

Column 1 *Item*	*Column 2* *Provision of Co-operatives National Law (Victoria)*	*Column 3* *Designated instrument is an order in writing*	*Column 4* *Designated instrument is a notice in the Government Gazette*
15	section 343(10) (exemption from compliance with section 343)	for individual co-operative	for class of co-operatives
16	section 359(3) (exemption from compliance with section 359 or 248)	for all cases	—
17	section 363(2) (stating maximum greater than 20% of nominal value of issued share capital)	for individual co-operative	for class of co-operatives
18	section 372(1) (exemption of person or class of persons from the operation of Division 1 of Part 3.5)	—	for all cases
19	section 380(1) (exemption from compliance with Division 2 of Part 3.5 or section 248)	for all cases	—
20	section 397(4) (exemption from compliance with section 397)	for all cases	—
21	section 401(7) (notification by Registrar of date of effect of transfer of engagements between co-operatives)	—	for all cases
22	section 404(4) (exemption from compliance with section 404 or 248)	for all cases	—

Column 1	*Column 2*	*Column 3*	*Column 4*
Item	*Provision of Co-operatives National Law (Victoria)*	*Designated instrument is an order in writing*	*Designated instrument is a notice in the Government Gazette*
23	section 445(3) (exemption from compliance with section 445 or 248)	for individual co-operative	for class of co-operatives
24	section 607(3) (Registrar's approval)	for individual co-operative or person	for class of co-operatives or persons

Schedule 2—Consequential amendments

Section 42

1 Accident Compensation Act 1985

In section 5I(a) for "**Co-operatives Act 1996**" **substitute** "Co-operatives National Law (Victoria)".

2 Associations Incorporation Reform Act 2012

In sections 10(1)(b), 22(3)(b)(iv) and 109 for "**Co-operatives Act 1996**" **substitute** "Co-operatives National Law (Victoria)".

3 Australian Consumer Law and Fair Trading Act 2012

In Schedule 1 for "**Co-operatives Act 1996**" **substitute** "Co-operatives National Law (Victoria)".

4 Borrowing and Investment Powers Act 1987

In sections 29(1) and (2) for "**Co-operatives Act 1996**" **substitute** "Co-operatives National Law (Victoria)".

5 Bus Safety Act 2009

In section 3(1), in the definition of ***co-operative*** for "**Co-operatives Act 1996**" **substitute** "Co-operatives National Law (Victoria)".

6 Children, Youth and Families Act 2005

In section 66(2) for "**Co-operatives Act 1996**" **substitute** "Co-operatives National Law (Victoria)".

7 Duties Act 2000

(1) In section 3(1), in the definition of ***co-operative*** and in paragraph (b) of the definition of ***financial institution*** for "**Co-operatives Act 1996**" **substitute** "Co-operatives National Law (Victoria)".

(2) In section 46(1)(b) for "**Co-operatives Act 1996**" **substitute** "Co-operatives National Law (Victoria)".

(3) In section 46(2)(a) for "section 335 of the **Co-operatives Act 1996**" **substitute** "section 413 of the Co-operatives National Law (Victoria)".

(4) In sections 46(2)(b) and 46(2)(c) for "section 386 of the **Co-operatives Act 1996**" **substitute** "section 472 of the Co-operatives National Law (Victoria)".

8 Disability Act 2006

In section 101(2) for "**Co-operatives Act 1996**" **substitute** "Co-operatives National Law (Victoria)".

9 Fisheries Act 1995

In section 4(1), in the definition of ***co-operative*** for "**Co-operatives Act 1996**" **substitute** "Co-operatives National Law (Victoria)".

10 Gambling Regulation Act 2003

In section 1.3(1) in paragraph (b) of the definition of ***authorising officer*** and paragraph (b) of the definition of ***constituting document*** for "**Co-operatives Act 1996**" **substitute** "Co-operatives National Law (Victoria)".

11 Housing Act 1983

(1) In section 4(1), in the definition of ***co-operative*** for "**Co-operatives Act 1996**" **substitute** "Co-operatives National Law (Victoria)".

(2) In section 6(1)(g) for "non-trading co-operatives" **substitute** "non-distributing co-operatives".

(3) In section 129(2) for "**Co-operatives Act 1996**" **substitute** "Co-operatives National Law (Victoria)".

(4) In section 132(12), in the definition of ***relevant regulatory body*** in paragraph (b) for "**Co-operatives Act 1996**" **substitute** "Co-operatives National Law (Victoria)".

(5) In Part 1 of Schedule 8, in items 1(5), 1(10) and 1(11) for "**Co-operatives Act 1996**" **substitute** "Co-operatives National Law (Victoria)".

12 Liquor Control Reform Act 1998

In section 3(1), in the definition of ***co-operative*** for "**Co-operatives Act 1996**" **substitute** "Co-operatives National Law (Victoria)".

13 Partnership Act 1958

In sections 55(2)(b)(iv) and 89(4)(b)(iv) for "**Co-operatives Act 1996**" **substitute** "Co-operatives National Law (Victoria)".

14 Personal Property Securities (Statute Law Revision and Implementation) Act 2010

(1) In section 17, in the definition of ***Registrar*** for "**Co-operatives Act 1996**" **substitute** "**Co-operatives National Law Application Act 2013**".

(2) In the heading to section 20 for "**Co-operatives Act 1996**" **substitute** "**Co-operatives National Law (Victoria)**".

(3) In section 20(1) for "**Co-operatives Act 1996**" **substitute** "Co-operatives National Law (Victoria)".

15 Property Law Act 1958

In section 28B(1)(a)(ii) for "**Co-operatives Act 1996**" **substitute** "Co-operatives National Law (Victoria)".

16 Supported Residential Services (Private Proprietors) Act 2010

In section 169(2) for "**Co-operatives Act 1996**" **substitute** "Co-operatives National Law (Victoria)".

17 Transfer of Land Act 1958

In sections 98CB(2)(c) and 98CC(1)(d) for "**Co-operatives Act 1996**" **substitute** "Co-operatives National Law (Victoria)".

18 Transport (Compliance and Miscellaneous) Act 1983

In section 130A(1) in the definition of ***co-operative*** for "**Co-operatives Act 1996**" **substitute** "Co-operatives National Law (Victoria)".

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 7 February 2013

Legislative Council: 21 February 2013

The long title for the Bill for this Act was "A Bill for an Act to provide for the application of a national law relating to the formation, registration and operation of co-operatives, to repeal the **Co-operatives Act 1996** and to make related amendments to other Acts and for other purposes."

The **Co-operatives National Law Application Act 2013** was assented to on 13 March 2013 and came into operation on 3 March 2014: Special Gazette (No. 46) 18 February 2014 page 1.

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication incorporates amendments made to the **Co-operatives National Law Application Act 2013** by Acts and subordinate instruments.

Consumer Affairs Legislation Amendment Act 2013, No. 57/2013

Assent Date:	22.10.13
Commencement Date:	S. 8 on 23.10.13: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Co-operatives National Law Application Act 2013**

Statute Law Revision Act 2013, No. 70/2013

Assent Date:	19.11.13
Commencement Date:	S. 3(Sch. 1 item 8) on 1.12.13: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Co-operatives National Law Application Act 2013**

Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014

Assent Date:	3.6.14
Commencement Date:	S. 10(Sch. item 21) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2
Current State:	This information relates only to the provision/s amending the **Co-operatives National Law Application Act 2013**

Veterans and Other Acts Amendment Act 2015, No. 12/2015

Assent Date:	21.4.15
Commencement Date:	S. 18 on 15.6.15: Special Gazette (No. 144) 9.6.15 p. 1
Current State:	This information relates only to the provision/s amending the **Co-operatives National Law Application Act 2013**

Justice Legislation Amendment (Court Security, Juries and Other Matters) Act 2017, No. 38/2017

Assent Date:	29.8.17
Commencement Date:	S. 77 on 30.8.17: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Co-operatives National Law Application Act 2013**

3 Amendments Not in Operation

There are no amendments which were Not in Operation at the date of this publication.

4 Explanatory details

No entries at date of publication.

Annexure

Co-operatives (Adoption of National Law) Act 2012

Note

This Act has been amended by the following Acts of New South Wales:

No 42 Statute Law (Miscellaneous Provisions) Act 2012

No 95 Statute Law (Miscellaneous Provisions) Act (No 2) 2012

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to enact co-operatives legislation applying in this State. It does so as part of a proposed substantively uniform scheme of legislation applying the Co-operatives National Law in the States and Territories (***jurisdictions***).

The Bill contains the Co-operatives National Law, set out in the Appendix, which operates as a template for all jurisdictions. Each jurisdiction has agreed to enact legislation applying the National Law in its jurisdiction or to enact consistent legislation. The intention is that there will be a substantively uniform scheme of legislation for co-operatives applying in all jurisdictions, based on the National Law. Some features of the National Law are set out below.

In addition to applying the Co-operatives National Law, this Bill and the application legislation of other jurisdictions would specify local administration details such as the appointment of a Registrar of Co-operatives, specifying which courts deal with various matters, and stating how official notices are published.

National Regulations supporting the Co-operatives National Law would be made by the Governor of New South Wales. Each jurisdiction has agreed to adopt, or make regulations consistent with, the National Regulations.

Existing co-operatives legislation in all jurisdictions is based on Core Consistent Provisions developed by the Standing Committee of Attorneys-General. The proposed Co-operatives National Law

continues the major features of the existing legislation, while also removing variations between jurisdictions and updating some provisions—particularly provisions that apply parts of the *Corporations Act 2001* of the Commonwealth (the ***Corporations Act***).

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act.

Part 2 Application of Co-operatives National Law and Co-operatives National Regulations

Clause 4 applies the Co-operatives National Law as a law of this jurisdiction called the *Co-operatives National Law (NSW)*. The clause applies the Co-operatives National Regulations as regulations called the *Co-operatives National Regulations (NSW)*.

Clause 5 defines certain words and expressions used in the *Co-operatives National Law (NSW)*.

Clause 6 excludes the operation of the *Interpretation Act 1987* and Subordinate *Legislation Act 1989* from applying to the applied provisions and the Co-operatives National Regulations and other instruments made under the Co-operatives National Law. The clause makes it clear that it does not affect local regulations made under the proposed Act.

Part 3 Some matters referred to in the Co operatives National Law (NSW)

Clause 7 specifies for this jurisdiction the meaning of certain terms used in the Co-operatives National Law. These terms are ***designated authority***, ***designated instrument***, and ***designated tribunal***. It is intended that each jurisdiction will make appropriate provision for these terms in jurisdictional legislation applying the National Law.

Clause 8 provides that a reference to a particular date in provisions of the Corporations Act as applied in this jurisdiction is to be read as a reference to a specified different date. The specified different date relates to changes to the liability of directors under insolvent trading provisions in the Corporations Act that were not adopted by the *Co-operatives Act 1992* until a later time.

Clause 9 provides that unclaimed money from the disposal of shares compulsorily acquired is to be dealt with under the *Unclaimed Money Act 1995*.

Clause 10 results in certain property of a deregistered co-operative vesting in the State of New South Wales. The clause achieves this by providing that the specified entity referred to in section 453 (d) of the *Co-operatives National Law (NSW)* is the State of New South Wales. By way of explanation, section 453 of the Co-operatives National Law applies provisions of the Corporations Act that refer to the Commonwealth, and clause 10 (1) has the effect of substituting the State of New South Wales for this purpose. Clause 10 (2) replaces references to a Special Account under Commonwealth legislation with references to the Special Deposits Account under State legislation.

Clause 11 provides for the application of legislation of this jurisdiction to warrants issued under the Co-operatives National Law.

Clause 12 provides that the costs of an inquiry under Part 6.5 of the *Co-operatives National Law (NSW)* may be directed to be paid to the State.

Clause 13 provides that information obtained in the course of administering the *Co-operatives National Law (NSW)* or the *Co-operatives Act 1992* may be divulged to certain specified persons.

Clause 14 provides that a pecuniary penalty ordered to be paid in the State is a civil debt payable to the Registrar of Co-operatives on behalf of the State, and is recoverable accordingly.

Clause 15 provides that stamp duty is not payable on certain instruments associated with co-operatives, and stamp duty already paid is to be taken into account in respect of certain other instruments associated with co-operatives.

Clause 16 provides that registration fees are not chargeable under any Act in respect of certain instruments associated with co-operatives.

Part 4 Regulations

Clause 17 authorises the Governor to make regulations (***National Regulations***) under the power conferred by the Co-operatives National Law as applied in each jurisdiction to make Co-operatives National Regulations. The Co-operatives National Regulations in that form take effect only to the extent they are applied or adopted by individual jurisdictions (see clause 4 in the case of this jurisdiction).

Clause 18 authorises the Governor to make regulations (***local regulations***) for the purposes of the proposed Act or as contemplated by the Co-operatives National Law as applying in this jurisdiction.

Part 5 Miscellaneous

Clause 19 provides that the Co-operatives National Law does not apply to certain co-operative housing bodies.

Clause 20 contains evidentiary provisions relating to the making of orders, notices, exemptions and other instruments published in the Gazette.

Clause 21 provides for the procedure for the prosecution of offences under the proposed Act and the *Co-operatives National Law (NSW)*.

Clause 22 provides for the recovery of fines and penalties imposed by the rules of a co-operative.

Clause 23 gives protection from civil liability for certain persons.

Clause 24 specifies the officer who is to exercise functions as the Registrar of Co-operatives under the proposed Act or the *Co-operatives National Law (NSW)*.

Clause 25 repeals the *Co-operatives Act 1992*, the *Co-operatives Amendment Act 1997*, and the *Co-operatives Regulation 2005*.

Schedule 1 Savings and transitional provisions

This Schedule contains some specific savings and transitional provisions, and also enables local regulations of a savings or transitional nature to be made.

Appendix Co-operatives National Law

This Appendix sets out the Co-operatives National Law. It is divided into Chapters and Schedules, which are briefly summarised below.

Chapter 1 Preliminary

This Chapter sets out the principles used by a co-operative organisation. The principles are those agreed by the International Co-operative Alliance and incorporated into Recommendation 193 of the International Labour Organization. The Chapter contains interpretation provisions and also sets out the relationship between the Co-operatives National Law and the Corporations Act. The provisions of the Corporations Act that are applied throughout the Co-operatives National Law are collected in a note and cross-referenced in tabular form along with relevant modifications for ease of reference.

Chapter 2 Formation, powers and constitution of co-operatives

This Chapter provides the mechanism for incorporating a co-operative and specifies the legal powers of the incorporated body as well as the legal assumptions that underpin a co-operative's dealings with third parties. It identifies the matters that must be included in the rules of a co-operative and authorises the Registrar of Co-operatives to publish model rules that a co-operative can adopt. The Chapter also sets out the nature of share capital of a co-operative and establishes the legal notions of membership and active membership. Member rights and obligations as well as the circumstances in which membership is cancelled and any rights accompanying cancellation are dealt with in the Chapter.

Chapter 3 Management and operation of co-operatives

This Chapter deals with corporate governance of a co-operative. Matters such as the board as the managing organ, directors and their duties and meetings are included. Matters relating to financial reporting and auditing are contained in the Chapter along with provisions governing fundraising from members and the public.

Chapter 4 Structural and other events for co-operatives

This Chapter deals with corporate structural events such as external administration, mergers, schemes of arrangement and transfers of incorporation. Relevant provisions of the Corporations Act are applied and modified to achieve consistency of treatment in most external administration processes. Special provisions for caretaker-type administration and administrative powers of the Registrar of Co-operatives leading to a winding up are also located here.

Chapter 5 Participating co-operatives

This Chapter replaces the existing system of multiple registration to enable cross-border trade by co-operatives with a mutual recognition scheme for co-operatives from jurisdictions that participate in the Co-operatives National Law scheme.

Chapter 6 Supervision and protection of co-operatives

This Chapter establishes the powers of the Registrar of Co-operatives, inspectors and special investigators and the procedures that must be used when conducting an investigation. The Co-operatives National Law will introduce consistent powers and procedures across jurisdictions. If necessary, however, a particular jurisdiction will be able to modify provisions in this Chapter to account for local circumstances.

Chapter 7 Legal proceedings and other matters

This Chapter establishes nationally consistent provisions for offences, civil penalty provisions, appeals against administrative decisions, and the use of evidence in proceedings.

Chapter 8 General

This Chapter deals with administrative and other miscellaneous matters such as those relating to the office of Registrar of Co-operatives, the service and filing of documents, and the making of National Regulations.

Schedules

Schedule 1 sets out the matters that must be addressed in the rules of a co-operative.

Schedule 2 defines terms used in provisions that regulate interests and control in shares of a co-operative.

Schedule 3 contains savings and transitional provisions.

Schedule 4 sets out interpretation provisions that are nationally consistent and are used in place of the interpretation legislation in each jurisdiction.

Co-operatives (Adoption of National Law) Act 2012

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11 Warrants (Co-operatives National Law ss 483 and 518)

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An Act relating to the formation, registration and management of co-operatives; and for related purposes.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Co-operatives (Adoption of National Law) Act 2012*.

2 Commencement

(1) This Act commences on a day or days to be appointed by proclamation.

(2) Different days may be appointed under subsection (1) for the commencement of different provisions of the Co-operatives National Law.

3 Definitions

(1) For the purposes of this Act, ***the local application provisions of this Act*** are the provisions of this Act other than the Co-operatives National Law.

(2) In the local application provisions of this Act:

Co-operatives National Law (NSW) means the provisions applying in relation to this jurisdiction because of section 4 (1).

Co-operatives National Regulations or ***National Regulations*** means the Co-operatives National Regulations made under the Co-operatives National Law.

Co-operatives National Regulations (NSW) means the provisions applying in relation to this jurisdiction because of section 4 (2).

Director-General means:

(a) the Commissioner for Fair Trading, Department of Finance and Services, or

(b) if there is no such position in the Department of Finance and Services—the Director-General of that Department.

instrument includes a document.

local regulations means regulations made under section 18, but does not include the Co-operatives National Regulations and the *Co-operatives National Regulations (NSW)*.

this jurisdiction means the State of New South Wales.

(3) Terms used in the local application provisions of this Act and also in the Co-operatives National Law have the same meanings in those provisions as they have in that Law.

(4) The Appendix forms part of this Act but notes included in this Act (other than in the Appendix) do not form part of this Act.

Part 2 Application of Co-operatives National Law and Co-operatives National Regulations

4 Adoption of Co-operatives National Law and Co-operatives National Regulations

(1) The Co-operatives National Law, as in force from time to time, set out in the Appendix to this Act:

(a) applies as a law of this jurisdiction, and

(b) as so applying may be referred to as the *Co-operatives National Law (NSW)*, and

(c) so applies as if it were an Act.

(2) The Co-operatives National Regulations, as in force from time to time:

(a) apply as National Regulations in force for the purposes of the *Co-operatives National Law (NSW)*, subject to modifications prescribed by the local regulations, and

(b) as so applying may be referred to as the *Co-operatives National Regulations (NSW)*.

Note. The Co-operatives National Regulations as in force from time to time apply by virtue of this provision as National Regulations for the purposes of the *Co-operatives National Law (NSW)*. The regulations as so applying and referred to as the *Co-operatives National Regulations (NSW)* are interpreted in accordance with that Law (and see in particular clauses 15 and 37 of Schedule 4 to that Law).

5 Meaning of certain terms in Co-operatives National Law for purposes of this jurisdiction

In the *Co-operatives National Law (NSW)*:

police officer means a member of the NSW Police Force who is a police officer within the meaning of the *Police Act 1990*.

public sector official means a member of the Government Service within the meaning of the *Public Sector Employment and Management Act 2002*.

Registrar means the Director-General, who is designated by section 24 as the Registrar of Co-operatives.

this jurisdiction means the State of New South Wales.

6 Exclusion of legislation of this jurisdiction

The following Acts of this jurisdiction do not apply to the *Co-operatives National Law (NSW)*, the *Co-operatives National Regulations (NSW)*, the Co-operatives National Regulations or other instruments (excluding local regulations) made under that Law:

(a) Interpretation Act 1987,

(b) Subordinate Legislation Act 1989.

Part 3 Some matters referred to in Co-operatives National Law (NSW)

7 Designated authority, designated instrument and designated tribunal (Co-operatives National Law s 4)

(1) With respect to the definition of ***designated authority*** in the *Co-operatives National Law (NSW)*:

(a) the Registrar is specified for the purposes of sections 15, 601 and 622 of that Law, and

(b) the Director-General is specified for the purposes of sections 492, 494 and 520 of that Law, and

(c) an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* is specified for the purposes of sections 504 and 505 of that Law.

(2) With respect to the definition of ***designated instrument*** in the *Co-operatives National Law (NSW)*:

(a) an order in writing in the approved form is specified for the purposes of the provisions of that Law referred to in Column 2 of the table to this subsection and for the person or class (if any) or in the circumstances (if any) specified in that Column, and

(b) a Gazette notice in the approved form is specified for the purposes of the provisions of that Law referred to in Column 3 of the table to this subsection and for the person or class (if any) or in the circumstances (if any) specified in that Column, and

(c) a written notice in the approved form is specified for the purposes of section 443 (5) of that Law.

Table

Column 1	Column 2	Column 3
Item	**Designated instrument is an order in writing**	**Designated instrument is a Gazette notice**
1	...	Section 33 (1) (certificate of registration)
2	Section 35 (5) (a) (exemption from special postal ballot for amendment of rules for conversion)—for individual co-operative	Section 35 (5) (b) (exemption from special postal ballot for amendment of rules for conversion)—for class of co-operatives
3	...	Section 60 (2) (specifying rule amendments requiring prior approval by Registrar)
4	Section 71 (1) (exemption from requirements of Division 2 of Part 2.4)—for individual co-operative	Section 71 (1) (exemption from requirements of Division 2 of Part 2.4)—for class of co-operatives
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Column 1	Column 2	Column 3
Item	**Designated instrument is an order in writing**	**Designated instrument is a Gazette notice**
7	...	Section 221 (1) (approval of omission of "Limited" or "Ltd" from name)
8	Section 226 (6) (exemption from requirement to display location notice)—for individual small co-operative	Section 226 (6) (exemption from requirement to display location notice)—for class of or all small co-operatives)
9	Section 316 (1) (exemption for individual co-operative from accounting and auditing provisions)	...
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Column 1	Column 2	Column 3
Item	**Designated instrument is an order in writing**	**Designated instrument is a Gazette notice**
12	...	Section 320 (1) (exemption for classes of non-auditor members etc from accounting and auditing provisions)
13	...	Section 322 (1) (exemption from National Regulations made under Part 3.3)
14	Section 338 (6) (exemption from compliance with section 338)—for individual co-operative	Section 338 (6) (exemption from compliance with section 338)—for class of co-operatives
15	Section 343 (10) (exemption from compliance with section 343)—for individual co-operative	Section 343 (10) (exemption from compliance with section 343)—for class of co-operatives
16	Section 359 (3) (exemption from compliance with section 359 or 248)	...
17	Section 363 (2) (stating maximum greater than 20% of nominal value of issued share capital)—for individual co-operative	Section 363 (2) (stating maximum greater than 20% of nominal value of issued share capital)—for class of co-operatives

Column 1	Column 2	Column 3
Item	**Designated instrument is an order in writing**	**Designated instrument is a Gazette notice**
18	...	Section 372 (1) (exemption of person or class of persons from the operation of Division 1 of Part 3.5)
19	Section 380 (1) (exemption from compliance with Division 2 of Part 3.5 or section 248)	...
20	Section 397 (4) (exemption from compliance with section 397)	...
21	...	Section 401 (7) (notification by Registrar of date of effect of transfer of engagements between co-operatives)
22	Section 404 (4) (exemption from compliance with section 404 or 248)	...
23	Section 445 (3) (exemption from compliance with section 445 or 248)—for individual co-operative	Section 445 (3) (exemption from compliance with section 445 or 248)—for class of co-operatives
24	Section 607 (3) (Registrar's approval)—for individual co-operative or person	Section 607 (3) (Registrar's approval)—for class of co-operatives or persons

(3) The following provisions have effect with respect to the definition of ***designated tribunal*** in the *Co-operatives National Law (NSW)*:

(a) the Supreme Court is specified for the purposes of the provisions of that Law in which the term is used, except Part 7.3 of that Law,

(b) the Administrative Decisions Tribunal is specified for the purposes of Part 7.3 of that Law.

8 Adjustment of date referred to in Corporations Act as applied (Co-operatives National Law ss 201, 444 and 451)

For the purposes of sections 201 (b), 444 (3) (k) and 451 (1) (f) of the *Co-operatives National Law (NSW)*, the reference to 23 June 1993 is to be read as a reference to 15 December 1995.

9 Disposal of consideration for shares compulsorily acquired (Co-operatives National Law s 436)

(1) For the purposes of section 436 (3) (b) (i) of the *Co-operatives National Law (NSW)*, references in section 1339 of the Corporations Act to crediting an amount to the Companies and Unclaimed Moneys Special Account are to be read as references to dealing with the amount as unclaimed money in accordance with the *Unclaimed Money Act 1995*.

(2) For the purposes of section 436 (3) (b) (ii) of the *Co-operatives National Law (NSW)*, section 1341 (1) and (2) of the Corporations Act are taken to be replaced by subsection (3) of this section.

(3) The amount is to be dealt with in accordance with the *Unclaimed Money Act 1995*, and accordingly applications for the payment of the amount may be made under that Act to the Chief Commissioner of State Revenue.

10 Deregistration (Co-operatives National Law s 453—sections 601AD, 601AE and 601AF of Corporations Act as applied)

(1) For the purposes of section 453 (d) of the *Co-operatives National Law (NSW)*, references in sections 601AD–601AF of the Corporations Act to the Commonwealth are to be read as references to the State of New South Wales.

(2) For the purposes of section 453 (e) of the *Co-operatives National Law (NSW)*, references in section 601AE of the Corporations Act to crediting an amount to a Special Account (within the meaning of the *Financial Management and Accountability Act 1997* of the Commonwealth) are to be read as references to crediting the amount to the Special Deposits Account (within the meaning of the *Public Finance and Audit Act 1983*).

11 Warrants (Co-operatives National Law ss 483 and 518)

(1) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to warrants under Part 6.4 of the *Co-operatives National Law (NSW)*.

(2) Part 6.4 of the *Co-operatives National Law (NSW)* does not apply to the extent of any inconsistency with that Division.

Note 1. Section 7 (1) (c) of this Act provides for authorised officers within the meaning of the Law Enforcement (Powers and Responsibilities) Act 2002 to be designated authorities for the issue of warrants under the Law.

Note 2. Section 518 of the Law contemplates that the Co-operatives National Law Act of a jurisdiction may contain machinery and other provisions for applications for, the issue of, and the execution of, warrants.

Note 3. Section 483 of the Law provides that Part 6.4 (which includes section 518) applies to a jurisdiction except to the extent (if any) that the Co-operatives National Law Act of a jurisdiction provides otherwise, and with the modifications (if any) made by that Act.

12 Costs of inquiry (Co-operatives National Law s 530)

For the purposes of section 530 (3) (b) of the *Co-operatives National Law (NSW)*, the prescribed entity is the State of New South Wales.

13 Secrecy (Co-operatives National Law s 537)

(1) For the purposes of section 537 (4) (c) of the *Co-operatives National Law (NSW)*, information may be divulged to:

(a) the Treasurer, or

(b) the Chief Commissioner of State Revenue, or

(c) the Auditor-General, or

(d) the Independent Commission Against Corruption, or

(e) any special commission (within the meaning of the *Special Commissions of Inquiry Act 1983*) if:

(i) the Registrar has received a written request for information from the special commission, and

(ii) the Minister has given written approval to the Registrar of the communication of that information, and

(iii) the Registrar has given to the special commission written approval of the communication of that information.

(2) For the purposes of the definition of ***former Act*** in section 537 (6) of the *Co-operatives National Law (NSW)*, the *Co-operatives Act 1992* is specified.

14 Pecuniary penalty orders (Co-operatives National Law s 556)

(1) For the purposes of section 556 (2) of the *Co-operatives National Law (NSW)*, a pecuniary penalty ordered to be paid in this jurisdiction is to be paid and treated in accordance with this section.

(2) The penalty is a civil debt payable to the Registrar on behalf of the State.

(3) The Registrar or the State may enforce the order as if it were an order made in civil proceedings against the person to recover a debt due by the person.

(4) The debt arising from the order is taken to be a judgment debt.

15 Stamp duty (Co-operatives National Law s 620)

(1) No duty is payable in respect of any of the following instruments:

(a) in the case of a co-operative that:

(i) has as its primary activity the providing of any community service or benefit, and

(ii) was, before it was incorporated under the *Co-operatives National Law (NSW)*, an unincorporated club, association or body operating to provide sporting or recreational facilities for its members and not carried on for the pecuniary benefit of its members,

an instrument transferring to the co-operative any property that was, immediately before the co-operative was so incorporated, held by or on behalf of the unincorporated club, association or body,

(b) an instrument executed or registered for or with respect to a transfer of any property to give effect to section 413 or 481 of the *Co-operatives National Law (NSW)* in respect of:

(i) a merger of co-operatives, or

(ii) a transfer of engagements,

(c) a share certificate or any other instrument issued or executed in connection with the capital of a co-operative.

(2) If:

(a) a co-operative that transfers its incorporation under Division 2 of Part 4.3 of the *Co-operatives National Law (NSW)* was before its registration as a co-operative under that Law a

company under the Corporations Act or any corresponding previous law of this jurisdiction, and

(b) stamp duty had been paid on its incorporation as such a company in respect of the amount of the nominal capital of the company (or if subsequently increased on the amount of its nominal capital as so increased),

any stamp duty so paid is to be taken into account and included in assessing the stamp duty payable on its incorporation or registration pursuant to the transfer.

(3) An instrument issued or executed in connection with a CCU of a co-operative is not exempt under subsection (2).

16 Registration fees (Co-operatives National Law s 620)

No fee is chargeable under any Act for registration of an instrument executed or registered for or with respect to a transfer of any property to give effect to section 413 or 481 of the *Co-operatives National Law (NSW)* in respect of:

(a) a merger of co-operatives, or

(b) a transfer of engagements, or

(c) a transfer of incorporation.

Part 4 Regulations

17 National Regulations

(1) The Governor is authorised to exercise the power to make Co-operatives National Regulations conferred by the Co-operatives National Law as applied by an Act of any jurisdiction.

(2) The Executive Council of the State is authorised to advise the Governor in the exercise of the power referred to in subsection (1).

(3) This section does not limit the power of the Governor to make local regulations conferred under the *Co operatives National Law (NSW)*.

18 Local regulations

(1) The Governor may make regulations (the ***local regulations***), not inconsistent with the local application provisions of this Act or the *Co-operatives National Law (NSW)*, for or with respect to any matter:

(a) that by the local application provisions of this Act is required or permitted to be prescribed by the local regulations or that is necessary or convenient to be prescribed by the local regulations for carrying out or giving effect to the local application provisions of this Act, or

(b) that by the *Co-operatives National Law (NSW)* is required or permitted to be prescribed by the local regulations.

(2) Without limitation, the local regulations may make provision for or with respect to:

(a) the administration of the *Co-operatives National Law (NSW)*, and

(b) procedural matters relating to any aspects of the *Co-operatives National Law (NSW)*, and

(c) without limiting paragraphs (a) and (b), administrative matters relating to the supervision and inspection of co-operatives.

(3) The local regulations may create offences and impose penalties for an offence of not more than the amount specified in section 612 (5) of the *Co-operatives National Law (NSW)*.

Part 5 Miscellaneous

19 Non-application of Co-operatives National Law to co-operative housing societies and other bodies

Except as provided by the local regulations, the *Co-operatives National Law (NSW)* does not apply to or in respect of:

(a) a co-operative housing body under the *Co-operative Housing and Starr-Bowkett Societies Act 1998*, or

(b) a body that is of the same nature as such a co-operative housing body but that is not registered under that Act.

20 Orders and other instruments published in 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, the *Co-operatives National Law (NSW)*, the *Co-operatives National Regulations (NSW)* or the local regulations is evidence of the giving or issuing of the order, notice, exemption or other instrument of which it purports to be a copy.

21 Proceedings for offences

(1) In this section:

offence means an offence under the local application provisions of this Act, the local regulations, the *Co-operatives National Law (NSW)* or the *Co-operatives National Regulations (NSW)*.

(2) Proceedings for an offence are to be disposed of summarily before:

(a) the Local Court, or

(b) the Supreme Court in its summary jurisdiction.

(3) The maximum penalty that may be imposed by the Local Court for an offence is 50 penalty units or imprisonment for 12 months, or both.

(4) Proceedings for an offence under the local application provisions of this Act or the local regulations may be:

(a) started no later than 5 years after the alleged commission of the offence, and

(b) started only by the Registrar or a person authorised in writing by the Registrar to start the proceedings.

Note. See sections 551 and 552 of the Co-operatives National Law about starting proceedings for an offence under that Law or the National Regulations.

(5) Nothing in this section affects the operation of the *Director of Public Prosecutions Act 1986*.

22 Proceedings for recovery of fines or penalties under co-operative's rules

(1) Proceedings for the recovery of any fine or penalty imposed by the rules of a co-operative are to be disposed of summarily before the Local Court.

(2) Proceedings for the recovery of a fine or penalty imposed by the rules of a co-operative may be instituted only by the co-operative.

23 Particular officials protected from liability

(1) In this section:

official means:

(a) the Minister, or

(b) the Registrar, or

(c) a public sector official (within the meaning of section 5) engaged in the administration of the local application provisions of this Act or the *Co-operatives National Law (NSW)*.

(2) An official does not incur civil liability for an act done, or omission made, honestly and without negligence under the local application provisions of this Act, the local regulations, the *Co-operatives National Law (NSW)* or the *Co-operatives National Regulations (NSW)*.

(3) If subsection (2) prevents a civil liability attaching to an official, the liability attaches instead to the State.

24 Registrar of Co-operatives

(1) The Director-General is designated as the Registrar of Co-operatives and may exercise the functions of the Registrar of Co-operatives expressed to be conferred or imposed on the Registrar by or under the local application provisions of this Act, the local regulations, the *Co-operatives National Law (NSW)* or the *Co-operatives National Regulations (NSW)*.

(2) For that purpose, a reference in the local application provisions of this Act, the local regulations, the *Co-operatives National Law (NSW)* or the *Co-operatives National Regulations (NSW)* to the Registrar is to be

read as a reference to the Director-General, but those functions are to be exercised under the title of the Registrar of Co-operatives.

25 Repeals

The following are repealed:

(a) *Co-operatives Act 1992*,

(b) *Co-operatives Amendment Act 1997*,

(c) *Co-operatives Regulation 2005*.

Schedule 1 Savings and transitional provisions

Part 1 Preliminary

1 Local regulations for savings or transitional matters

(1) The local regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.

(2) Any such provision may, if the local regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Definition

In this Part:

repealed Act means the *Co-operatives Act 1992*.

3 General savings

Subject to the local application provisions of this Act and the *Co-operatives National Law (NSW)*, each person, thing and circumstance appointed or created under the repealed Act or existing or continuing under that Act immediately before the commencement of relevant provisions of the *Co-operatives National Law (NSW)* continues to have the same status, operation and effect as it would have had if this Act had not been enacted.

4 Registration of co-operatives

(1) A co-operative whose registration under the repealed Act is in force immediately before the commencement of this clause is taken to be registered under the *Co-operatives National Law (NSW)*.

(2) A co-operative referred to in subclause (1) that was a trading co-operative immediately before the commencement of this clause is taken to be a distributing co-operative.

(3) A co-operative referred to in subclause (1) that was a non-trading co-operative immediately before the commencement of this clause is taken to be a non-distributing co-operative.

5 Rules of certain co-operatives formed to carry on club may restrict voting rights

(1) The rules of a co-operative that has as a primary activity the operation, maintenance or carrying on of a club may provide for different classes of membership and restrict the voting rights attaching to membership of those different classes, but only if:

(a) the Registrar approves of the provisions concerned, and

(b) the membership of the class or classes entitled to full voting rights constitutes at least 40% of the total membership of the co-operative.

(2) Any such provision in the rules of a co-operative must not be amended except with the prior approval of the Registrar.

(3) An approval that was given under section 177 of the repealed Act by the Co-operatives Council constituted under that Act, and that was operative immediately before the commencement of this clause, has effect as if given by the Registrar.

(4) This clause applies only to:

(a) a co-operative that holds a club licence under the *Liquor Act 2007* (regardless of when it was registered as a co-operative), or

(b) a co-operative that was registered under the repealed Act before 17 December 1997 (being the date of assent to the *Statute Law (Miscellaneous Provisions) Act (No 2) 1997*).

6 Entitlements of former members of trading co-operatives (Co-operatives National Law Sch 3, clause 1)

A reference in Division 5 of Part 2.6 of the *Co-operatives National Law (NSW)* to the period of 2 years is taken to be a reference to a period of 5 years in a case where the cancellation of membership occurred before the commencement of that Division.

7 Entitlement to distribution from business or reserves of co-operative

Any entitlement that a member or former member of a co-operative had immediately before the commencement of this clause in relation to a surplus arising from the business of the co-operative or a part of the reserves of the co-operative continues in force until satisfied.

8 Minimum paid up amount of shares (Co-operatives National Law s 78 (4))

Section 78 of the *Co-operatives National Law (NSW)* does not affect shares issued before the commencement of that section.

9 Personal property security interests

The repeal of the *Co-operatives Act 1992* does not affect the operation of Part 6 of Schedule 6 to that Act on and after the date of the repeal, and that Part so operates as if that Act had not been repealed.

Appendix Co-operatives National Law

(Section 4)

Chapter 1 Preliminary

Part 1.1 Introductory

1 Citation

This Law may be cited as the Co-operatives National Law.

2 Commencement

This Law commences in a jurisdiction as provided by the Co-operatives National Law Act of that jurisdiction.

3 Objects

The objects of this Law are:

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

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

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

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

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

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

Part 1.2 Interpretation

4 Definitions

In this Law:

active member—see section 145.

active membership provisions—see section 146 (1).

active membership resolution—see section 146 (2).

agreement means an agreement, arrangement or understanding:

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

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

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

another jurisdiction means a State or Territory other than this jurisdiction.

approved form means a form approved under section 622.

ASIC means the Australian Securities and Investments Commission.

ASIC Act means the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.

Australian legal practitioner means a person who:

(a) is admitted to the legal profession under the law of a jurisdiction; and

(b) holds a current practising certificate under a law of a jurisdiction authorising the person to engage in legal practice.

authorised deposit-taking institution means an authorised deposit-taking institution within the meaning of the *Banking Act 1959* of the Commonwealth.

board means the board of directors of a co-operative, and includes a person or committee exercising a power of the board delegated to the person or committee under the rules of the co-operative.

books includes:

(a) a register; and

(b) minutes; and

(c) any other record of information; and

(d) financial reports or financial records, however compiled, recorded or stored; and

(e) a document.

carry on business has the same meaning in relation to a co-operative or participating co-operative as it has under the Corporations Act in relation to a company.

Note. Division 3 of Part 1.2 of the Corporations Act contains provisions relating to carrying on business.

CCU means a co-operative capital unit, as provided for by Division 2 of Part 3.4 (see section 345).

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

civil penalty provision—see section 553.

compensation order—see section 553.

constituent documents of a corporation means the constitution of the corporation or any rules or other document constituting the corporation or governing its activities, and includes a memorandum or articles of association and replaceable rules or other rules.

co-operative means a body registered under this Law as applying under the Co-operatives National Law Act of this jurisdiction as a co-operative (including a co-operative group).

co-operative group means a co-operative that has a membership as described in section 111.

co-operative principles—see section 10.

Co-operatives National Law Act of a jurisdiction means the Act of that jurisdiction that applies this Law (whether with or without modification) as a law of that jurisdiction.

corporation includes:

(a) a company; and

(b) any body corporate (whether incorporated in this jurisdiction or elsewhere); and

(c) an unincorporated body that, under the law of its place of origin, may:

(i) sue or be sued; or

(ii) hold property in the name of its secretary or of an office holder of the body duly appointed for that purpose;

but does not include:

(d) an exempt public authority (within the meaning of the Corporations Act); or

(e) a corporation sole.

Note. A co-operative is a corporation within this definition.

Corporations Act means the *Corporations Act 2001* of the Commonwealth or, where appropriate, that Act as applying under this Law as a law of this jurisdiction.

Corporations application legislation means:

(a) for a State—Part 3 of the *Corporations (Ancillary Provisions) Act 2001* of that State; or

(b) for the Northern Territory—Part 4 of the *Corporations Reform (Northern Territory) Act* of that Territory; or

(c) for the Australian Capital Territory—the provisions of a law of that Territory that are declared by the Co-operatives National Law Act of that Territory to be the Corporations application legislation of that Territory;

unless a law of the State or Territory concerned provides otherwise.

Corporations legislation means the Corporations legislation to which Part 1.1A of the Corporations Act applies.

corresponding co-operatives law of another jurisdiction—see section 7.

de facto partner has the meaning given by the *Acts Interpretation Act 1901* of the Commonwealth in relation to an Act of the Commonwealth.

debenture of a co-operative means a chose in action that includes an undertaking by the co-operative to repay as a debt money deposited with or lent to the co-operative. The chose in action may (but need not) include a security interest in property of the co-operative to secure repayment of the money. However, a debenture does not include:

(a) an undertaking to repay money deposited with or lent to the co-operative by a person if:

(i) the person deposits or lends the money in the ordinary course of a business carried on by the person; and

(ii) the co-operative receives the money in the ordinary course of carrying on a business that neither comprises nor forms part of a business of borrowing money and providing finance; or

(b) an undertaking by an Australian authorised deposit-taking institution to repay money deposited with it, or lent to it, in the ordinary course of its banking business; or

(c) an undertaking to pay money under:

(i) a cheque; or

(ii) an order for the payment of money; or

(iii) a bill of exchange; or

(d) an undertaking by a co-operative to pay money to a related corporation; or

(e) an undertaking to repay money that is prescribed by the regulations under the Corporations Act; or

(f) another document of a class prescribed by the National Regulations as exempt from this definition.

For the purposes of this definition, if a chose in action that includes an undertaking by a co-operative to pay money as a debt is offered as consideration for the acquisition of securities under an off-market takeover bid, or is issued under a compromise or arrangement under Part 4.4, the undertaking is taken to be an undertaking to repay as a debt money deposited with or lent to the co-operative.

deed of arrangement means a deed of arrangement executed by a co-operative under Part 5.3A of the Corporations Act as applying under this Law (see section 382 of this Law) or a deed of that type as varied and in force from time to time.

deposit-taking co-operative means a co-operative permitted under section 333 to accept money on deposit.

designated authority means (except in section 612) the person or body specified or described in the Co-operatives National Law Act of this jurisdiction for the purposes of the provision in which the term is used.

designated instrument means an instrument or document:

(a) of the kind; and

(b) made, served or published in the manner (if any);

specified or described in the Co-operatives National Law Act of this jurisdiction for the purposes of the provision in which the term is used.

Note. Examples are an order in writing served on a person and a notice published in the Gazette.

designated tribunal means the court or tribunal specified or described in the Co-operatives National Law Act of this jurisdiction for the purposes of the provision in which the term is used.

director of a co-operative includes:

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

(b) a person under whose directions or instructions the directors or members of the board of directors of the co-operative are accustomed to act.

distributing co-operative—see section 18.

entity includes a person and an unincorporated body.

evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

file includes lodge.

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.

half-year—see section 296.

inactive member of a co-operative is a member of the co-operative who is not an active member of the co-operative.

inspector means a person appointed as an inspector under Part 6.4.

investigator means a person appointed under section 520 to hold an inquiry into the affairs of a co-operative.

involved in a contravention—see section 9.

jurisdiction means a State or Territory.

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

local Registrar means the Registrar for this jurisdiction.

local regulations means regulations made under the Co-operatives National Law Act of this jurisdiction, but does not include the National Regulations.

Ministerial Council means the MCCA as defined in the Australian Uniform Co-operative Laws Agreement, the parties to which are the States and Territories, and which came into force on 21 January 2012 (being the date when it has been executed by all the parties).

Note. The Agreement includes the following definition:

"MCCA" means the Ministerial Council on Consumer Affairs which for the purposes of this Agreement comprises the members in accordance with Part VIII of this Agreement or such body as succeeds it or for the time being performs the functions carried out by the Ministerial Council on Consumer Affairs as set out in this Agreement.

model rules means model rules under Division 2 of Part 2.3.

modification, in relation to an applied Corporations legislation matter, means a modification or change (as the case may be) within the meaning of the Corporations application legislation of this jurisdiction.

mortgage includes a lien, charge or other security over property.

National Regulations means the Co-operatives National Regulations made under this Law, as referred to in section 612.

Note. Jurisdictional legislation may provide for the application of the National Regulations in individual jurisdictions. Section 6 of this Law deals with the case where the National Regulations are not applied in a jurisdiction in that manner but are separately made for that jurisdiction.

non-distributing co-operative—see section 19.

NSW legislation website means the website with the URL of www.legislation.nsw.gov.au, or any other website, used by the Parliamentary Counsel of New South Wales to provide public access to the legislation of New South Wales.

officer of a co-operative or participating co-operative means:

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

(b) a person:

(i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the co-operative; or

(ii) who has the capacity to affect significantly the co-operative's financial standing; or

(iii) in accordance with whose instructions or wishes the directors of the co-operative are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business

relationship with the directors or the co-operative); or

(c) a receiver, or receiver and manager, of property of the co-operative; or

(d) an administrator of the co-operative; or

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

(f) a liquidator of the co-operative; or

(g) a trustee or other person administering a compromise or arrangement made between the co-operative and someone else.

ordinary resolution—see section 238.

participating co-operative means a body that is registered and incorporated under, and is subject to, a corresponding co-operatives law of another jurisdiction.

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

participating Registrar means a person exercising the functions of a Registrar under a corresponding co-operatives law of another jurisdiction.

pecuniary penalty order—see section 553.

PPSA security interest (short for Personal Property Securities Act security interest) means a security interest within the meaning of the *Personal Property Securities Act 2009* of the Commonwealth and to which that Act applies, other than a transitional security interest within the meaning of that Act.

Note 1. The Personal Property Securities Act 2009 of the Commonwealth applies to certain security interests in personal property. See the following provisions of that Act:

(a) section 8 (Interests to which this Act does not apply);

(b) section 12 (Meaning of security interest);

(c) Chapter 9 (Transitional provisions).

Note 2. For the meaning of transitional security interest, see section 308 of the Personal Property Securities Act 2009 of the Commonwealth.

primary activity—see section 144.

prison includes a correctional centre or correctional complex.

public sector official has the meaning given by the Co-operatives National Law Act of this jurisdiction.

quoted security means a security that is quoted on a prescribed financial market (within the meaning of the Corporations Act).

receiver includes a receiver and manager.

Registrar for this jurisdiction has the meaning given by the Co-operatives National Law Act of this jurisdiction.

related (in the context of related corporations)—see Part 3 of Schedule 2.

relevant interest—see Part 1 of Schedule 2.

rules of a co-operative (otherwise than in the context of proposed rules or model rules) means the registered rules of the co-operative in force for the time being.

secretary of a co-operative means the person appointed under section 190 to be, or to act as, the secretary of the co-operative.

security interest means:

(a) a PPSA security interest; or

(b) a charge, lien or pledge.

serve includes give, send and similar terms.

small co-operative means a co-operative of a class or description prescribed by the National Regulations.

special postal ballot—see section 248.

special resolution—see section 239.

strict liability—see section 550.

subsidiary has the same meaning as it has in the Corporations Act.

Supreme Court means the Supreme Court of this jurisdiction.

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

the Minister means:

(a) the Minister administering the Co-operatives National Law Act of this jurisdiction; or

(b) if different Ministers are administering that Act in different respects—the Minister administering the Act in the relevant respect; or

(c) if different Ministers are administering different portions of that Act—the Minister administering the relevant portion of the Act; or

(d) if paragraphs (b) and (c) do not apply and 2 or more Ministers are administering that Act or a portion of that Act—any one of the Ministers administering the Act or portion of the Act.

this jurisdiction—see the definition of that term in the Co-operatives National Law Act of each jurisdiction that adopts this Law.

5 Miscellaneous provisions relating to the interpretation of this Law (Schedule 4)

Schedule 4 contains miscellaneous provisions relating to the interpretation of this Law.

6 References to regulations where National Regulations are not applied

(1) This section applies where the Co-operatives National Law Act of a jurisdiction does not provide that the National Regulations apply as regulations for the purposes of this Law as applying in that jurisdiction.

(2) A reference in this Law as applying in that jurisdiction to National Regulations is taken to be a reference to regulations made under that Act that are the same or substantially the same as the National Regulations.

7 Corresponding co-operatives law

(1) This section determines what (if any) law of another jurisdiction is a ***corresponding co-operatives law*** for the purposes of this Law.

(2) If this Law applies as a law of the other jurisdiction (whether with or without modification), this Law as so applying is a corresponding co-operatives law for the purposes of this Law.

(3) If this Law does not apply as a law of the other jurisdiction, a law of the other jurisdiction is a corresponding co-operatives law for the purposes of this Law if the National Regulations declare that the law substantially corresponds to the provisions of this Law.

8 Co-operatives National Law Act of this jurisdiction

(1) It is intended that this Law will or may be supplemented by provisions of the Co-operatives National Law Act of this jurisdiction where an intention of supplementation (however expressed) is indicated in this Law, including provisions designating:

(a) a person or body to be a designated authority; or

(b) an instrument or document to be a designated instrument; or

(c) a court or tribunal to be a designated tribunal;

for the purposes of particular provisions of this Law.

Note. Other provisions of this Law express the intention that the Co-operatives National Law Act of this jurisdiction will or may provide for particular matters.

(2) It is also intended that the National Regulations will or may be supplemented by provisions of the local regulations where an intention of supplementation is indicated in the National Regulations.

9 Involvement in contraventions (cf Corporations Act s 79)

A person is involved in a contravention if, and only if, the person:

(a) has aided, abetted, counselled or procured the contravention; or

(b) has induced, whether by threats or promises or otherwise, the contravention; or

(c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention; or

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

Part 1.3 The co-operative principles

10 Co-operative principles

The co-operative principles are the following principles:

1 Voluntary and open membership

Co-operatives 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

Co-operatives 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 co-operatives members have equal voting rights (1 member, 1 vote) and co-operatives at other levels are organised in a democratic way.

3 Member economic participation

Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of the capital is usually the common property of the co-operative. 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:

(a) developing the co-operative, possibly by setting up reserves, part of which at least would be indivisible;

(b) benefiting members in proportion to their transactions with the co-operative;

(c) supporting other activities approved by the membership.

4 Autonomy and independence

Co-operatives 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 co-operative autonomy.

5 Education, training and information

Co-operatives provide education and training for their members, elected representatives, managers and employees so they can contribute effectively to the development of their co-operatives. They inform the general public, particularly young people and opinion leaders, about the nature and benefits of co-operation.

6 Co-operation among co-operatives

Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures.

7 Concern for the community

While focusing on member needs, co-operatives work for the sustainable development of their communities through policies accepted by their members.

Note. The co-operative principles are those adopted by the International Co-operative Alliance.

11 Interpretation to promote co-operative principles

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

Part 1.4 The Corporations legislation

Division 1 Exclusion of matters from the Corporations legislation

12 Excluded matter—co-operatives and participating co-operatives

(1) A co-operative and a participating co-operative are each 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 this section.

Note. This section ensures that neither the Corporations Act nor Part 3 of the ASIC Act will apply in relation to a co-operative or participating co-operative, other than to the extent specified in this section. Section 5F of the Corporations Act provides that if a State or Territory law declares a matter to be an excluded matter in relation to the whole of the Corporations legislation other than to a specified extent, then that legislation will not apply, except to the specified extent, in relation to that matter in the State or Territory concerned. However, other provisions of this Part provide for the application of provisions of the Corporations legislation to co-operatives or participating co-operatives as laws of this jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(o) provisions relating to powers of a court to cure procedural irregularities and to make other orders.

(3) To avoid doubt, it is declared that subsection (1) does not operate so as to exclude the operation of the following provisions of the Corporations Act, except in relation to shares in, CCUs issued by, debentures of, or deposits with, a co-operative or participating co-operative:

(a) Part 1.2A;

(b) Chapter 2L;

(c) Chapter 6CA;

(d) Chapter 6D;

(e) Part 7.10.

Division 2 Applied matters (applied Corporations legislation matters)

13 Applied Corporations legislation matters under this Law

(1) Other provisions of this Law declare matters to be applied Corporations legislation matters for the purposes of the Corporations application legislation of this jurisdiction in relation to provisions of the Corporations Act specified in those provisions.

(2) A declaration is made subject to any modifications specified in or in connection with the provision in which the declaration is made.

(3) Additionally, a declaration is also made subject to:

(a) any modifications applying under section 15; and

(b) any modifications prescribed by the National Regulations; and

(c) any necessary modifications.

Note 1. The Corporations application legislation of this jurisdiction provides for the application of provisions of the Corporations Act and Part 3 of the ASIC Act as laws of this jurisdiction in respect of any matter declared by a law of this jurisdiction (whether with or without modification) to be an applied Corporations legislation matter for the purposes of the Corporations application legislation in relation to those Commonwealth provisions. The Corporations application legislation ensures that a declaration made for the purposes of that legislation only operates so as to apply a provision of the Corporations legislation to a matter as a law of this jurisdiction if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

Note 2. The following Table indicates the location and subject matter of declarations made under other provisions of this Law.

Table

Applied provisions of Corporations Act	Location of applied provisions in Corporations Act	Matter to which applied provision applies	Provision of this Law that makes the declaration
Sections 111AA–111AX	Part 1.2A (Disclosing entities)	Debentures (and CCUs) of a co-operative	Section 337
Sections 283AA–283HB	Chapter 2L (Debentures)	Debentures (and CCUs) of a co-operative	Section 337
Section 295A	Part 2M.3, Division 1 (Annual financial reports and directors' reports)	A co-operative with quoted securities	Section 277
Sections 299A–300A	Part 2M.3, Division 1 (Annual financial reports and directors' reports)	A co-operative with quoted securities	Section 281
Sections 302–306	Part 2M.3, Division 2 (Half-year financial report and directors' report)	A co-operative that is a disclosing entity	Section 282
Sections 307–313	Part 2M.3, Division 3 (Audit and auditor's report)	A co-operative	Section 283
Section 315 (1)	Part 2M.3, Division 4 (Annual financial reporting to members)	A co-operative that is a disclosing entity	Section 285
Section 318	Part 2M.3, Division 4 (Annual financial reporting to members)	A co-operative	Section 288

Applied provisions of Corporations Act	Location of applied provisions in Corporations Act	Matter to which applied provision applies	Provision of this Law that makes the declaration
Sections 323–323C	Part 2M.3, Division 6 (Special provisions about consolidated financial statements)	A co-operative	Section 294
Sections 324AA–324DD (except section 324BD)	Part 2M.4 (Appointment and removal of auditors), Divisions 1–5	A co-operative	Section 297
Sections 416–434G	Part 5.2 (Receivers, and other controllers, of property of corporations)	A co-operative	Section 393
Sections 435A–451D (except section 446B)	Part 5.3A (Administration of a company's affairs with a view to executing a deed of company arrangement)	A co-operative	Section 382
Sections 459A–581	Part 5.4 (Winding up in insolvency) Part 5.4A (Winding up by the court on other grounds) Part 5.4B (Winding up in insolvency or by the court) Part 5.5 (Voluntary winding up) Part 5.6 (Winding up generally)	The winding up of a co-operative	Section 444

Applied provisions of Corporations Act	Location of applied provisions in Corporations Act	Matter to which applied provision applies	Provision of this Law that makes the declaration
Sections 465–489E	Part 5.4B (Winding up in insolvency or by the court)	The winding up or deregistration of participating co-operatives	Section 472
Sections 513–581	Part 5.6 (Winding up generally)	The winding up or deregistration of participating co-operatives	Section 472
Section 536	Part 5.6, Division 3 (Liquidators)	A person appointed to administer a compromise or arrangement	Section 420
Section 563AAA	Part 5.6, Division 6 (Proof and ranking of claims)	Debentures (and CCUs) issued by a co-operative to any of its members or employees	Section 342
Sections 588C–588Z	Part 5.7B (Recovering property or compensation for the benefit of creditors of insolvent company)	A co-operative	Section 451
Sections 589–596	Part 5.8 (Offences)	A co-operative	Section 201
Sections 596AA–596AI	Part 5.8A (Employee entitlements)	A co-operative	Section 202
Sections 596A–597B	Part 5.9, Division 1 (Examining a person about a corporation)	A co-operative	Section 489

Applied provisions of Corporations Act	Location of applied provisions in Corporations Act	Matter to which applied provision applies	Provision of this Law that makes the declaration
Sections 600A–600H	Part 5.9, Division 3 (Provisions applying to various kinds of external administration)	A co-operative	Section 382
Sections 601AA–601AH	Part 5A.1 (Deregistration)	The deregistration of a co-operative and a deregistered co-operative	Section 453
Sections 674–678	Chapter 6CA (Continuous disclosure)	Debentures (and CCUs) of a co-operative	Section 337
Sections 700–742	Chapter 6D (Fundraising)	Debentures (and CCUs) of a co-operative	Section 337
Sections 1040A–1045A	Part 7.10 (Market misconduct and other prohibited conduct relating to financial products and financial services)	Debentures (and CCUs) of a co-operative	Section 337
Sections 1339–1343A	Part 9.7 (Unclaimed property)	Anything paid or transferred to the Registrar under section 436 (2)	Section 436 (3)

14 Applied Corporations legislation matters under the National Regulations

(1) The National Regulations may declare any matter relating to co-operatives or participating co-operatives to be an applied Corporations legislation matter for the purposes of the Corporations application legislation of this jurisdiction in relation to any provision of the Corporations legislation that does not apply of its own force to co-operatives or participating co-operatives (as the case may be).

(2) The declaration is made subject to any modifications specified in the provision in which the declaration is made.

(3) Additionally, the declaration is also made subject to:

(a) any modifications applying under section 15; and

(b) any modifications prescribed by the National Regulations; and

(c) any necessary modifications.

(4) The National Regulations may also provide that a specified provision of the Corporations legislation (with any applicable modifications) that is the subject of the declaration:

(a) operates to the exclusion of a specified provision of this Law; or

(b) prevails over a specified provision of this Law to the extent of any inconsistency.

15 Modifications to applied provisions

(1) This section applies in relation to any provisions of the Corporations legislation (the applied provisions) that are the subject of:

(a) a declaration under this Law, as referred to in section 13; or

(b) a declaration under the National Regulations, as referred to in section 14.

(2) For the purposes of sections 13 and 14, the following modifications apply:

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

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

(c) a reference in the applied provisions to the court is to be read as a reference to the Supreme Court;

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

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

(f) a reference in the applied provisions to the Gazette is to be read as a reference to the Government Gazette of this jurisdiction;

(g) a reference in the applied provisions to "prescribed" is to be read as a reference to "approved by the designated authority", and (without limitation) a reference to a prescribed form is to be read as a reference to an approved form within the meaning of this Law;

(h) a reference in the applied provisions to a special resolution is to be read as a reference to a special resolution referred to in section 239 of this Law;

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

(j) a reference in the applied provisions (including section 311 of the Corporations Act) to a "contravention of this Act" is to be read as including a reference to a contravention of this Law;

(k) a reference in the applied provisions to the regulations is to be read as a reference to the National Regulations or local regulations, as the case requires;

(l) all notes in the applied provisions are to be ignored;

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

(3) Subsection (2) does not apply to the extent to which this Law or the National Regulations provide otherwise, whether expressly or by implication.

Division 3 Prescription by National Regulations of other matters dealt with by Corporations legislation

16 National Regulations may provide for matters dealt with by Corporations legislation

(1) The National Regulations may make provision, in relation to co-operatives, participating co-operatives or associated matters, for or with respect to any matter for which a provision of the Corporations legislation has effect in relation to companies or associated matters.

(2) A National Regulation made under subsection (1) may deal with a matter in a similar way as, or in a different way from, that in which the provision of the Corporations legislation has effect.

(3) Subsection (1) does not apply in relation to a provision of the Corporations legislation that applies of its own force or by operation of other provisions of this Law.

(4) Without limiting subsection (1) or (2), the National Regulations may confer jurisdiction on a court or tribunal to exercise any function conferred by the National Regulations made under subsection (1).

Note. This section authorises the National Regulations to deal with a matter dealt with by Corporations legislation (with certain limitations) in a manner that does not involve the declaration of the matter to be an applied Corporations legislation matter. This procedure is contemplated by the Corporations application legislation of the various jurisdictions.

Chapter 2 Formation, powers and constitution of co-operatives

Part 2.1 Formation

Division 1 Types of co-operatives

17 Types of co-operatives

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

(2) A co-operative may be either:

(a) a distributing co-operative; or

(b) a non-distributing co-operative.

18 Distributing co-operatives

(1) A distributing co-operative is a co-operative that is not prohibited from giving returns or distributions on surplus or share capital.

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

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

(a) in the case of a co-operative group—2 or more co-operatives; or

(b) in the case of any other distributing co-operative:

(i) if a lesser number than 5 is approved by the Registrar—at least that number of active members; or

(ii) otherwise—5 or more active members.

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

19 Non-distributing co-operatives

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

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

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

(a) in the case of a co-operative group—2 or more co-operatives; or

(b) in the case of any other non-distributing co-operative:

(i) if a lesser number than 5 is approved by the Registrar—at least that number of active members; or

(ii) otherwise—5 or more active members.

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

20 Provisions regarding Registrar's approvals about numbers

(1) The Registrar may give one composite approval that operates as more than one of the following:

(a) an approval concerning the number of active members of a co-operative required under section 18 (3) or 19 (3);

(b) an approval concerning the number of persons required to hold the formation meeting of a co-operative under section 22 (2);

(c) an approval concerning the number of members required to sign the application for registration of a proposed co-operative under section 26 (1);

(d) an approval concerning the minimum number of members for a co-operative to continue to carry on business under section 119.

(2) A composite approval may be given in relation to:

(a) a particular co-operative or proposed co-operative; or

(b) a particular class of co-operatives or proposed co-operatives; or

(c) all co-operatives or proposed co-operatives.

(3) This section does not limit the power of the Registrar to give separate approvals under any of the relevant sections.

Division 2 Formation meeting

21 Formation meeting

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

(2) Before a formation meeting can be held for a proposed co-operative, a draft of the proposed rules and a draft of the proposed formation disclosure statement must be approved by the Registrar in accordance with Division 3.

22 Requirements regarding formation meeting

(1) At the formation meeting for a proposed co-operative:

(a) the proposed rules of the co-operative approved under section 24 for the proposed co-operative, including active membership provisions, must be passed by two-thirds of the proposed

members of the proposed co-operative attending the meeting; and

(b) in the case of:

(i) a proposed distributing co-operative; or

(ii) a proposed non-distributing co-operative that is the subject of a direction under section 23 (2) (a);

a formation disclosure statement approved under section 25 must be presented to the meeting; and

(c) the proposed members of the proposed co-operative must sign the application for membership; and

(d) the proposed members must elect the first directors of the proposed co-operative under the proposed rules; and

(e) the proposed members must authorise a person:

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

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

(2) The formation meeting must be held by:

(a) in the case of a co-operative group—not less than 2 co-operatives suitably qualified to be members of the proposed co-operative group; or

(b) in the case of any other co-operative—not less than 5 persons, or if a lesser number than 5 is approved by the Registrar not less than the approved number of persons, suitably qualified to be members of the proposed co-operative.

(3) For the purposes of subsection (2), a person (including a co-operative) 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 co-operative; and

(b) in the case of an individual—the person is an adult; and

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

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

(5) An approval under subsection (2) may be given in relation to a particular co-operative or class of co-operatives or to all co-operatives.

Division 3 Initial approval of rules and formation disclosure statement

23 Submission of draft rules and draft formation disclosure statement

(1) The following documents must be submitted to the Registrar before the formation meeting:

(a) a draft of the rules proposed for the co-operative (including active membership provisions);

(b) in the case of:

(i) a distributing co-operative—a draft formation disclosure statement for the co-operative; or

(ii) a non-distributing co-operative—a draft formation disclosure statement for the co-operative if the Registrar so directs under subsection (2) (a);

(c) a written notice of intention to apply for registration as a co-operative.

(2) The Registrar may by written notice direct that:

(a) a draft formation disclosure statement for a proposed non-distributing co-operative must be submitted to the Registrar; and

(b) a formation disclosure statement approved under section 25 must be presented to the formation meeting for the co-operative.

(3) The notice under subsection (2) is to be given to the person who submitted notice of intention to apply for registration as a co-operative and must specify the time by which the draft formation disclosure statement must be submitted to the Registrar.

24 Provisions relating to and approval of rules

(1) This section applies to draft rules for a co-operative required to be submitted to the Registrar under section 23.

(2) The rules must:

(a) be in accordance with section 56; and

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

(3) If the rules do not make provision for any matter required by Schedule 1, the Registrar may approve the relevant provisions of the model rules as rules of the co-operative.

(4) The Registrar may:

(a) approve the rules as submitted; or

(b) approve different rules to those submitted; or

(c) refuse to approve the rules; or

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

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

(6) The Registrar is taken to have approved the proposed rules (as submitted to the Registrar) at the end of the period of 28 days after they were submitted, unless before the end of that period the Registrar gives written notice to the person who submitted them that the Registrar:

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

(b) is still considering the matter; or

(c) refuses to approve the proposed rules.

(7) The Registrar must give the person who submitted the proposed rules to the Registrar written notice of the reasons for acting under subsection (6) (a) or (c).

25 Provisions relating to and approval of formation disclosure statement

(1) This section applies to a draft formation disclosure statement for a co-operative required to be submitted to the Registrar under section 23.

(2) The draft formation disclosure statement for a distributing co-operative must contain the information necessary to ensure prospective members are adequately informed of the nature and extent of a person's financial involvement or liability as a member of the co-operative including so far as applicable:

(a) the estimated costs of formation; and

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

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

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

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

(f) information about any contracts required to be entered into by the co-operative; and

(g) any other information that the Registrar directs to be included.

(3) The draft formation disclosure statement for a non-distributing co-operative must contain the information that the Registrar directs to be included.

(4) The Registrar may:

(a) approve the draft statement as submitted; or

(b) amend the draft, or require a specified 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 draft statement; or

(e) require the person submitting the draft statement to give the Registrar any additional information the Registrar 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) Approval may be given with or without conditions.

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

(8) The Registrar is taken to have approved the formation disclosure statement (as submitted to the Registrar) at the end of the period of 28 days after the day it was submitted to the Registrar, unless before the end of that period the Registrar gives written notice to the person who submitted the draft statement that the Registrar:

(a) has approved a different formation disclosure statement to that submitted; or

(b) is still considering the matter; or

(c) refuses to approve the formation disclosure statement.

(9) The Registrar must give the person who submitted the draft statement to the Registrar written notice of the reasons for acting under subsection (8) (a) or (c).

Note. Section 69 contains restrictions on advertising or publishing statements about an offer, or intended offer, of shares in a distributing co-operative unless a current formation disclosure statement relating to the shares is registered with or approved by the Registrar.

Division 4 Registration of proposed co-operative

26 Application for registration of proposed co-operative

(1) An application for registration of a proposed co-operative (other than an existing corporation) must:

(a) be made in the approved form; and

(b) be accompanied by the fee:

(i) prescribed by the National Regulations, unless subparagraph (ii) applies; or

(ii) prescribed by the local regulations; and

(c) be signed by:

(i) in the case of a co-operative group—at least 2 directors; and

(ii) in the case of any other proposed co-operative—at least 5, or if a lesser number than 5 is approved by the Registrar at least the approved number of, suitably qualified members, including 2 directors elected at the formation meeting; and

(d) be accompanied by:

(i) 2 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) a proposed distributing co-operative; or

(B) a proposed non-distributing co-operative that is subject to a direction under section 23 (2);

a copy of the formation 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) a statement of the address (located in this jurisdiction) of the co-operative's registered office or proposed registered office; and

(v) any other particulars the Registrar may require in a particular case.

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

27 Registration of proposed co-operative

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

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

(a) the proposed rules of the proposed co-operative must be the rules approved by the Registrar under section 24;

(b) the requirements of this Law must have been complied with in relation to the proposed co-operative;

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

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

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

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

28 Incorporation and certificate of registration

(1) A co-operative becomes a corporation on being registered.

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

Division 5 Registration of existing corporation

29 Existing corporation can be registered

A corporation (other than a co-operative taken to be registered under this Law) may apply to the Registrar to be registered as a co-operative under this Law.

30 Formation meeting (existing corporation)

(1) Before applying for registration as a co-operative, the corporation must, at the formation meeting, by a resolution approve of:

(a) the proposed registration; and

(b) any amendment of its existing constituent documents necessary to enable the corporation to comply with this Law; and

(c) the proposed rules of the proposed co-operative approved under section 24, including active membership provisions.

(2) The formation disclosure statement approved under section 25 must be presented to the formation meeting, in the case of:

(a) a proposed distributing co-operative; or

(b) a proposed non-distributing co-operative that is the subject of a direction under section 23 (2).

(3) A resolution under this section must have been passed by a two-thirds majority of eligible members present at the formation meeting.

Note. Section 32 (5) provides that, despite anything to the contrary in this Division, the registration of a corporation as a co-operative does not take effect until the corporation ceases to be registered under the law under which it was previously registered.

31 Application for registration of existing corporation

An application for the registration of an existing corporation must:

(a) be in the approved form; and

(b) be accompanied by the fee:

(i) prescribed by the National Regulations, unless subparagraph (ii) applies; or

(ii) prescribed by the local regulations; and

(c) be accompanied by:

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

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

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

(iv) 2 copies of the proposed rules of the co-operative, as provided for by the special resolution; and

(v) in the case of a proposed distributing co-operative or in the case of a proposed non-distributing co-operative that is subject to a direction under section 23 (2)—a copy of the formation disclosure statement presented to the meeting held under section 30, certified by the directors or committee of management of the corporation; 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 Registrar of the incorporation of the corporation; and

(viii) a statement setting out the connection that the proposed co-operative would have to this jurisdiction; and

(ix) a statement of the address (located in this jurisdiction) of the co-operative's registered office or proposed registered office; and

(x) any other particulars the Registrar may require in a particular case.

32 Requirements for registration

(1) When an application is made for the registration of a corporation as a co-operative under this Division, the Registrar must register the corporation as a co-operative under this Law and register its rules under

this Law if the Registrar is satisfied the requirements for the registration of the corporation as a co-operative have been met.

(2) The requirements for the registration of a corporation as a co-operative under this Division are as follows:

(a) the proposed rules of the proposed co-operative must be the rules approved by the Registrar under section 24;

(b) the requirements of this Law must have been complied with in relation to the proposed co-operative;

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

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

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

(4) If the Registrar has decided under this section to register a corporation under this Law, the corporation must notify the authority responsible for registering the corporation under the law under which it was previously registered of that decision.

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

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

33 Certificate of registration

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

(a) issue a certificate of registration; and

(b) publish notice of the issue of the certificate by designated instrument.

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

34 Effect of registration

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

(2) Except as expressly provided in this Law, the registration and incorporation of the corporation as a co-operative does not prejudice any right of a member in relation to any shares held at the time of registration and incorporation.

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

Division 6 Conversion of co-operative

35 Conversion of co-operative

(1) A co-operative may, by amendment of its rules, convert from:

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

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

(2) An amendment of the rules for the conversion of a co-operative with share capital to a co-operative without share capital cannot be passed until at least 2 weeks after a notice has been published in a newspaper

circulating generally in the district in which the registered office of the co-operative is situated advising of the proposal to submit the proposed amendment to members of the co-operative.

(3) An amendment of the rules for the conversion of a non-distributing co-operative to a distributing co-operative does not have effect without the prior approval of the Registrar under section 60.

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

(5) The Registrar may exempt:

(a) a co-operative from subsection (4) by designated instrument; or

(b) a class of co-operatives from subsection (4) by designated instrument.

(6) An exemption may be given unconditionally or subject to conditions.

Division 7 General

36 Acceptance of money by proposed co-operative

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

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

Maximum penalty: $6,000.

37 Issue of duplicate certificate

The Registrar must issue a duplicate certificate of registration:

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

(b) on payment of the fee:

(i) prescribed by the National Regulations, unless subparagraph (ii) applies; or

(ii) prescribed by the local regulations.

Part 2.2 Legal capacity and powers

Division 1 General powers

38 Effect of incorporation

As a corporation, a co-operative:

(a) has perpetual succession; and

(b) may have a common seal; and

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

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

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

39 Power to form companies and enter into joint ventures

Without limiting any other provision of this Law, a co-operative has power:

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

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

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

Division 2 Doctrine of ultra vires not to apply

40 Interpretation

In this Division:

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

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

41 Doctrine of ultra vires not to apply

(1) The objects of this Division are:

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

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

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

42 Legal capacity

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

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

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

(b) to issue debentures and CCUs of the co-operative; and

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

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

(e) to grant a security interest in property of the co-operative; and

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

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

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

(4) To avoid doubt, this section does not:

(a) authorise a co-operative to do an act that is prohibited by a law of this jurisdiction; or

(b) give a co-operative a right that a law of this jurisdiction denies the co-operative.

43 Rules may limit powers and set out objects
(cf Corporations Act s 125)

(1) The rules of a co-operative may contain an express restriction on, or a prohibition of, the co-operative's exercise of any of its powers, but the exercise of a power by the co-operative is not invalid merely because it is contrary to an express restriction or prohibition in the rules of the co-operative.

(2) The rules of a co-operative may set out the co-operative's objects, but an act of the co-operative is not invalid merely because it is contrary to or beyond any objects in the rules of the co-operative.

Division 3 Persons having dealings with co-operatives

44 Entitlement to make assumptions

(1) A person may make the assumptions in section 45 in relation to:

(a) dealings with a co-operative; or

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

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

45 Assumptions (cf Corporations Act s 129)

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

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

(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 secretary of a similar co-operative.

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

(a) has been duly appointed; and

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

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

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

(6) A person may assume that a document has been sealed by the co-operative if it bears what appears to be an impression of the co-operative's common 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 co-operative, and the other is, or may be assumed to be, a director or secretary of the co-operative.

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

46 Person who knows or ought to know cannot 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 ought to know that the assumption is not correct because of the nature of the person's connection or relationship with the co-operative.

47 Filing of documents not to constitute constructive knowledge

(1) A person is not considered to have knowledge of the rules of a co-operative, any of the contents of the rules of a co-operative, 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 filed with the Registrar;

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

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

48 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, acquisition or purported acquisition of title to property to which the assumption relates; or

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

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

Division 4 Execution of documents

49 Execution of documents by co-operative (cf Corporations Act s 127)

(1) A co-operative may execute a document without using a common seal if the document is signed by:

(a) 2 directors of the co-operative; or

(b) a director and the secretary of the co-operative.

(2) A co-operative with a common seal may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by:

(a) 2 directors of the co-operative; or

(b) a director and the secretary of the co-operative.

(3) A co-operative may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with subsection (1) or (2).

(4) This section does not limit the ways in which a co-operative may execute a document (including a deed).

50 Agent exercising co-operative's power to make contracts (cf Corporations Act s 126)

(1) A co-operative's power to make, vary, ratify or discharge a contract may be exercised by an individual acting with the co-operative's express or implied authority and on behalf of the co-operative.

(2) The power may be exercised without using a common seal.

(3) This section does not affect the operation of a law that requires a particular procedure to be complied with in relation to the contract.

51 Other requirements as to consent or sanction not affected

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

Division 5 Pre-registration contracts

52 Contracts before registration

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53 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 cannot recover damages under section 52 from the person.

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

54 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 2.3 Rules

Division 1 Rules of a co-operative

55 Effect of rules

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

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

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

(c) between a member and each other member.

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

56 Content of rules

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

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

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

(4) The rules may adopt by reference all or any of the provisions of the model rules, as provided in Division 2.

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

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

(7) The maximum fine fixed by the rules must not be more than any amount prescribed by the National Regulations as the maximum fine.

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

57 Purchase and inspection of copy of rules

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

(2) The amount required by the rules must not be more than the fee:

(a) prescribed by the National Regulations, unless paragraph (b) applies; or

(b) prescribed by the local regulations;

for obtaining a copy of the rules from the Registrar.

(3) Any person is entitled to obtain from the Registrar a copy of the rules of a co-operative on payment of the fee:

(a) prescribed by the National Regulations, unless paragraph (b) applies; or

(b) prescribed by the local regulations.

58 False copies of rules

(1) A person must not give to a member of a co-operative or to a person intending or applying to become a member of a co-operative a copy of any rules or any amendments of rules, other than those that have been registered, representing that they are binding on the members of the co-operative.

(2) A person must not amend any of the rules of a co-operative after they have been registered and circulate the amended rules representing that they have been registered when they have not been.

Maximum penalty: $1,000.

59 Rules can only be amended under this Law

The rules of a co-operative cannot be amended except under this Law.

60 Approval of certain rule amendments

(1) This section applies to:

(a) an amendment of rules that is referred to in subsection (2); and

(b) an amendment of rules that are referred to in section 35 (3) relating to the conversion of a non-distributing co-operative to a distributing co-operative.

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

(3) A proposed amendment to which this section applies must be approved by the Registrar before the resolution amending the rules is passed by a co-operative or the board of a co-operative.

(4) A draft of the proposed amendment must be submitted to the Registrar before:

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

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

(5) The proposed amendment must:

(a) be in accordance with section 56; and

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

(c) be accompanied by a statement stating the reasons for the amendment.

(6) The Registrar may:

(a) approve the amendment as submitted; or

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

(c) refuse to approve the amendment; or

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

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

(8) The Registrar is taken to have approved the proposed amendment (as submitted to the Registrar) at the end of the period of 28 days after it was submitted, unless before the end of that period the Registrar gives written notice to the person who submitted it that the Registrar:

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

(b) is still considering the matter; or

(c) refuses to approve the proposed amendment.

(9) The Registrar must give the person who submitted the draft amendment to the Registrar written notice of the reasons for acting under subsection (8) (a) or (c).

61 Amendment by special resolution

The rules of a co-operative may only be amended by special resolution unless this Law otherwise provides.

62 Amendment by resolution of board

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

(2) If the rules of a co-operative are amended under this section, the co-operative must cause the amendment to be notified in writing to its members as soon as practicable after the amendment takes effect and in any event no later than the day when notice of the next

annual general meeting of the co-operative after the amendment takes effect is given to the members.

63 Amendment does not take effect until registered

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

(2) An application for registration of an amendment must:

(a) be made in the approved form; and

(b) be made within 28 days, or a shorter or longer time prescribed by the National Regulations, after the amendment is made; and

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

(3) The Registrar must register the amendment unless:

(a) the Registrar is satisfied the amendment is contrary to this Law; or

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

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

Division 2 Model rules

64 Model rules

(1) The National Regulations may prescribe model rules.

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

(3) A model rule commences on:

(a) the day occurring 28 days after the date of publication of the National Regulations containing the model rule; or

(b) a later day specified in, or ascertained in accordance with, the model rule or the National Regulations.

(4) A model rule may apply generally or be limited in its application to a specified class of co-operatives.

65 Adoption of model rules

The rules of a co-operative may adopt by reference all or any of the provisions of the model rules:

(a) as in force from time to time, unless paragraph (b) applies; or

(b) as in force at a particular time, if the rules so provide.

66 Relationship of this Division to Division 1

If the rules of a co-operative adopt a model rule as in force from time to time and the model rule is amended, Division 1 does not require the amendment (so far as it affects the rules of the co-operative) to be approved or registered before the amendment takes effect in relation to the co-operative.

Part 2.4 Shares

Division 1 Nature of share

67 Nature of share in co-operative

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

(a) is personal property; and

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

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

(2) Subject to subsection (1):

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

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

Division 2 Disclosure requirements for distributing co-operatives

68 Registration of current disclosure statement

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

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

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

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

(c) any other information that the Registrar directs to be included.

(3) A formation disclosure statement approved by the Registrar under section 25 is taken to be registered with the Registrar for the purposes of this section until it stops being current under subsection (4).

(4) A disclosure statement stops being current when:

(a) a change occurs in the rights or liabilities attaching to any class of share in the co-operative; or

(b) a significant change occurs in the financial position or prospects of the co-operative.

(5) The co-operative must register a new disclosure statement with the Registrar when the currently registered disclosure statement stops being current, and must do so within 14 days (or a longer period approved by the Registrar) after it stops being current.

Maximum penalty: $1,000.

69 Restrictions on advertising and publicity (cf Corporations Act s 734)

(1) A person must not:

(a) advertise; or

(b) publish a statement that directly or indirectly refers to;

an offer, or intended offer, of shares in a distributing co-operative unless a current disclosure statement relating to the shares is:

(c) registered with the Registrar under section 68; or

(d) lodged with the Registrar for registration under section 68.

Maximum penalty: $1,000.

(2) Subsection (1) applies in relation to shares in a distributing co-operative only if:

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

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

(3) A person does not contravene subsection (1) by publishing an advertisement or statement if they publish it in the ordinary course of a business of:

(a) publishing a newspaper or magazine; or

(b) broadcasting by radio or television;

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

(4) An offence based on subsection (1) is an offence of strict liability.

70 Disclosure to intending shareholders in distributing co-operative

(1) The board of a distributing co-operative must give a person who intends to acquire shares in the co-operative and is not already a shareholder in the co-operative:

(a) a current disclosure statement; and

(b) any other information the Registrar directs.

(2) The disclosure statement and any other information required under subsection (1) and Part 2.5 must be given before the person becomes bound to acquire the shares.

71 Exemptions from disclosure statements

(1) The Registrar may, by designated instrument, exempt a co-operative or class of co-operatives from any or all of the provisions of this Division.

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

(3) An exemption may be given unconditionally or subject to conditions.

Division 3 Compensation for defective disclosure

72 Contravention leading to right to recover for loss or damage (cf Corporations Act s 728)

A co-operative contravenes this section if a disclosure statement is given to a person under section 70 and:

(a) there is:

(i) a misleading or deceptive statement in the disclosure statement or in any application form or document that accompanies the disclosure statement; or

(ii) an omission from the disclosure statement of material or information required to be contained in the statement by or under this Law;

and the misleading or deceptive statement or the omission is materially adverse from the point of view of the person to whom it is given; or

(b) the disclosure statement is not current (as referred to in section 70 (1)).

73 Right to recover for loss or damage resulting from contravention (cf Corporations Act s 729)

(1) A person who suffers loss or damage because of a contravention of section 72 in relation to a co-operative may recover the amount of the loss or damage from a person referred to in a following paragraph if the loss or damage is one that the paragraph makes the person liable for, even if the person did not commit, and was not involved in, the contravention:

(a) the co-operative is liable for loss or damage caused by any contravention of section 72 in relation to the disclosure statement;

(b) each director of the co-operative is liable for loss or damage caused by any contravention of section 72 in relation to the disclosure statement;

(c) a person named in the disclosure statement with their consent as having made a statement (see section 615):

(i) that is included in the disclosure statement; or

(ii) on which a statement made in the disclosure statement is based;

is liable for loss or damage caused by the inclusion of the statement in the disclosure statement;

(d) a person who is involved in the contravention of section 72 is liable for loss or damage caused by that contravention.

(2) An action under subsection (1) may begin at any time within 6 years after the day on which the cause of action arose.

(3) This Division does not affect any liability that a person has under any other law.

Note. Section 9 defines "involved" in a contravention.

74 Due diligence defence (cf Corporations Act s731)

(1) A person is not liable under this Division in relation to a contravention of section 72 because of a misleading or deceptive statement if the person proves they:

(a) made all inquiries (if any) that were reasonable in the circumstances; and

(b) after doing so, believed on reasonable grounds that the statement was not misleading or deceptive.

(2) A person is not liable under this Division in relation to a contravention of section 72 because of an omission from a disclosure statement in relation to a particular matter or particular information if the person proves they:

(a) made all inquiries (if any) that were reasonable in the circumstances; and

(b) after doing so, believed on reasonable grounds that there was no omission from the statement in relation to that matter or information.

(3) A person is not liable under this Division in relation to a contravention of section 72 because a disclosure statement is not current if the person proves they:

(a) made all inquiries (if any) that were reasonable in the circumstances; and

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

75 General defences (cf Corporations Act s 733)

(1) A person is not liable under this Division in relation to a contravention of section 72 because of a misleading or deceptive statement in, or an omission from, a disclosure statement if the person proves that they placed reasonable reliance on information given to them by:

(a) if the person is a body—someone other than a director, employee or agent of the body; or

(b) if the person is an individual—someone other than an employee or agent of the individual.

(2) For the purposes of subsection (1), a person is not the agent of a body or individual merely because they perform a particular professional or advisory function for the body or individual.

(3) A person is not liable under this Division in relation to a contravention of section 72 because a disclosure statement is not current if the person proves that they were not aware of the circumstance or event that caused the statement to cease to be current.

Division 4 Issue of shares

76 Shares—general

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

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

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

(4) Subject to this Part and Part 2.5, shares must not be issued to a non-member.

77 Minimum number of shares to be subscribed for

(1) A member of a co-operative with share capital must subscribe for such minimum number of shares (if any) as may be required by the rules of the co-operative.

(2) The minimum number may be determined by reference to the use made by the member of the co-operative or in any other manner specified in the rules of the co-operative.

(3) An amendment of the rules of the co-operative as to the minimum number of shares to be subscribed for does not operate to require an existing member of the co-operative to subscribe for additional shares, but an existing member is not prevented from agreeing to subscribe for additional shares.

(4) This section does not affect section 82.

78 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 for shares at the time of allotment must be paid in a way specified in the rules of the co-operative or permitted by this Law.

(3) This section does not apply to a bonus share issued under section 83 or 357.

(4) This section does not affect shares issued before the commencement of this section in this jurisdiction if the Co-operatives National Law Act of this jurisdiction so provides.

79 Shares not to be issued at a discount

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

80 Issue of shares at a premium

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

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

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

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

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

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

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

(d) in writing off the preliminary expenses of the co-operative;

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

81 Joint ownership of shares

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

82 Members may be required to take up additional shares

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

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

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

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

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

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

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

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

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

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

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

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

(6) The requirements in respect of a proposal to take up additional shares under subsection (3) do not apply to the issue of bonus shares under section 80 (4) (a), 83 or 357.

83 Bonus share issues

(1) A distributing co-operative may issue bonus shares to members of the co-operative if the assets of the co-operative:

(a) have been sold at a profit; or

(b) have been revalued at a greater value than that disclosed before the revaluation in the books of the co-operative.

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

84 Restrictions on bonus shares

Bonus shares may be issued under section 83 subject to the following restrictions:

(a) each issue must have been approved by a special resolution of the co-operative;

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

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

(d) the total nominal value of bonus shares issued by a co-operative in any period of 12 months must not be more than 20%, or another percentage prescribed under the National Regulations, of the nominal value of the issued share capital of the co-operative immediately before the date of issue of the bonus shares.

85 Notice about bonus shares

Notice of the meeting or postal ballot at which a resolution is to be proposed as a special resolution to approve a bonus share issue under section 83 must be accompanied by:

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

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

(c) if the issue arises from, or partly from, a revaluation of assets—a certificate of value of the assets, being a certificate given in relation to a valuation made not more than one year before the date of the notice by:

(i) a person prescribed by the National Regulations; or

(ii) a person having qualifications prescribed by the National Regulations; and

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

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

Division 5 Provisions applying to particular share subscriptions

86 Definition

In this Division:

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

87 Application of this Division

This Division applies in relation to shares in a co-operative only if:

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

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

88 Application money to be held on trust (cf Corporations Act s 722)

(1) If a person offers shares for issue or sale under a disclosure statement, the person must hold:

(a) all application money received from people applying for shares under the disclosure statement; and

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

in trust under this section for the applicants until:

(c) the shares are issued or transferred; or

(d) the money is returned to the applicants.

Maximum penalty: $2,500 or imprisonment for 6 months, or both.

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

Maximum penalty: $2,500 or imprisonment for 6 months, or both.

(3) An offence based on subsection (1) or (2) is an offence of strict liability.

89 Minimum subscription condition must be fulfilled before issue or (cf Corporations Act s 723 (2))

If a disclosure statement for an offer of shares states that the shares will not be issued or transferred unless:

(a) applications for a minimum number of the shares are received; or

(b) a minimum amount is raised;

the person making the offer must not issue or transfer any of the shares until that condition is satisfied. For the purpose of working out whether the condition has been satisfied, a person who has agreed to take securities as underwriter is taken to have applied for those shares.

Note 1. Under section 88, the application money must be held in trust until the issue or transfer of the shares.

Note 2. This section prevents the issue or transfer of the shares not only to those who apply for them in response to the disclosure statement but also to those who do not need to apply for them (for example, because they are to take the securities under an underwriting agreement).

90 Repayment of money if disclosure statement condition not met (cf Corporations Act s 724 (1) (a), (1A) and (2) (a))

(1) If:

(a) a person offers shares under a disclosure statement; and

(b) the disclosure statement states (expressly or impliedly) that it is a condition that the shares will not be issued or transferred unless:

(i) applications for a minimum number of the shares are received; or

(ii) a minimum amount is raised; and

(c) that condition is not satisfied within 4 months after the date of the disclosure statement;

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

Maximum penalty: $2,500 or imprisonment for 6 months, or both.

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

(3) An offence based on subsection (1) is an offence of strict liability.

Division 6 Disclosure and registration of interests in shares

91 Direction to disclose (cf Corporations Act s 672A (1))

The board of a co-operative may direct:

(a) a member of the co-operative; or

(b) a person named in a previous disclosure under section 92 as having a relevant interest in, or having given instructions about, shares in the co-operative;

to make the disclosure required by section 92.

92 Disclosure by member of relevant interests and instructions (cf Corporations Act s 672B)

(1) A person given a direction under section 91 must disclose in writing to the board of the co-operative giving the direction:

(a) full details of their own relevant interest in the shares and of the circumstances that give rise to that interest; and

(b) the name and address of each other person who has a relevant interest in any of the shares together with full details of:

(i) the nature and extent of the interest; and

(ii) the circumstances that give rise to the other person's interest; and

(c) the name and address of each person who has given the person instructions about:

(i) the acquisition or disposal of the shares; or

(ii) the exercise of any voting or other rights attached to the shares; or

(iii) any other matter relating to the shares or interests;

together with full details of those instructions (including the date or dates on which they were given).

Maximum penalty: $1,000 or imprisonment for 3 months, or both.

(2) However, a matter referred to in subsection (1) (b) or (c) need be disclosed only to the extent to which it is known to the person required to make the disclosure.

(3) An offence based on subsection (1) is an offence of strict liability.

(4) A defendant bears an evidential burden in relation to the matter in subsection (2).

(5) The disclosure must be made within 5 business days after:

(a) the person is given the direction; or

(b) if the person applies for an exemption under subsection (6) from complying with the direction and the Registrar refuses to grant the exemption—the Registrar notifies the person of the Registrar's decision on the application.

(6) The Registrar may, by designated instrument, exempt a person from complying with a direction if the Registrar believes the direction is unjustified.

(7) The person does not have to comply with a direction given by the co-operative if the person proves that the giving of the direction is vexatious.

(8) A board that receives information from a person acting on a direction given to the person by the board must pay to the person the fee (if any):

(a) prescribed by the National Regulations, except to the extent paragraph (b) applies; or

(b) prescribed by the local regulations.

93 Registration as trustee, executor or administrator on death of owner of shares

(1) A trustee, executor or administrator of the estate of a dead person who was the registered holder of a share in a co-operative may be registered as the holder of the share as trustee, executor or administrator of the estate.

(2) A trustee, executor or administrator of the estate of a dead person who was entitled in equity to a share in a co-operative may, with the consent of the co-operative and of the registered holder of the share, be registered as the holder of the share as trustee, executor or administrator of the estate.

94 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 jurisdiction relating to the administration of the estates of persons who, through mental or physical infirmity, are incapable of managing their affairs, to administer the estate of another person (the ***incapable person***).

(2) If the incapable person is the registered holder of a share in a co-operative, the appointed person may be registered as the holder of the share as administrator of the estate of the incapable person.

(3) If the incapable person is entitled in equity to a share in a co-operative, the appointed person may, with the consent of the co-operative and of the registered holder of the share, be registered as the holder of the share as administrator of the estate of the incapable person.

95 Registration as Official Trustee in Bankruptcy

(1) This section applies when a share in a co-operative that is the property of a bankrupt vests by force of the *Bankruptcy Act 1966* 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 the share as the Official Trustee in Bankruptcy.

(3) If the bankrupt is entitled in equity to the share, the official trustee may, with the consent of the co-operative and of the registered holder of the share, be registered as the holder of the share as the Official Trustee in Bankruptcy.

96 Liabilities of person registered as trustee or administrator

(1) A person registered under section 93, 94 or 95 is, while so registered, subject to the same liabilities in relation to the share as the liabilities to which the person would have been subject if the share had remained, or had been, registered in the name of the dead person, the incapable person or the bankrupt.

(2) The person registered is subject to no other liabilities in relation to the share.

97 Notice of trusts in register of members

Shares held by a trustee under a particular trust may, with the consent of the co-operative, be marked in the register of members in a way that identifies the shares as being held under the trust.

98 No notice of trust except as provided by this Division

Except as provided in this Division:

(a) no notice of a trust, whether express, implied or constructive, is to be entered on a register or be receivable by the Registrar; and

(b) no liabilities are affected by anything done under this Division; and

(c) nothing done under this Division affects a co-operative with notice of a trust.

Division 7 Sale or transfer of shares

99 Sale or transfer of shares

A share in a co-operative cannot be sold or transferred except:

(a) on the death of a member—under Division 8; 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 the person will be an active member of the co-operative.

100 Sale or transfer of shares to be subject to rules

(1) A share in a co-operative cannot be sold or transferred except under the rules of the co-operative.

(2) Without limiting subsection (1), a share in a co-operative cannot be sold or transferred to 2 or more persons jointly if the rules of the co-operative do not (either generally or in the circumstances of the particular case) allow the share to be held jointly.

101 Transfer not effective until registered

The transfer (by sale or otherwise) of a share in a co-operative is not effective until the transfer is registered and the name of the transferee is entered in the register of members in respect of the share.

Division 8 Transfer of shares and other interests on death of member

102 Meaning of "interest"

In this Division:

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

(a) the member's membership; and

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

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

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

103 Transfer of shares and other interests on death of member

(1) On the death of a member of a co-operative, the board must transfer the deceased member's share or interest in the co-operative to:

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

(b) one or more persons that the deceased's personal representative specifies in an application for transfer made to the co-operative within 3 months after the death of the member.

(2) On the death of a member of a co-operative, the member's share or interest in the co-operative cannot be transferred to a person other than the personal representative of the deceased member except with the consent of the board of the co-operative.

(3) The board:

(a) in the case of an application referred to in subsection (1) (b)—must give its consent under subsection (2) to the transfer of the deceased member's share or interest in the co-operative, unless the board reasonably believes the only

transferee or each transferee will not be an active member of the co-operative; or

(b) in any other case—may give its consent under subsection (2) only if the board reasonably believes the only transferee or each transferee will be an active member of the co-operative.

(4) The board must not give its consent under subsection (2) to the transfer of a share if, because of the transfer, the nominal value of the shares held by the transferee would be more than:

(a) 20% of the nominal value of the share capital of the co-operative; or

(b) if a lower percentage is specified in the rules of the co-operative—that lower percentage of the nominal value of the share capital of the co-operative.

(5) This section has effect subject to section 100.

104 Transfer of small shareholdings and interests on death

(1) If the total value of a deceased member's shares or interest in a co-operative is less than $10,000 (or a higher amount prescribed by the National Regulations), the board may, on the basis of evidence that it considers sufficient, transfer the shares or interest under whichever of the following paragraphs is appropriate:

(a) if the member 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;

(b) if the member 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 the grant.

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

(3) This section has effect subject to section 100.

(4) In this section:

transfer of an interest includes the payment of money.

105 Value of shares and interests

The value of the shares or interest of a deceased member must be decided, for the purposes of this Division, under the rules of the co-operative.

106 Co-operative protected

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

Division 9 Repurchase of shares

107 Purchase and repayment of shares

(1) The rules of a co-operative may authorise the co-operative:

(a) to purchase any share of a member in the co-operative at the request of the member; and

(b) to repay to a member, with the member's consent, all or any part of the amount paid up on any share held by the member when the amount repaid is not required for the activities of the co-operative.

(2) The amount paid by a co-operative under this section in purchasing shares or repaying any amount paid up on shares, or both, in any financial year of the co-operative must not be more than the total of:

(a) 5% of the nominal value of the issued share capital of the co-operative immediately before the start of the financial year; and

(b) the amount of any additional share capital of the co-operative subscribed for within that year.

(3) The members of a co-operative may, by special resolution, exempt a co-operative from the operation of subsection (2) in relation to a particular financial year, either unconditionally or subject to conditions.

(4) The amount paid for a share when it is repurchased may be an amount decided by the board that is less than the nominal value of the share but only:

(a) if the books of the co-operative disclose that the amount paid is the net shareholder's equity per share in the business of the co-operative; or

(b) under the rules of the co-operative.

(5) A co-operative must not purchase shares or repay amounts paid up on shares if:

(a) the co-operative is likely to become insolvent because of the repurchase of the shares or because of the repayment of amounts paid up on the shares; or

(b) the co-operative is insolvent.

(6) This section does not apply if the member has been expelled or has resigned from the co-operative or the member's membership has been otherwise cancelled under Part 2.6.

108 Deposits, debentures or CCUs instead of payment when share repurchased

(1) If a co-operative repurchases a share of a member, the co-operative may instead of paying the purchase price to the member:

(a) for a deposit-taking co-operative—apply the amount as an interest-bearing deposit by the member with the co-operative; or

(b) allot or issue debentures or CCUs of the co-operative to the member in satisfaction of the amount.

(2) Subsection (1) applies only if:

(a) the board considers payment of the repurchase price would adversely affect the financial position of the co-operative; or

(b) the board and the member so agree.

(3) The deposit, debenture or CCU bears interest during any period:

(a) for a co-operative with share capital:

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

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

(iii) if a rate of dividend has never been decided for the share capital of the co-operative—at the rate the board of the co-operative considers reasonable; or

(b) for a co-operative without share capital—at the rate the board of the co-operative considers reasonable; or

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

(4) The deposit, debenture or CCU 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 co-operative.

(5) The deposit, debenture or CCU must in any case be repaid within 10 years (or within any shorter period the rules of the co-operative require) after the repurchase of the shares concerned.

109 Cancellation of shares

A co-operative must cancel any share purchased by or forfeited to the co-operative under this Law or the rules of the co-operative.

Part 2.5 Membership

Division 1 General

110 Becoming a member of co-operative

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

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

(3) A minor may be admitted as a member of the co-operative unless the rules of the co-operative otherwise provide.

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

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

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

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

111 Members of co-operative group

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

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

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

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

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

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

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

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

112 Qualification for membership

(1) A person is not qualified to be admitted to membership of a co-operative unless:

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

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

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

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

(b) set out the consequences of failing to be, or ceasing to be, an active member.

113 Membership may be joint

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

114 Minors

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

(2) A minor is not competent to hold any office in a co-operative.

(3) A member of a co-operative who is a minor is not entitled to vote, but this does not apply to joint membership of a co-operative except where all the joint members are minors.

(4) This section applies only to individuals.

115 Representatives of corporations

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

(2) A corporation must not appoint a person to represent the corporation as a member of a co-operative if the person is currently a member of the co-operative or a representative of another corporation member.

Maximum penalty: $1,000.

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

(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.

116 Notification of shareholders and shareholdings

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

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

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

within 7 days of the request.

Maximum penalty: $2,000.

117 Circumstances in which membership ceases—all co-operatives

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

(a) if the member's membership is cancelled under Part 2.6;

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

(c) if:

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

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

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

(d) on the death of the member;

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

(f) for a member that is a corporation—if the corporation 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.

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

In the case of a co-operative that has share capital, in addition to the circumstances in section 117, a member ceases to be a member if:

(a) the member's total shareholding is transferred to another person under the rules of the co-operative and the name of the transferee is entered in the register of members in respect of the shareholding; or

(b) the member's total shareholding is forfeited under this Law or the rules of the co-operative; or

(c) the member's total shareholding is sold by the co-operative under a power conferred by the rules of the co-operative, and the name of the purchaser is entered in the register of members in respect of the shareholding; or

(d) the member's total shareholding is purchased by the co-operative under this Law; or

(e) the amount paid up on the member's shares is repaid to the member under the rules of the co-operative.

119 Carrying on business with too few members

(1) A person who is a director of a co-operative must not knowingly allow the co-operative to continue to carry on business with fewer than the minimum number of members allowed (under subsection (3)) for more than 28 days after the number of members falls below that minimum number.

Maximum penalty: $2,000.

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

(3) The minimum number of members allowed is:

(a) in the case of a co-operative group—2 co-operatives; or

(b) in the case of any other co-operative:

(i) if a lesser number than 5 is approved by the Registrar—that number of active members; or

(ii) otherwise—5 active members.

Note. See section 20 for composite approvals.

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

(5) An application for an extension must be made in the approved form before the period to be extended ends.

Division 2 Rights and liabilities of members

120 Rights of membership not exercisable until registered etc

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

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

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

(2) A co-operative must ensure 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.

Maximum penalty (for subsection (2)): $2,000.

121 Liability of members to co-operative

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

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

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

(4) This section does not affect a liability that a member of a co-operative may have to the co-operative in respect of:

(a) any trade or other business conducted by the member with the co-operative; or

(b) any fines imposed on the member by the co-operative.

122 Co-operative to give information to person intending or applying to become a member

(1) The board of a co-operative must give each person intending or applying to become a member of the co-operative:

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

(b) a copy of all special resolutions that would apply to the prospective member passed by the members of the co-operative, except special resolutions providing for an amendment of the rules of the co-operative; and

(c) a copy of the most recent financial information reported to members of the co-operative under Part 3.3.

(2) The board of a co-operative may comply with subsection (1):

(a) by:

(i) giving the person notice that the documents referred to in subsection (1) may be inspected by the person at the registered

office of the co-operative and at each other office of the co-operative in or outside this jurisdiction, including outside Australia; and

(ii) making the documents available for inspection in person; or

(b) if the person has elected to receive the documents as an electronic copy—by sending the person an electronic copy of the documents; or

(c) if the person did not make the election—by directly notifying, in writing, that the documents are accessible on the website and specifying the direct address on the website where the documents may be accessed.

Note. A direct address may be specified, for example, by specifying the URL of the documents.

123 False copy of documents

(1) A person who, in purported compliance with section 122:

(a) gives a person intending or applying to become a member of a co-operative a document as a copy of:

(i) a special resolution of the co-operative; or

(ii) the last annual report of the co-operative; and

(b) knows or ought to know that, in a material respect, it is not a true copy of the resolution or report; and

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

is guilty of an offence.

Note. Section 58 deals with false copies of rules.

(2) A person who, in purported compliance with section 122:

(a) makes available for inspection by a person intending or applying to become a member of a co-operative a document as a copy of:

(i) a special resolution of the co-operative; or

(ii) the last annual report of the co-operative; and

(b) knows or ought to know that, in a material respect, it is not a true copy of the resolution or report; and

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

is guilty of an offence.

Maximum penalty: $1,000.

124 Entry fees and regular subscriptions

(1) The rules of a co-operative may:

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

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

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

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

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

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

(b) any regular subscriptions that are imposed in accordance with the rules of the co-operative and of which the member has been given notice.

125 Members etc may be required to deal with co-operative

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

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

(3) In particular, the provisions of the rules of the co-operative or a contract may require a member:

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

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

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

(4) Any amount required to be paid to the co-operative as liquidated damages is, for the purposes of section 127, a debt payable by the member to the co-operative and is accordingly subject to that section.

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

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

126 Fines payable by members

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

(2) A fine imposed under subsection (1) must not be more than the maximum fine fixed by the rules of the co-operative.

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

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

127 Lien and set-off

(1) A co-operative has, in relation to any debt payable by a member or former member to the co-operative, a lien 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 co-operative may set-off any amount paid on account of that share or other thing, or any amount credited or payable to the member or former member, in or towards payment of the debt.

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

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

128 Repayment of shares on expulsion or resignation

(1) When a member is expelled or resigns from a co-operative under its rules, the co-operative must, within one year after the day of expulsion or resignation:

(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 or resignation, less any amount owed by the member to the co-operative at the day of expulsion or resignation under the rules of the co-operative 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 co-operative; or

(ii) the board and the former member agree.

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

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

(b) if the co-operative is a deposit-taking co-operative—the co-operative may apply the amount as a deposit by the former member with the co-operative;

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

(3) If the balance sheet of the co-operative last issued before the expulsion or resignation of a member of the co-operative 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 co-operative as at the date of expulsion or resignation of the member.

(5) Shares for which capital has been repaid must be cancelled.

Note. Section 163 deals with repayment of amounts owing because of cancelled membership. Sections 164 and 165 deal with interest on, and repayment of, deposits, debentures and CCUs referred to in this section.

Division 3 Disputes involving members

129 Grievance procedure

(1) The rules of a co-operative 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 co-operative.

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

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

(4) In this Division:

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

130 Application to designated tribunal

(1) The designated tribunal may, on the application of a member or the co-operative, make an order declaring and enforcing:

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

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

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

(3) The designated tribunal 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 considers that:

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

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

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

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

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

Division 4 Oppressive conduct of affairs

131 Interpretation—extended meaning of "member"

In this Division:

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

132 Application of Division

This Division does not apply to anything done under Part 2.6.

133 Application for order

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

(a) the Registrar;

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

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

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

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

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

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

134 Orders

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

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

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

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

(d) an order for the repayment of the member's shares under the provisions of this Law for repayment of share capital;

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

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

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

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

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

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

(k) an order as to costs;

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

135 Basis on which orders made

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

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

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

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

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

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

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

136 Winding up need not be ordered if members unfairly prejudiced by order

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

137 Application of winding up provisions

If an order that a co-operative be wound up is made under this Division, the provisions of this Law relating to the winding up of co-operatives apply, with any modifications that are necessary, as if the order had been made on an application filed in the Supreme Court by the co-operative.

138 Changes to rules

(1) If an order under this Division makes any amendment of the rules of a co-operative:

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

(b) the co-operative must not (despite any other provisions of this Law), without the leave of the Supreme Court, make any further amendment of the rules inconsistent with the provisions of the order.

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

139 Copy of order to be filed with Registrar

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

Maximum penalty: $1,000.

Division 5 Inspection of books

140 Order for inspection of books of co-operative
(cf Corporations Act s 247A)

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

(a) authorising the applicant to inspect books of the co-operative; or

(b) authorising another person (whether a member or not) to inspect books of the co-operative on the applicant's behalf.

(2) A person authorised to inspect books may make copies of the books unless the Supreme Court orders otherwise.

(3) A person who:

(a) is granted leave under section 580; or

(b) applies for leave under that section; or

(c) is eligible to apply for leave under that section;

may apply to the Supreme Court for an order under this section.

(4) On application, the Supreme Court may make an order authorising:

(a) the applicant to inspect books of the co-operative; or

(b) another person to inspect books of the co-operative on the applicant's behalf.

(5) The Supreme Court may make the order only if it is satisfied that:

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

(b) the inspection is to be made for a purpose connected with:

(i) applying for leave under section 580; or

(ii) bringing or intervening in proceedings with leave under that section.

(6) A person authorised to inspect books may make copies of the books unless the Supreme Court orders otherwise.

141 Ancillary orders (cf Corporations Act s 247B)

If the Supreme Court makes an order under section 140, the court may make any other orders it considers appropriate, including either or both of the following:

(a) an order limiting the use that a person who inspects books may make of information obtained during the inspection;

(b) an order limiting the right of a person who inspects books to make copies in accordance with section 140 (2).

142 Disclosure of information acquired in inspection (cf Corporations Act s 247C)

(1) A person who inspects books on behalf of an applicant under section 140 must not disclose information obtained during the inspection.

Maximum penalty: $500.

(2) Subsection (1) does not apply to the extent that the disclosure is to:

(a) the Registrar; or

(b) the applicant.

(3) An offence based on subsection (1) is an offence of strict liability.

(4) A defendant bears an evidential burden in relation to the matter in subsection (2).

143 Co-operative or directors may allow member to inspect books (cf Corporations Act s 247D)

The board of a co-operative, or the co-operative by a resolution passed at a general meeting, may authorise a member to inspect books of the co-operative.

Part 2.6 Active membership

Division 1 Definitions

144 Meaning of "primary activity"

A ***primary activity*** of a co-operative is an activity specified in the rules of the co-operative as a primary activity of the co-operative.

145 Meaning of "active member"

A member of a co-operative is an ***active member*** of the co-operative if the member:

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

(b) maintains any other relationship or arrangement with the co-operative for carrying on a primary activity of the co-operative that the National Regulations provide.

146 Meaning of "active membership provisions and resolutions"

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

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

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

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

Division 2 Active membership provisions

147 Number of primary activities required

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

148 Rules to contain active membership provisions

The board of a co-operative must ensure the rules of the co-operative contain active membership provisions under this Part.

149 Factors and considerations for deciding primary activities and other matters

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

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

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

(2) The ***relevant factors and considerations*** are:

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

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

(c) any other factors and considerations prescribed by the National Regulations.

(3) The National Regulations may:

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

(b) state 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 by the National Regulations so as to apply to co-operatives generally or to a specified class of co-operatives.

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

150 Active membership provisions—distributing co-operatives

The only active membership provisions that may be contained in the rules of a distributing co-operative are:

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

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

151 Active membership provisions—non-distributing co-operatives—regular subscriptions

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

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

Division 3 Active membership resolutions

152 Notice of meeting

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

(2) The notice must, in addition to the other matters required to be stated:

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

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

(c) contain a copy of section 156.

(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 co-operative, apply to the Registrar for a decision as to the member's eligibility.

(4) The Registrar may decide the matter, on the information available to the Registrar, by direction in writing to the co-operative and the member.

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

153 Eligibility to vote on active membership resolution

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

154 Eligibility of directors to vote on proposal at board meeting

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

155 Other entitlements of members not affected

A provision of this Division that renders a member of a co-operative 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

156 Cancellation of membership of inactive member

(1) Subject to sections 159 and 160, the board of a co-operative must declare the membership of a member cancelled if:

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

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

(2) This section applies to a member only if he or she was a member of the co-operative 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 decided 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 for an order under section 162 in relation to the cancellation of the person's membership under this section.

(6) In this section:

the required period, in relation to a co-operative, means:

(a) 3 years; or

(b) if a shorter period is stated in the rules of the co-operative—that period.

157 Shares to be forfeited if membership cancelled

(1) If a co-operative has share capital, the board of the co-operative must declare the shares of a member to be forfeited at the same time as the member's membership is cancelled under section 156.

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

(3) Nothing in this section affects the operation of section 163.

158 Failure to cancel membership—offence by director

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

Maximum penalty: $2,000.

159 Deferral of cancellation by board

(1) The board of a co-operative may by resolution defer cancellation of a member's membership for up to one year:

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

(b) if:

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

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

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

160 Cancellation of membership prohibited in certain circumstances

(1) Unless the National Regulations otherwise provide, the board of a co-operative must not declare the membership of a member to be cancelled under this Part:

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

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

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

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

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

(f) if the co-operative has, for the purpose of being registered as a company under the Corporations Act, filed with the Registrar a copy of the entry made in the minutes of the co-operative.

(2) The National Regulations may provide that the board of a co-operative must not declare the membership of a member to be cancelled under this Part in other circumstances that may be prescribed.

161 Notice of intention to cancel membership

(1) The board of a co-operative 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 co-operative; and

(b) the amount required to be repaid to the member in relation to the cancelled membership (whether because of the cancellation of shares or otherwise) is not more than $100 (or any other amount prescribed by the National Regulations).

(3) Notice may be given by publication of a notice in a newspaper in the district in which the registered office of the co-operative is situated if:

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

(b) the amount required to be repaid to the member in relation to the cancelled membership (whether because of the cancellation of shares or otherwise) is more than the applicable amount under subsection (2) (b).

162 Order against cancellation

(1) If the designated tribunal is satisfied the cancellation of a member's membership under section 156 was or would be unreasonable, the tribunal may, on application by the member or former member, direct that the membership should not have been cancelled or should not be cancelled.

(2) An application for an order may be made only within 6 months after:

(a) notice of the board's intention to declare the membership to be cancelled is given to the member under section 161 (1) or is first published under section 161 (3); or

(b) if notice was not required as referred to in section 161 (2)—the cancellation takes effect.

(3) 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 co-operative with all the rights and entitlements (including any shareholding) attaching to or arising from the former membership.

(4) Reinstatement of a member under this section is to be effected under the directions of the designated tribunal.

163 Repayment of amounts owing because of cancelled membership

(1) If the membership of a member of a co-operative is cancelled under this Part, the co-operative must, within one year after the date of cancellation:

(a) repay to the former member the amount owing to the member because of the cancellation; or

(b) apply the amount under subsection (2) if:

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

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

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

(a) if the co-operative is a deposit-taking co-operative—the co-operative may apply the amount as a deposit by the former member with the co-operative (subject to the requirements of section 164 as to interest on the deposit);

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

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

(3) The amount payable to a former member because of the cancellation of membership includes any amount paid up for shares forfeited because of the cancellation of membership.

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

(5) The co-operative may retain the amount otherwise payable to a former member under this section, if:

(a) the former member cannot be found by the co-operative, after reasonable efforts by the co-operative to find the former member; and

(b) the amount is less than $100 (or any other amount prescribed by the National Regulations).

164 Interest on deposits, debentures and CCUs

(1) This section applies when the amount payable to a former member under section 128 or 163 is applied as a deposit with the co-operative or the co-operative allots or issues debentures or CCUs to the former member in satisfaction of the amount.

(2) The deposit, debenture or CCU bears interest during any period:

(a) for a co-operative with share capital:

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

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

(iii) if a rate of dividend has never been decided for the share capital of the co-operative—at the rate the board of the co-operative considers reasonable; or

(b) for a co-operative without share capital—at the rate the board of the co-operative considers reasonable; or

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

(3) A former member may agree to the rate of interest being lower 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 applying under section 337 of this Law, do not apply to an allotment or issue of debentures or CCUs under this section:

(a) Chapter 2L;

(b) Chapter 6D.

165 Repayment of deposits, debentures and CCUs

(1) A deposit, debenture or CCU to which an amount payable to a former member is transferred under this Division or section 128 (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 co-operative.

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

166 Register of cancelled memberships

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

Division 5 Entitlements of former members of distributing co-operatives

167 Application of Division

This Division applies only to distributing co-operatives.

168 Former shareholders to be taken to be shareholders for certain purposes

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

(a) the entitlement of a shareholder in relation to the purchase of shares in the co-operative under an offer described in section 373 (1) (a), (b) or (c) or the purchase of all the shares in the co-operative, if the offer or purchase occurs within 2 years after the person's shares were forfeited;

(b) the entitlement of a shareholder when the co-operative becomes registered as a company if the relevant special resolution under section 404 is passed within 2 years after the person's shares were forfeited;

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

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

(a) an offer described in section 373 (1) (a) or (c) that is made by another co-operative; or

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

(3) Subsection (1) (c) does not apply if the winding up is for a merger under Part 4.3.

(4) 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 co-operative if section 169 operates so as to require the forfeited shareholding to be regarded as a forfeited shareholding in another co-operative.

169 Entitlements of former shareholders on mergers etc

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

(a) another co-operative (***the new co-operative***) is created because of a merger under Part 4.3 involving the original co-operative; or

(b) the engagements of the original co-operative are transferred to another co-operative (***the new co-operative***) under Part 4.3.

(2) A person referred to in subsection (1) is, for the purposes of section 168 (and the further operation of this section), taken to have held shares in the new co-operative and as having had those shares in the new co-operative forfeited under this Part when the person's shares in the original co-operative were forfeited.

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

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

(b) in any other case—the forfeited shareholding in the new co-operative is the shareholding that is the same in all respects as the forfeited shareholding in the original co-operative.

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

(a) solely on the basis of the person's shareholding in the original co-operative when the shares were forfeited or (in a further operation of this section to the person) when the person was first taken to have a forfeited shareholding in the original co-operative; and

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

170 Set-off of amounts repaid etc on forfeited shares

(1) If a person has an entitlement because of section 169, the entitlement operates to end any liability of the co-operative:

(a) to repay to the person under section 163 any amount for the forfeited shares concerned; or

(b) for a deposit held by the co-operative, or debentures or CCUs allotted or issued to the person, under section 163 for the forfeited shares concerned (except a liability to pay interest that is payable but unpaid).

(2) If an amount has been repaid to a person under section 163 or 165, the amount repaid is to be set-off against any entitlement of the person under section 168 for the forfeited shares concerned.

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

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

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

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

171 Exemption of co-operatives from provisions

(1) The Registrar may, by designated instrument, exempt a co-operative or class of co-operatives from any or all of the provisions of this Division.

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

Chapter 3 Management and operation of co-operatives

Part 3.1 Management

Division 1 The board

172 Board of directors

(1) Subject to this Law and the rules of the co-operative, the business of a co-operative is to be managed by a board of directors.

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

(3) The board of directors may exercise all the powers of the co-operative that are not, by this Law or the rules of the co-operative, required to be exercised by the co-operative in general meeting.

(4) The acts of a director are valid despite any defect that may afterwards be discovered in his or her appointment or qualification.

173 Election of directors

(1) Except as provided in subsections (2)–(4), the directors of a co-operative are to be elected in the way specified in the rules of the co-operative.

(2) The first directors of:

(a) a co-operative formed under this Law are to be elected at its formation meeting; or

(b) a co-operative that was a corporation incorporated under another law are to be the directors in office at the date of registration under this Law.

(3) If authorised by the rules of the co-operative, a board of directors may appoint a person to fill a casual vacancy in the office of a director until the next annual general meeting.

(4) A motion approving or nominating 2 or more persons for election as directors by a single resolution must not be made at a meeting of a co-operative unless a resolution that it be 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 amending the rules of a co-operative 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 give details of the qualifications and experience of the person nominated.

(8) Unless this Law or the rules of a co-operative otherwise provide, a director is eligible for re-election at the end of his or her term of office.

174 Qualification of directors

(1) A person is not qualified to be a director of a co-operative unless he or she is:

(a) a person who is an active member of the co-operative or a representative of a corporation that is an active member of the co-operative (a member director); or

(b) a person who is qualified as provided by the rules of the co-operative (a non-member director) and who is not an active member of the co-operative.

Note. A non-member director either is not a member of the co-operative or is an inactive member of the co-operative.

(2) The majority of directors must be member directors.

(3) Subsection (2) does not prevent the rules of a co-operative requiring that a greater number of directors than a majority must be member directors.

(4) An employee of a co-operative is not precluded from being a member director or non-member director of the co-operative if he or she is otherwise qualified.

175 Meeting of 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 a greater number of directors specified in the rules of the co-operative.

(5) However, for a quorum, the member directors must outnumber the non-member directors by at least one or, if a greater number is stated in the rules of the co-operative, by that greater number.

(6) The chairperson of the board may be elected either by the board or at a general meeting of the co-operative, and is to be elected, hold office, and retire, and may be removed from office, as provided by the rules of the co-operative.

176 Transaction of business outside meetings

(1) The board of a co-operative may, if it considers appropriate, transact any of its business by the circulation of papers among all of the directors of the board.

(2) A resolution in writing approved in writing by a majority of the directors of the board is 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 under this section.

(7) Papers may be circulated among directors of the board for the purposes of this section by fax or other transmission of the information in the papers concerned.

177 Alternate directors

(1) In the absence of a director from a meeting of the board, a person appointed by the board under the rules of the co-operative concerned to act as an alternate for the director (an alternate director) may act in the place of the director.

(2) The rules of the co-operative may include provisions regulating the term of office, vacation of or removal from office, and remuneration of an alternate director.

178 Delegation by board

If authorised by the rules of the co-operative, the board may, by resolution, delegate the board's functions (other than this power of delegation) stated 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 co-operative; or

(d) to a committee of members of the co-operative and other persons if members form the majority of persons on the committee.

179 Removal from and vacation of office

(1) The directors hold office, must retire, and may be removed from office, as provided by the rules of the co-operative.

(2) A director vacates office in the circumstances (if any) provided in the rules of the co-operative and in any of the following cases:

(a) if the director is a disqualified person under section 181;

(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 co-operative;

(d) if the person ceases to hold the qualification because of which the person was qualified to be a director;

(e) if an administrator of the co-operative's affairs is appointed under Part 4.1;

(f) if the director is removed from office under section 180.

180 Removal from office by resolution (cf Corporations Act s 203D)

(1) A co-operative may by ordinary resolution remove a director from office despite anything in:

(a) the rules of the co-operative; or

(b) an agreement between the co-operative and the director; or

(c) an agreement between any or all members of the co-operative and the director.

(2) Notice of intention to move the resolution must be given to the co-operative at least 2 months before the meeting is to be held. However, subject to subsection (3), if the co-operative calls a meeting after the notice of intention is given under this subsection, the meeting may pass the resolution even though the meeting is held less than 2 months after the notice of intention is given.

(3) At least 21 days notice must be given of a meeting of the members of the co-operative at which a resolution will be moved:

(a) to remove a director from office; or

(b) to appoint a director in place of a director removed from office.

(4) The co-operative must give the director a copy of the notice as soon as practicable after it is received.

Maximum penalty: $500.

(5) The director is entitled to put his or her case to members by:

(a) giving the co-operative a written statement for circulation to members (see subsections (6) and (7)); and

(b) speaking to the motion at the meeting.

(6) The written statement is to be circulated by the co-operative to members by:

(a) sending a copy to everyone to whom notice of the meeting is sent if there is time to do so; or

(b) if there is not time to comply with paragraph (a)—having the statement distributed to members attending the meeting and read out at the meeting before the resolution is voted on.

The co-operative contravenes this subsection if it does not comply with this subsection.

Maximum penalty: $500.

(7) The director's statement does not have to be circulated to members if it is more than 1,000 words long or defamatory.

(8) If a person is appointed to replace a director removed under this section, the time at which:

(a) the replacement director; or

(b) any other director;

is to retire is to be worked out as if the replacement director had become director on the day on which the replaced director was last appointed a director.

(9) An offence based on subsection (4) or (6) is an offence of strict liability.

Division 2 Disqualification from managing co-operatives

181 Offence for disqualified person to manage co-operative

(1) A person is a ***disqualified person*** in relation to a co-operative if the person:

(a) is disqualified from managing corporations under Part 2D.6 of the Corporations Act; or

(b) is disqualified from managing co-operatives under this Division; or

(c) is disqualified from managing co-operatives under a corresponding co-operatives law; or

(d) is the auditor of the co-operative or a business partner, employee or employer of the auditor.

(2) A person must not act as a director or directly or indirectly take part in, or be concerned with the management of, a co-operative if the person is a disqualified person in relation to the co-operative.

Maximum penalty: $24,000 or imprisonment for 2 years, or both.

(3) It is a defence to an offence arising under this section if the person had permission or leave:

(a) in the case of an offence arising in relation to subsection (1) (a)—to manage corporations granted under section 206G of the Corporations Act and as referred to in section 206G (1) (a) of that Act; or

(b) in any case—to manage co-operatives given or granted under either section 188 or 189;

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

182 Automatic disqualification for offences

(1) A person who has been convicted of an offence under this Law or a corresponding co-operatives law is disqualified from managing co-operatives during the period of 5 years after the conviction or, if sentenced to imprisonment, after his or her release from prison.

(2) A person who has, whether before or after the commencement of this section in this jurisdiction, been convicted of an offence under a previous law of this or any other jurisdiction relating to co-operatives is disqualified from managing co-operatives during the period of 5 years after the conviction or, if sentenced to imprisonment, after his or her release from prison.

(3) In proceedings for an offence arising under this Division in relation to this section, a certificate by an authority prescribed by the National Regulations for the purposes of this subsection stating that a person has been convicted of an offence under a stated law on a stated date is evidence the person was convicted of that offence on that date.

(4) In proceedings for an offence arising under this Division in relation to this section, a certificate by an authority prescribed by the National Regulations for the purposes of this subsection stating that a person was released from prison on a stated date is evidence the person was released from prison on that date.

183 Extension of period of automatic disqualification (cf Corporations Act s 206BA)

(1) This section applies if a person is disqualified from managing co-operatives on being convicted of an offence under the Corporations Act, this Law, a corresponding co-operatives law, or a previous law of this or any other jurisdiction relating to co-operatives.

(2) On application by the Registrar, the Supreme Court may extend the period of disqualification by up to an additional 15 years.

(3) The Registrar must apply:

(a) before the period of disqualification begins; or

(b) before the end of the first year of the disqualification.

(4) The Registrar may apply only once in relation to the disqualification.

(5) In determining whether an extension is justified (and if so, for how long), the Supreme Court may have regard to any matters that the court considers appropriate.

184 Court's power of disqualification—contravention of civil penalty (cf Corporations Act s 206C)

(1) On application by the Registrar, the Supreme Court may disqualify a person from managing co-operatives for a period that the court considers appropriate if:

(a) a declaration is made under section 554 that the person has contravened a civil penalty provision; and

(b) the court is satisfied that the disqualification is justified.

(2) In determining whether the disqualification is justified, the court may have regard to:

(a) the person's conduct in relation to the management, business or property of any corporation; and

(b) any other matters that the court considers appropriate.

185 Court's power of disqualification—insolvency and non-payment of (cf Corporations Act s 206D**)**

(1) On application by the Registrar, the Supreme Court may disqualify a person from managing co-operatives for up to 20 years if:

(a) within the last 7 years, the person has been an officer of 2 or more entities (being co-operatives or other corporations) when they have failed; and

(b) the court is satisfied that:

(i) the manner in which the entity was managed was wholly or partly responsible for the entity failing; and

(ii) the disqualification is justified.

(2) For the purposes of subsection (1), an entity fails if:

(a) a court orders the entity to be wound up because the court is satisfied that it is insolvent; or

(b) the entity enters into voluntary liquidation and creditors are not fully paid or are unlikely to be fully paid; or

(c) the entity executes a deed of arrangement and creditors are not fully paid or are unlikely to be fully paid; or

(d) the entity ceases to carry on business and creditors are not fully paid or are unlikely to be fully paid; or

(e) a levy of execution against the entity is not satisfied; or

(f) a receiver, receiver and manager, or provisional liquidator is appointed in relation to the entity; or

(g) the entity enters into a compromise or arrangement with its creditors; or

(h) the entity is wound up and a liquidator lodges a report about the entity's inability to pay its debts.

(3) In determining whether the disqualification is justified, the Supreme Court may have regard to:

(a) the person's conduct in relation to the management, business or property of any entity; and

(b) any other matters that the court considers appropriate.

Note. Action may be able to be taken under section 206D of the Corporations Act in the circumstances to which this section applies, whether or not action is taken under this section.

186 Court's power of disqualification—repeated contraventions of Law (cf Corporations Act s 206E)

(1) On application by the Registrar, the Supreme Court may disqualify a person from managing co-operatives for the period that the court considers appropriate if:

(a) the person:

(i) has at least twice been an officer of a co-operative that has contravened co-operatives legislation while they were an officer of the co-operative and each time the person has failed to take reasonable steps to prevent the contravention; or

(ii) has at least twice contravened co-operatives legislation while they were an officer of a co-operative; or

(iii) has been an officer of a body corporate and has done something that would have contravened section 192 or 193 if the body corporate had been a co-operative; and

(b) the court is satisfied that the disqualification is justified.

(2) In determining whether the disqualification is justified, the Supreme Court may have regard to:

(a) the person's conduct in relation to the management, business or property of any corporation; and

(b) any other matters that the court considers appropriate.

(3) In this section:

co-operatives legislation means this Law or a corresponding co-operatives law.

187 Registrar's power of disqualification (cf Corporations Act s 206F (1)–(4))

(1) The Registrar may disqualify a person from managing co-operatives for up to 5 years if:

(a) within 7 years immediately before the Registrar gives a notice under paragraph (b) (i):

(i) the person has been an officer of 2 or more co-operatives; and

(ii) while the person was an officer, or within 12 months after the person ceased to be an officer of those co-operatives, each of the co-operatives was wound up and a liquidator lodged a report about the co-operative's inability to pay its debts; and

(b) the Registrar has given the person:

(i) a notice in the approved form requiring them to demonstrate why they should not be disqualified; and

(ii) an opportunity to be heard on the question; and

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

(2) If the Registrar disqualifies a person from managing co-operatives under this section, the Registrar must serve a notice on the person advising them of the disqualification.

(3) The notice must be in the approved form.

(4) The disqualification takes effect from the time when a notice referred to in subsection (2) is served on the person.

188 Registrar's power to give permission (cf Corporations Act s 206F (5))

(1) The Registrar may give a person whom the Registrar has disqualified from managing co-operatives under this Division written permission to manage a particular co-operative or co-operatives.

(2) The permission may be expressed to be subject to conditions and limitations determined by the Registrar.

(3) A person must comply with any condition or limitation subject to which permission is given.

Maximum penalty: $24,000 or imprisonment for 2 years, or both.

189 Court's power to grant leave (cf Corporations Act s 206G)

(1) A person who is disqualified from managing co-operatives may apply to the Supreme Court for leave to manage:

(a) co-operatives; or

(b) a particular class of co-operatives; or

(c) a particular co-operative;

except where the person was disqualified by the Registrar under section 187.

(2) The person must lodge a notice with the Registrar at least 21 days before commencing the proceedings.

(3) The notice must be in the approved form.

(4) The order granting leave may be expressed to be subject to conditions or limitations determined by the Supreme Court.

(5) The person must lodge with the Registrar a copy of any order granting leave within 14 days after the order is made.

(6) On application by the Registrar, the Supreme Court may revoke the leave. The order revoking leave does not take effect until it is served on the person.

(7) A person must comply with any condition or limitation subject to which leave is granted.

Maximum penalty: $24,000 or imprisonment for 2 years, or both.

(8) This section does not apply to a person who is disqualified from managing co-operatives because of section 181 (1) (d).

Division 3 Secretary

190 Secretary

(1) A co-operative must have a secretary.

(2) The board of the co-operative is to appoint the secretary.

(3) The board may appoint a person to act as the secretary during the absence or incapacity of the secretary.

(4) A person is not qualified to be appointed as, or to act as, the secretary unless the person is an adult who ordinarily resides in Australia.

191 Responsibility of secretary (cf Corporations Act s 188)

(1) The secretary of a co-operative contravenes this subsection if the co-operative contravenes a provision of this Law specified in the National Regulations.

Maximum penalty: $500.

(2) An offence based on subsection (1) is an offence of strict liability.

(3) A person does not contravene subsection (1) if they show that they took all reasonable steps to ensure that the co-operative complied with the section.

Division 4 Duties and liabilities of directors, officers and employees

192 Care and diligence—civil obligation only (cf Corporations Act s 180)

(1) **Care and diligence—directors and other officers**

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

(a) were a director or officer of a co-operative in the co-operative's circumstances; and

(b) occupied the office held by, and had the same responsibilities within the co-operative as, the director or officer.

Note. This subsection is a civil penalty provision (see section 554).

(2) **Business judgment rule**

A director or other officer of a co-operative who makes a business judgment is taken to meet the requirements of subsection (1), and their equivalent duties at common law and in equity in respect of the judgment, if they:

(a) make the judgment in good faith for a proper purpose (taking into account the co-operative principles where relevant and other relevant matters); and

(b) do not have a material personal interest in the subject matter of the judgment; and

(c) inform themselves about the subject matter of the judgment to the extent they reasonably believe to be appropriate; and

(d) rationally believe that the judgment is in the best interests of the co-operative.

The director's or officer's belief that the judgment is in the best interests of the co-operative is a rational one unless the belief is one that no reasonable person in their position would hold.

Note. This subsection only operates in relation to duties under this section and their equivalent duties at common law or in equity (including the duty of care that arises under the common law principles governing liability for negligence)—it does not operate in relation to duties under any other provision of this Law or under any other laws.

(3) In this section:

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

193 Good faith—civil obligations (cf Corporations Act s 181)

(1) **Good faith—directors and other officers**

A director or other officer of a co-operative must exercise their powers and discharge their duties:

(a) in good faith in the best interests of the co-operative; and

(b) for a proper purpose.

Note. This subsection is a civil penalty provision (see section 554).

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

Note 1. This subsection is a civil penalty provision (see section 554).

Note 2. Section 9 defines "involved" in a contravention.

194 Use of position—civil obligations (cf Corporations Act s 182)

(1) **Use of position—directors, other officers and employees**

A director, secretary, other officer or employee of a co-operative must not improperly use their position to:

(a) gain an advantage for themselves or someone else; or

(b) cause detriment to the co-operative.

Note. This subsection is a civil penalty provision (see section 554).

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

Note 1. This subsection is a civil penalty provision (see section 554).

Note 2. Section 9 defines "involved" in a contravention.

195 Use of information—civil obligations (cf Corporations Act s 183)

(1) **Use of information—directors, other officers and employees**

A person who obtains information because they are, or have been, a director or other officer or employee of a co-operative must not improperly use the information to:

(a) gain an advantage for themselves or someone else; or

(b) cause detriment to the co-operative.

Note. This subsection is a civil penalty provision (see section 554).

(2) The duty under subsection (1) continues after the person stops being a director or other officer or employee of the co-operative.

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

Note 1. This subsection is a civil penalty provision (see section 554).

Note 2. Section 9 defines "involved" in a contravention.

196 Good faith, use of position and use of information—criminal (cf Corporations Act s 184)

(1) **Good faith—directors and other officer**

A director or other officer of a co-operative commits an offence if they:

(a) are reckless; or

(b) are intentionally dishonest;

and fail to exercise their powers and discharge their duties:

(c) in good faith in the best interests of the co-operative; or

(d) for a proper purpose.

(2) **Use of position—directors, other officers and employees**

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

(a) with the intention of directly or indirectly gaining an advantage for themselves, or someone else, or causing detriment to the co-operative; or

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

(3) **Use of information—directors, other officers and employees**

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

(a) with the intention of directly or indirectly gaining an advantage for themselves, or someone else, or causing detriment to the co-operative; or

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

Maximum penalty: $200,000 or imprisonment for 5 years, or both.

197 Interaction of preceding sections with other laws
(cf Corporations Act s 185)

Sections 192–196:

(a) have effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person because of their office or employment in relation to a co-operative; and

(b) do not prevent the commencement of civil proceedings for a breach of a duty or in respect of a liability referred to in paragraph (a).

This section does not apply to section 192 (2) and (3) to the extent to which they operate on the duties at common law and in equity that are equivalent to the requirements of section 192 (1).

198 Indemnification and exemption of officer or auditor

(1) **Exemptions not allowed** (cf Corporations Act s 199A (1))

A co-operative or a related corporation must not exempt a person (whether directly or through an interposed entity) from a liability to the co-operative incurred as an officer or auditor of the co-operative.

(2) **When indemnity for liability (other than for legal costs) not allowed** (cf Corporations Act s 199A (2))

A co-operative or a related corporation must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against any of the following liabilities incurred as an officer or auditor of the co-operative:

(a) a liability owed to the co-operative or a related corporation;

(b) a liability that is owed to someone other than the co-operative or a related corporation and did not arise out of conduct in good faith.

This subsection does not apply to a liability for legal costs.

(3) **When indemnity for legal costs not allowed** (cf Corporations Act s 199A (3))

A co-operative or related corporation must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against legal costs incurred in defending an action for a liability incurred as an officer or auditor of the co-operative if the costs are incurred:

(a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under subsection (2); or

(b) in defending or resisting criminal proceedings in which the person is found guilty; or

(c) in defending or resisting proceedings brought by the Registrar or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or

(d) in connection with proceedings for relief to the person under this Law in which the court denies the relief.

Paragraph (c) does not apply to costs incurred in responding to actions taken by the Registrar or a liquidator as part of an investigation before commencing proceedings for the court order.

(4) **Meaning of outcome of proceedings** (cf Corporations Act s 199A (4))

For the purposes of subsection (3), the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

199 Insurance premiums for certain liabilities of director, secretary, other (cf Corporations Act s 199B)

(1) A co-operative or a related corporation must not pay, or agree to pay, a premium for a contract insuring a person who is, or has been, an officer or auditor of the co-operative against a liability (other than one for legal costs) arising out of conduct involving a wilful breach of duty in relation to the co-operative.

Maximum penalty: $500.

(2) This section applies to a premium whether it is paid directly or through an interposed entity.

(3) An offence based on subsection (1) is an offence of strict liability.

200 Certain indemnities, exemptions, payments and agreements not (cf Corporations Act s 199C)

(1) Sections 198 and 199 do not authorise anything that would otherwise be unlawful.

(2) Anything that purports to indemnify or insure a person against a liability, or exempt them from a liability, is void to the extent that it contravenes section 198 or 199.

201 Application of Corporations Act—offences by officers of co-operatives

A co-operative is declared to be an applied Corporations legislation matter for the purposes of the Corporations application legislation of this jurisdiction in relation to Part 5.8 of the Corporations Act, subject to the following modifications:

(a) section 589 (2) and (3) of the Corporations Act are taken to be omitted;

(b) the reference in section 592 (1) (a) of the Corporations Act to 23 June 1993 is, if the Co-operatives National Law Act of this jurisdiction so provides, to be read as a reference to a date specified in that Act of this jurisdiction for the purposes of this paragraph;

(c) the modifications referred to in section 13 (3) of this Law so far as they are relevant.

Note. See section 13, including Note 1 to that section.

202 Application of Corporations Act—employee entitlements

A co-operative is declared to be an applied Corporations legislation matter for the purposes of the Corporations application legislation of this jurisdiction in relation to Part 5.8A of the Corporations Act, subject to the modifications referred to in section 13 (3) of this Law so far as they are relevant.

Note. See section 13, including Note 1 to that section.

203 Directors' remuneration

A director of a co-operative must not receive remuneration for services as a director other than:

(a) fees, concessions and other benefits approved at a general meeting of the co-operative; and

(b) director's travelling and other expenses that the director properly incurs:

(i) in attending meetings of the board of directors of the co-operative or any meetings of committees of directors of the co-operative; and

(ii) in attending any general meetings of the co-operative.

Maximum penalty: $24,000 or imprisonment for 2 years, or both.

204 Certain financial accommodation to officers prohibited

(1) An officer of a co-operative who is not a director of the co-operative must not obtain financial accommodation from the co-operative other than:

(a) with the approval of a majority of the directors; or

(b) under a scheme about providing financial accommodation to officers that has been approved by a majority of the directors.

Maximum penalty: $24,000 or imprisonment for 2 years, or both.

(2) For the purposes of this section, financial accommodation is taken to be obtained by an officer of a co-operative if it is obtained by:

(a) a proprietary company in which the officer is a shareholder or director; or

(b) a trust of which the officer is a trustee or beneficiary; or

(c) a trust of which a corporation is trustee if the officer is a director or other officer of the corporation.

(3) A co-operative must not give financial accommodation to an officer of the co-operative if:

(a) by giving the financial accommodation, the officer would contravene this section; and

(b) the co-operative knows or should reasonably know of the contravention.

Maximum penalty (for subsection (3)): $50,000.

205 Financial accommodation to directors and associates

(1) A co-operative must not provide financial accommodation to a director, or to a person the co-operative knows or should reasonably know is an associate of a director, unless:

(a) the accommodation is:

(i) approved under subsection (2); or

(ii) given under a scheme approved under subsection (2); or

(iii) provided on terms no more favourable to the director or associate than the terms on which it is reasonable to expect the co-operative would give if dealing with the

director or associate at arm's length in the same circumstances; 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.

Maximum penalty: $50,000.

(2) For the purposes of subsection (1) (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.

(3) A director or an associate of a director must not obtain financial accommodation given in contravention of subsection (1).

Maximum penalty: $24,000 or imprisonment for 2 years, or both.

(4) For the purposes of this section, a concessional rate of interest for a borrower from a co-operative is a normal term only if the borrower is entitled to the concession by being a member of a class of borrowers from the co-operative specified in its rules as being entitled to the concession.

(5) If a director of a co-operative or an associate of a director accepts, in payment of a debt owed by a member of the co-operative to the director or associate, any proceeds of financial accommodation provided to the member by the co-operative, this section has effect as if the financial accommodation has been provided to the director or associate.

(6) 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.

(7) In this section:

associate of a director means:

(a) the director's spouse or de facto partner; or

(b) a person when acting in the capacity of trustee of a trust under which:

(i) the director or director's spouse or de facto partner has a beneficial interest; or

(ii) a corporation referred to in paragraph (c) has a beneficial interest; or

(c) a corporation if:

(i) the director or director's spouse or de facto partner has a material interest in shares in the corporation; and

(ii) the nominal value of the shares is not less than 10% of the nominal value of the issued share capital of the corporation.

(8) For the purposes of this section, a person has a ***material interest*** in a share in a corporation if:

(a) the person has power to withdraw the share capital subscribed for the share or to exercise control over the withdrawal of the share capital; or

(b) the person has power to dispose of the share 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.

206 Restriction on directors of certain co-operatives selling land to co-operative

A director of a co-operative, the primary activity of which is or includes the acquisition of land to settle or retain people on the land and of providing any community service or benefit, must not sell land to the co-operative except under a special resolution of the co-operative.

Maximum penalty: $24,000 or imprisonment for 2 years, or both.

207 Management contracts

(1) A co-operative must not enter into a management contract unless the contract has first been approved by special resolution.

(2) A management contract entered into in contravention of subsection (1) is void.

(3) In this section:

management contract means a contract or other arrangement under which:

(a) a person who is not an officer of the co-operative agrees to perform the whole, or a substantial part, of the functions of the co-operative, whether under the control of the co-operative or not; or

(b) a co-operative agrees to perform the whole or a substantial part of its functions:

(i) in a particular way; or

(ii) in accordance with the directions of any person; or

(iii) subject to stated restrictions or conditions.

Division 5 Declaration of interests

208 Declaration of interest

(1) A director of a co-operative who is or becomes in any way, whether directly or indirectly, interested in a contract or proposed contract with the co-operative must declare the nature and extent of the interest to the board of directors under this section.

Maximum penalty: $24,000 or imprisonment for 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 co-operative after it is made, the declaration must be made at the next meeting of the board held after the director becomes interested in the contract.

(4) For the purposes of this section, a general written notice given to the board by a director to the effect that the director:

(a) is a member of a stated entity; and

(b) is to be regarded as interested in any contract that may, after the giving of the notice, be made with the entity;

is a sufficient declaration.

(5) A director of a co-operative who holds an office or has an interest in property whereby, whether directly or indirectly, duties or interests might be created that could conflict with the director's duties or interests as director must, under subsection (6), declare at a

meeting of the board of directors the fact and the nature, character and extent of the conflict.

Maximum penalty: $24,000 or imprisonment for 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 whichever is the later of the following:

(i) the person becomes a director;

(ii) the relevant facts as to holding the office or having the interest come to the person's knowledge; 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 decides, 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 purpose of the making of a decision 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 decision; or

(b) take part in the making by the board of the decision.

(9) Any vote cast in contravention of this section is not to be counted.

209 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.

210 Division does not affect other laws or rules

Except as provided in section 211, this Division is in addition to, and does not limit, the operation of a rule of law or a provision in the rules of a co-operative restricting a director from having an interest in contracts with the co-operative or from holding offices or possessing properties involving duties or interests in conflict with his or her duties or interests as director.

211 Certain interests need not be declared

The interest in a contract or proposed contract that a director is required by this Division to declare does not include an interest in:

(a) a contract or proposed contract for a purchase of goods and services by the director from the co-operative; or

(b) a lease of land to the director by the co-operative; or

(c) a contract or proposed contract for the sale of agricultural products or livestock by the director to the co-operative; or

(d) a contract or proposed contract that, under the rules of the co-operative, may be made between the co-operative and a member; or

(e) a contract or proposed contract of a class of contracts prescribed by the National Regulations for the purposes of this section;

but only if the contract is made in good faith, in the ordinary course of the business of the co-operative, and on the terms that are usual and proper in similar dealings between the co-operative and its members.

Division 6 Co-operative's registers, books and returns

212 Registers to be kept by co-operatives

(1) A co-operative must keep the following registers under this section:

(a) a register of directors;

(b) a register of members (including their shareholding, if any);

(c) a register of:

(i) loans to, securities given by, debentures issued by, and deposits received by the co-operative; and

(ii) names of persons who have given loans or deposits to the co-operative or hold securities or debentures given or issued by the co-operative;

(d) a register of loans made by or guaranteed by the co-operative, and of securities taken by the co-operative;

(e) a register of CCUs issued by the co-operative and their holders;

(f) a register of memberships cancelled under Part 2.6;

(g) a register of notifiable interests under section 368;

(h) other registers required by the National Regulations.

Maximum penalty: $2,000.

(2) Registers kept by a co-operative under this Law must be kept in the way, and contain the particulars, prescribed by this Law or the National Regulations.

(3) An offence based on subsection (1) is an offence of strict liability.

Note. Other provisions of this Law require a co-operative to keep other registers.

213 Location of registers

(1) A register kept by a co-operative under this Law must be kept at:

(a) the co-operative's registered office; or

(b) an office at the co-operative's principal place of business; or

(c) an office (whether of the co-operative or of someone else) where the work involved in maintaining the register is done; or

(d) another office approved by the Registrar.

(2) The office must be in this jurisdiction.

(3) The co-operative must file with the Registrar a notice of the address at which the register is kept within 28 days after the register is:

(a) established at an office that is not the co-operative's registered office; or

(b) moved from one office to another.

214 Inspection of co-operative's registers and other documents

(1) A co-operative must have at the office where the registers are kept and available during all reasonable hours for inspection by a member free of charge the following:

(a) a copy of:

(i) this Law; and

(ii) the Co-operatives National Law Act of this jurisdiction; and

(iii) the National Regulations; and

(iv) the local regulations;

(b) a copy of the rules of the co-operative and attachments to the rules required under section 421;

(c) a copy of the minutes of each general meeting of the co-operative;

(d) a copy of the last annual report of the co-operative;

(e) the register of directors;

(f) the register of members;

(g) the register of names of persons who have given loans or deposits to the co-operative or hold securities or debentures given or issued by the co-operative;

(h) the register of CCUs issued by the co-operative and their holders;

(i) other registers that the National Regulations may provide are to be open for inspection under this section.

(2) If a register is not kept on a computer, the member may inspect the register itself.

(3) If the register is kept on a computer, the member may inspect a hard copy of the information on the register unless the person and the co-operative agree 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 co-operative require a fee to be paid, in which case the copy may be made on payment of the required fee.

(5) The fee required by the rules of the co-operative must not be more than the fee (for a copy of any entry in the register):

(a) prescribed by the National Regulations, except to the extent paragraph (b) applies; or

(b) prescribed by the local regulations.

(6) A co-operative must:

(a) permit a member to inspect a document or make a copy of a document the member may inspect or make under this section; and

(b) give the member all reasonable help to inspect the document or make the copy.

Maximum penalty: $2,000.

(7) The rules of a co-operative may provide for the availability or non-availability of minutes of board meetings and subcommittee meetings for inspection by members.

(8) A co-operative must have, at the place where the registers are kept and available during all reasonable hours for inspection by any person, the documents in relation to the co-operative prescribed by the National Regulations.

Maximum penalty: $2,000.

(9) Neither subsection (7) nor a rule referred to in that subsection affects access to minutes being obtained under section 143 or any other provision of this Law.

215 Use of information on registers

(1) A person must not:

(a) use information about a person obtained from a register kept by a co-operative under this Law to contact or send material to the person; or

(b) disclose information of that kind knowing the information is likely to be used to contact or send material to the person;

unless the use or disclosure of the information is:

(c) relevant to the holding of the directorship, membership, shares, CCUs, 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 Law.

(2) A person who contravenes subsection (1) is liable to compensate anyone else who suffers loss or damage because of the contravention.

(3) A person who makes a profit from a contravention of subsection (1) owes a debt to the co-operative.

(4) The amount of the debt is the amount of the profit.

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

Note. Regarding subsection (5), item 2.1 of National Privacy Principle 2 in Schedule 3 to the Privacy Act 1988 of the Commonwealth provides: "An organisation must not use or disclose personal information about an individual for a purpose (the secondary purpose) other than the primary purpose of collection unless: [...] (g) the use or disclosure is required or authorised by or under law".

216 Notice of appointment or cessation of appointment of directors and officers to be lodged with Registrar

(1) A co-operative must give notice to the Registrar under this section of the appointment of a person as a director, chief executive officer or secretary of the co-operative or a subsidiary of the co-operative, and of the cessation of the appointment.

(2) The notice must:

(a) be in the approved form; and

(b) be given within 28 days after the appointment or cessation of appointment; and

(c) state the particulars prescribed by the National Regulations of the appointment or cessation of appointment.

(3) An offence based on subsection (2) is an offence of strict liability.

Maximum penalty: $2,000.

217 List of members to be lodged with Registrar at request of Registrar

(1) A co-operative must, at the written request of the Registrar, lodge with the Registrar, within the time and in the way the Registrar states, a full list of the members of the co-operative and of each subsidiary of the co-operative, together with the particulars about the members the Registrar states in the request.

Maximum penalty: $2,000.

(2) An offence based on subsection (1) is an offence of strict liability.

218 Reports to be lodged with Registrar concerning prescribed particulars

(1) A co-operative must lodge with the Registrar, within the period or periods prescribed by, or determined in accordance with, the National Regulations, a report on any particulars prescribed by the National Regulations.

Maximum penalty: $2,000.

(2) An offence based on subsection (1) is an offence of strict liability.

219 Special return to be lodged at request of Registrar

(1) The Registrar may, by written direction, require a co-operative to lodge with the Registrar a special return in the form, within the time, and relating to the subject matter, stated by the Registrar.

(2) The co-operative must comply with a direction under subsection (1).

Maximum penalty: $2,000.

(3) An offence based on subsection (2) is an offence of strict liability.

Note. Part 3.3 also requires reports to be lodged with the Registrar.

Division 7 Name and registered office

220 Name to include certain matter

(1) The name of a co-operative may consist of words, numbers or a combination of both.

(2) The name of the co-operative must include the word "Co-operative" or "Cooperative" or the abbreviation "Co-op" or "Coop".

(3) The word "Limited" or the abbreviation "Ltd" must be the last word of the name.

(4) A corporation that is formed or incorporated under an Act of this jurisdiction (but not this Law) must not register under that Act by a name including the word "Co-operative" or "Cooperative" or the abbreviation "Co-op" or "Coop".

Maximum penalty: $2,000.

(5) The Registrar must not register as the name of a co-operative a name that contains anything the National Regulations declare is an unsuitable name.

(6) However, the Registrar may register a name that contains a thing declared to be an unsuitable name, if the Registrar is satisfied the name is suitable for registration in the particular circumstances.

(7) The local regulations may exempt or provide for the exemption of specified entities or kinds of entities from subsection (4).

221 Exception to requirement for using "Limited" in name

(1) The Registrar may, by designated instrument, approve of the omission of the word "Limited" or the abbreviation "Ltd" from the name of a co-operative, if its rules:

(a) prohibit the co-operative making distributions to its members and paying fees to its directors; and

(b) require the directors to approve all other payments the co-operative makes to directors.

(2) The co-operative must notify the Registrar as soon as practicable if any of those requirements or prohibitions in its rules are not complied with or if its rules are modified to remove any of those requirements or prohibitions.

Maximum penalty: $2,000.

(3) An approval may be granted subject to conditions and the conditions to which an approval is subject may be varied from time to time by the Registrar by notice in writing to the co-operative.

(4) Any conditions to which the Registrar's approval is subject are binding on the co-operative and must, if the Registrar so directs, be inserted in the rules of the co-operative.

Note. See section 62 (1), which provides that rules may be amended by resolution passed by the board if the amendment does no more than give effect to a requirement, direction, restriction or prohibition imposed or given under the authority of this Law.

(5) The Registrar may at any time by notice in writing to the co-operative revoke an approval under this section but only after giving the co-operative an opportunity to make submissions to the Registrar on the matter.

(6) An approval under this section operates to exempt the co-operative from the requirement that the word "Limited" or the abbreviation "Ltd" form part of its name.

222 Use of abbreviations

A description of a co-operative is not inadequate or incorrect merely because of one or more of the following:

(a) the use of the abbreviation "Co-op" or "Coop" instead of the word "Co-operative" or "Cooperative" in the co-operative's name (see section 220 (2));

(b) the use of the abbreviation "Ltd" instead of the word "Limited" in the co-operative's name (see section 220 (3));

(c) the use of the symbol "&" instead of the word "and" in the co-operative's name;

(d) the use of any of the words instead of the corresponding abbreviation or symbol in the co-operative's name;

(e) the use of any abbreviation or elaboration of the name of the co-operative that is approved in a particular case or for a particular purpose by the Registrar in writing.

223 Name to appear on seals, publications and business documents

(1) A co-operative must ensure its name appears in legible characters:

(a) on each seal of the co-operative; and

(b) in all notices, advertisements and other official publications of the co-operative; and

(c) in all its business documents.

Maximum penalty: $2,000.

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

(a) use any seal of the co-operative; or

(b) issue or authorise the issue of a notice, advertisement or other official publication of the co-operative; or

(c) sign or authorise to be signed on behalf of the co-operative a business document of the co-operative;

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

Maximum penalty: $2,000.

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

Maximum penalty: $2,000.

(4) An offence based on subsection (1) is an offence of strict liability.

(5) In this section:

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

(a) a business letter, statement of account, invoice or order for goods or services; or

(b) a bill of exchange, promissory note, cheque or other negotiable instrument; or

(c) a receipt or letter of credit issued by the co-operative; or

(d) a document of a class prescribed by the National Regulations as a class of business documents.

224 Change of name of co-operative

(1) A co-operative may by special resolution change its name to a name approved by the Registrar.

(2) A change of name must be advertised as prescribed by the National Regulations.

(3) A change of name does not take effect until:

(a) the Registrar has noted the change on the certificate of registration of the co-operative; or

(b) the certificate of registration is surrendered to the Registrar and a replacement certificate of registration is issued in the new name.

(4) A change of name by a co-operative does not affect:

(a) the identity of the co-operative; or

(b) the exercise of a right, or the enforcement of an obligation, by or against the co-operative or a person; or

(c) the continuation of legal proceedings by or against the co-operative.

(5) Legal proceedings that might have been continued or started by or against the co-operative in its former name may be continued or started by or against the co-operative in its new name.

(6) The Registrar may refuse to approve a change of name if the Registrar thinks the new name is unsuitable.

(7) The Registrar may direct a co-operative to change its name if the Registrar considers the name is likely to be confused with the name of a corporation or a registered business name. The co-operative must comply with the direction.

Maximum penalty: $500.

(8) An offence based on subsection (7) is an offence of strict liability.

225 Restriction on use of word co-operative or similar words

(1) A person other than a co-operative must not trade, or carry on business, under a name or title containing the word "Co-operative" or "Cooperative", the abbreviation "Co-op" or "Coop", or words importing a similar meaning.

Maximum penalty: $2,000.

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

226 Registered office of co-operative

(1) A co-operative must have a registered office.

Maximum penalty: $2,000.

(2) A co-operative is guilty of an offence if its registered office is not located in this jurisdiction.

Maximum penalty: $2,000.

(3) A co-operative must, at the premises of its registered office, publicly and conspicuously display a notice stating the name of the co-operative and identifying the premises as its registered office.

Maximum penalty: $2,000.

(4) Within 28 days after changing the address of its registered office, a co-operative must give the Registrar written notice of the new address of its registered office.

Maximum penalty: $2,000.

(5) A co-operative's office is registered as the co-operative's registered office while the address of the office is recorded in the register of co-operatives by the Registrar and there specified as its registered office.

(6) The Registrar may, by designated instrument, exempt a small co-operative, a class of small co-operatives or all small co-operatives from subsection (3).

(7) An exemption may be given unconditionally or subject to conditions.

(8) An offence based on subsection (1), (2), (3) or (4) is an offence of strict liability.

Part 3.2 Voting and meetings

Division 1 Voting entitlements

227 Application of Part to voting

The provisions of this Part apply to voting on all resolutions.

228 Voting

(1) The right to vote attaches to membership and not shareholding.

(2) Except as provided in subsections (3) and (4), each member has only one vote at a meeting of the co-operative.

(3) If its rules so provide, a member of a co-operative group may have the number of votes (up to 5) at a general meeting that is stated 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 decided under the rules.

(6) In the case of shares held jointly by 2 or more members otherwise than by virtue of joint membership, each member holding the shares is entitled to vote in accordance with this section.

Note. See section 233 for the effect on a member's right to vote where a non-member has a relevant interest in a share held by the member or in the member's right to vote.

229 Voting by proxy

(1) If the rules of the co-operative so provide, voting may be by proxy at a general meeting.

(2) The instrument of proxy may state the way in which a proxy is to vote on a particular resolution.

(3) The proxy must vote in the way authorised by an instrument of proxy referred to in subsection (2).

(4) A person must not act as a proxy unless he or she:

(a) is an active member of the co-operative; or

(b) in the case of a co-operative group—is entitled to represent a member of the group.

(5) The rules of the co-operative may limit the number of persons for whom a person may act as a proxy on the same question.

230 Inactive members not entitled to vote

A member cannot vote if the member is not an active member of the co-operative.

231 Control of right to vote

(1) A person must not directly or indirectly control the exercise of the right to vote of a member.

Maximum penalty: $6,000 or imprisonment for 6 months, or both.

(2) If a person controls the exercise of the right of a member to vote at a meeting of a co-operative:

(a) the vote of the member is invalid; and

(b) if the person is a member—the vote of the person is invalid.

(3) Nothing in this section prevents:

(a) the exercise of a vote by means of a proxy or power of attorney; or

(b) a director controlling the vote of a corporate member; or

(c) an agreed purchaser controlling a member's vote pending settlement.

232 Effect of disposal of shares on voting rights

A member of a co-operative cannot vote if the member has sold or transferred, or disposed of the beneficial interest in, all the member's shares, or agreed to do so.

233 Effect of relevant share and voting interests on voting rights

(1) Subject to subsection (3) and section 228 (5) and (6), a member of a co-operative cannot vote if another person (whether or not a member of the co-operative) has a relevant interest in any share held by the member or in the member's right to vote.

(2) A member who cannot vote because of this section may apply to the Registrar to review the matter.

(3) The Registrar may order that the member may vote if the Registrar is satisfied in the circumstances of the case that loss of the right to vote would be unjust or unreasonable, and the order of the Registrar has effect accordingly.

234 Rights of representatives to vote

A person appointed under this Law to represent a member of a co-operative or co-operative group:

(a) is entitled to receive notice of all meetings in the same way as the member represented; and

(b) is entitled to exercise the same rights to vote as the member represented.

235 Other rights and duties of members not affected by ineligibility to vote

A provision of this Law that disentitles a member of a co-operative to vote (either generally or in relation to a particular matter) does not affect any other right, entitlement, obligation or duty of the member as a member.

236 Vote of disentitled member to be disregarded

A vote cast by or on behalf of a member of a co-operative when not entitled to vote under this Division or any other provision of this Law must be disregarded.

Division 2 Resolutions

237 Decisions to be by ordinary resolution

Unless this Law or the rules of the co-operative otherwise provide, every question for decision by a co-operative must be decided by ordinary resolution.

238 Ordinary resolutions

An ***ordinary resolution*** is a resolution of a co-operative that is passed by a simple majority at a general meeting of the co-operative or in a postal ballot of members.

239 Special resolutions

(1) A ***special resolution*** is a resolution of a co-operative that is passed:

(a) by a two-thirds majority at a general meeting of the co-operative; 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.

Note 1. A co-operative may by its rules require a higher majority voting percentage on any matter or that specified matters must be passed by postal or special postal ballot.

Note 2. Section 250 enables 20% of members (or a lesser percentage specified in the rules) to require a postal ballot for a special resolution.

(2) A special resolution may be passed by a postal ballot only if the rules of the co-operative so permit or this Law requires the special resolution to be passed by postal ballot (including a special postal ballot).

(3) A resolution must not 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 co-operative stating:

(a) the intention to propose the special resolution; and

(b) the reasons for proposing the special resolution; and

(c) the effect of the special resolution being passed.

240 How majority is ascertained

(1) A resolution is passed by a particular majority at a meeting if that majority of the members of the co-operative who, being entitled to do so, vote in person or (if proxies are allowed) by proxy at the meeting vote in favour of the resolution.

(2) A resolution is passed by a particular majority in a postal ballot if that majority of the members of the co-operative who, being entitled to do so, cast formal votes in the postal ballot vote in favour of the resolution.

241 Declaration of passing of special resolution

(1) At a meeting of a co-operative for the purpose of passing a special resolution, a declaration by the chairperson of the meeting that the resolution has been passed as a special resolution is evidence of that fact.

(2) A declaration by the returning officer for a postal ballot to pass a special resolution that the resolution has been passed as a special resolution is evidence of that fact.

(3) Subsection (1) does not apply if a poll is taken at the meeting of the co-operative.

242 Effect of special resolution

(1) A special resolution has effect from the date it is passed.

(2) However, a special resolution relating to anything for which a special resolution is required to be passed by special postal ballot has no effect until it is registered.

Note. Section 446 provides that a members' voluntary winding up of a co-operative starts when the result of the special postal ballot is noted in the minutes by the secretary of the co-operative.

(3) Subsection (2) and sections 243 and 244 do not apply to a special resolution amending the rules of a co-operative.

Note. Part 2.3 deals with amendments to rules and when amendments take effect.

243 Registration of special resolution

(1) A co-operative must, in accordance with subsection (2), file 2 copies of each special resolution passed by the co-operative with the Registrar for registration.

Maximum penalty: $2,000.

(2) The copies must:

(a) be filed within 28 days after the passing of a special resolution or the further period the Registrar allows; and

(b) be signed by a director, the secretary of the co-operative or another authorised representative of the co-operative; and

(c) be accompanied by the filing fee prescribed by:

(i) the National Regulations, unless subparagraph (ii) applies; or

(ii) the local regulations.

Note. See section 444 (4) (a) regarding the period within which a special resolution must be filed with the Registrar in connection with the voluntary winding up of a co-operative.

(3) A co-operative or an officer of the co-operative must not knowingly fail to file the required copies under this section.

Maximum penalty: $2,000.

(4) An offence based on subsection (1) is an offence of strict liability.

244 Decision of Registrar on application to register special resolution

(1) If the Registrar is satisfied the co-operative has complied with this Law and the special resolution is not contrary to this Law, the Registrar must register the special resolution and may issue a certificate of registration.

(2) If the Registrar considers the effect of a special resolution filed for registration would be in contravention of this Law or any other law, the Registrar:

(a) may refuse to register the special resolution; and

(b) must give written notice to the co-operative that the special resolution:

(i) for a special resolution referred to in section 242 (2)—has no effect; and

(ii) in any other case—has no effect as from the date it was passed.

(3) A certificate of registration of a special resolution issued by the Registrar is, in favour of any person advancing money to the co-operative on the faith of the certificate or in favour of any guarantor of that advance, evidence that the resolution was properly passed.

Division 3 Resolution by circulated document

245 Application of Division

This Division applies to a resolution of a co-operative, including a resolution appointing an officer or auditor or approving of or agreeing to any act, matter or thing, if:

(a) the co-operative has fewer than 50 members; and

(b) the resolution is required or permitted under this Law or the rules of the co-operative to be passed at a general meeting of the co-operative.

246 Resolution by circulation of document—fewer than 50 members

(1) If all the members of a co-operative have signed a document that sets out the terms of a resolution and contains a statement that they are in favour of the resolution, the resolution is taken to have been passed at a general meeting of the co-operative.

(2) The meeting is taken to have been held:

(a) if all the members signed the document on the one day—on 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 co-operative at the general meeting.

(6) The document is ***signed*** by all members of a co-operative only if the document is signed by each person who was a member of the co-operative at the time the document was signed by the last member to sign.

(7) Nothing in this section affects or limits any rule of law about the effectiveness of the assent of members of a co-operative given to a document, or to an act, matter or thing, otherwise than at a general meeting of the co-operative.

Division 4 Postal ballots

247 Postal ballots

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

(2) On the declaration by the returning officer of the result of the ballot, the secretary of the co-operative must make an entry in the minutes of the co-operative showing:

(a) the number of formal votes cast in favour of the proposal concerned; and

(b) the number of formal votes cast against the proposal; and

(c) the number of informal votes cast.

248 Special postal ballots

(1) A ***special postal ballot*** is a postal ballot that is conducted in accordance with this section.

(2) The ballot must not be held less than 28 days after notice of the ballot is given to members.

Note. This period is intended to enable sufficient time for a meeting to be called (whether by the board or on the requisition of members) and held to discuss the proposal the subject of the ballot.

(3) The co-operative must send to each member (along with any other material required to be sent in relation to the postal ballot) a disclosure statement approved by the Registrar and containing information about:

(a) the financial position of the co-operative; and

(b) the interests of the directors of the co-operative in the proposal with which the ballot is concerned, including any interests of the directors in another organisation concerned in the proposal; and

(c) any compensation or consideration to be paid to officers or members of the co-operative in connection with the proposal; and

(d) any other matters the Registrar directs.

(4) If the Registrar so requires, the disclosure statement is to be accompanied by a report made by an independent person approved by the Registrar about any matters the Registrar directs.

(5) A draft disclosure statement must be submitted to the Registrar at least 28 days (or the shorter period the Registrar may allow in a particular case) before the notice of the special postal ballot is to be given to members.

(6) Section 25 (except subsections (1), (2) and (3)) applies to a disclosure statement under this section with any necessary modifications, and in particular as if a reference in that section to a formation meeting were a reference to the notice of the special postal ballot.

Note. Sections 380 and 445 provide for exemptions from this section in certain circumstances.

249 When special postal ballot is required

The board of a co-operative must conduct a special postal ballot when required by a provision of this Law.

Note. Voting by special postal ballot is provided for by this Law as follows:

(a) conversion of:

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

(ii) a distributing co-operative to a non-distributing co-operative, or vice versa;

(see section 35);

(b) a special resolution to require members to take up or subscribe for additional shares and a special resolution to deduct amounts for additional shares (see section 82);

(c) a special resolution on the requisition of members (see section 250);

(d) a special resolution to require members to lend money to the co-operative (see section 343);

(e) an acquisition or disposal of certain assets (see section 359);

(f) the maximum permissible level of share interest in a co-operative (see section 363);

(g) certain share offers (see section 374);

(h) a merger (see sections 396 and 476);

(i) a transfer of engagements (see sections 396 and 476);

(j) a transfer of incorporation (see section 404);

(k) a compromise or arrangement between a co-operative and its members (see section 414);

(l) a members' voluntary winding up (see section 445).

250 Holding of postal ballot on requisition

(1) The board of a co-operative must conduct a postal ballot (including a special postal ballot) for the passing of a special resolution on the written requisition of the number of members who together are able to cast at least 20% (or a lesser percentage specified in the rules of the co-operative) of the total number of votes able to be cast at a meeting of the co-operative.

(2) A member cannot 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 state:

(i) the proposed special resolution to be voted on; and

(ii) the reasons for the making of the special resolution; and

(iii) the effect of the special resolution being passed;

(b) it must be signed by the requisitioning members (and may consist of several documents in like form each signed by one or more of the requisitioning members);

(c) it must be served on the co-operative by being filed at the registered office of the co-operative.

(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 co-operative may recover the expenses of the postal ballot from the members who requisitioned the postal ballot as a debt payable to the co-operative.

251 Expenses involved in postal ballots on requisition

(1) All reasonable expenses incurred by a co-operative in preparing for and holding a special postal ballot are taken to form the expenses of the postal ballot conducted for the purposes of section 250.

(2) Those expenses include (but are not limited to) the following expenses:

(a) the cost of obtaining expert advice (including legal and financial advice) and of commissioning expert reports;

(b) costs attributable to the use of staff of the co-operative in 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

252 Annual general meetings (cf Corporations Act s 250N)

(1) A co-operative must hold its initial annual general meeting within 18 months after its registration.

Maximum penalty: $1,000 or imprisonment for 3 months, or both.

(2) A co-operative must hold an annual general meeting at least once in each calendar year after its initial annual general meeting and within 5 months after the end of its financial year.

Maximum penalty: $1,000 or imprisonment for 3 months, or both.

(3) An offence based on subsection (1) or (2) is an offence of strict liability.

(4) An annual general meeting is to be held in addition to any other meetings held by a co-operative in the year.

253 Special general meetings

A special general meeting of a co-operative may be called at any time by the board.

254 Notice of meetings

The board must give each member at least 14 days notice of each general meeting.

Note. Section 239 requires 21 days notice of each special resolution to be considered at a general meeting.

255 Quorum at meetings

(1) The quorum for a meeting of a co-operative must be stated in the rules of the co-operative.

(2) An item of business must not be transacted at a meeting of a co-operative unless a quorum of members entitled to vote is present during the transaction of that item.

256 Decision at meetings

(1) A question for decision at a general meeting of a co-operative is to be decided by a show of hands, unless a poll is required (see subsection (2)).

(2) The question is to be decided by a poll if a poll is required by the chairperson of the meeting or by any 5 members present at the meeting or represented at the meeting by proxy.

(3) A person who is a proxy for one or more members may cast only one vote on a question for decision by a show of hands.

(4) A person who is a proxy for one or more members may cast more than one vote on a question for decision by a poll, unless the rules of the co-operative restrict the number of votes that a proxy may cast.

(5) In the case of an equality of votes, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded may cast a second vote if the rules of the co-operative so provide.

(6) This section has effect subject to section 229.

Note. Section 229 deals with voting by proxy.

257 Calling of general meeting on requisition

(1) The board of a co-operative must call a general meeting of the co-operative on the written requisition of the number of members who together are able to cast at least 20% (or a lesser percentage specified in the rules of the co-operative) of the total number of votes able to be cast at a meeting of the co-operative.

(2) A member cannot 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 co-operative by being filed at the registered office of the co-operative.

(4) The meeting must be called and held as soon as practicable and in any case must be held within 63 days after the requisition is served.

(5) If the board does not call 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 total voting rights) may call the meeting in the same way as nearly as possible as meetings are called by the board;

(b) for that purpose, they may ask the co-operative to supply a written statement setting out the names and addresses of the persons entitled when the requisition was served to receive notice of general meetings of the co-operative;

(c) the board must send the requested statement to the requisitioning members within 7 days after the request for the statement is made;

(d) the meeting called by the requisitioning members must be held within 91 days after the requisition is served;

(e) any reasonable expenses incurred by the requisitioning members because of the board's failure to call the meeting must be paid by the co-operative;

(f) any amount required to be paid by the co-operative under paragraph (e) must be retained by the co-operative out of any money due from the co-operative by way of fees or other remuneration for their services to any of the directors that were in default.

258 Minutes

(1) Minutes of each general meeting, board meeting and committee meeting must be entered in the appropriate books within 28 days after the meeting.

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

(a) the chairperson of the meeting;

(b) the chairperson of the next meeting.

(3) Minutes must be kept in the English language.

Note. Section 214 makes provision regarding the availability of minutes for inspection.

259 Auditor entitled to notice and other communications
(cf Corporations Act s 249K)

(1) A co-operative must give its auditor:

(a) notice of a general meeting in the same way that a member of the co-operative is entitled to receive notice; and

(b) any other communications relating to the general meeting that a member of the co-operative is entitled to receive.

Maximum penalty: $500.

(2) An offence based on subsection (1) is an offence of strict liability.

260 Auditor's right to be heard at general meetings (cf Corporations Act s 249V)

(1) A co-operative's auditor is entitled to attend any general meeting of the co-operative.

(2) The auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the auditor in the capacity of auditor.

(3) The auditor is entitled to be heard even if:

(a) the auditor retires at the meeting; or

(b) the meeting passes a resolution to remove the auditor from office.

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

261 Questions and comments by members on co-operative management (cf Corporations Act s 250S)

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

Maximum penalty: $500.

(2) An offence based on subsection (1) is an offence of strict liability.

262 Questions by members of auditors at annual general meeting (cf Corporations Act s 250T)

(1) If a co-operative's auditor or their representative is at the meeting, the chairperson of an annual general meeting of the co-operative must:

(a) allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor or the auditor's representative questions relevant to:

(i) the conduct of the audit; and

(ii) the preparation and content of the auditor's report; and

(iii) the accounting policies adopted by the co-operative in relation to the preparation of the financial statements; and

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

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

Maximum penalty: $500.

(2) An offence based on subsection (1) is an offence of strict liability.

(3) If:

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

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

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

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

Maximum penalty (for subsection (4)): $500.

Part 3.3 Financial reports and audit

Note. Columns 1 and 2 of the following Table set out the Division numbers and Division headings of this Part, and Columns 3 and 4 indicate (where relevant) provisions of Chapter 2M of the Corporations Act that generally correspond to each Division of this Part.

Table

Column 1	Column 2	Column 3	Column 4
Division of this Part	**Heading to Division**	**Provisions of Chapter 2M of Corporations Act to which Division generally corresponds**	**Location of provisions in Chapter 2M of Corporations Act**
Division 1	Preliminary	—	—
Division 2	Financial records	ss 286–290	Part 2M.2
Division 3	Annual financial reports and directors' reports generally	ss 292–294 (also s 315 (2))	Part 2M.3, Div 1 (also Div 4)
Division 4	Annual financial reports	ss 295–297, 301	Part 2M.3, Div 1
Division 5	Annual directors' reports	ss 298–300A	Part 2M.3, Div 1
Division 6	Half-year financial report and directors' report	ss 302–306	Part 2M.3, Div 2
Division 7	Audit and auditor's report	ss 307–313	Part 2M.3, Div 3
Division 8	Annual financial reporting to members	ss 314–318	Part 2M.3, Div 4
Division 9	Lodging reports and returns with Registrar	ss 319–322	Part 2M.3, Div 5

Column 1	Column 2	Column 3	Column 4
Division of this Part	**Heading to Division**	**Provisions of Chapter 2M of Corporations Act to which Division generally corresponds**	**Location of provisions in Chapter 2M of Corporations Act**
Division 10	Special provisions about consolidated financial statements	ss 323–323C	Part 2M.3, Div 6
Division 11	Financial years and half-years	s 323D	Part 2M.3, Div 7
Division 12	Auditors	ss 324AA–331 (except s 327H)	Part 2M.4, Divs 1–6
Division 13	Accounting and auditing standards	ss 337, 338	Part 2M.5
Division 14	Exemptions and modifications	ss 340–343	Part 2M.6
Division 15	Miscellaneous	s 344	Part 2M.7

Division 1 Preliminary

263 Interpretation

(1) In this Part:

accounting standard—see section 314.

audit means:

(a) an audit conducted for the purposes of this Law; or

(b) a review of a financial report conducted for the purposes of this Law.

auditing standard—see section 314.

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

directors' declaration—see section 273.

financial report means an annual financial report or a half-year financial report prepared by a co-operative under this Part (and see section 273).

financial statements—see section 273.

notes to the financial statements—see section 273.

(2) Terms used in this Part have the same meanings as they have in the Corporations Act, and in particular in Chapter 2M of the Corporations Act.

Note. Examples of terms covered by subsection (2) are authorised audit company, entity, control and registered company auditor.

(3) Without limiting subsection (2), the term ***controlled entity*** used in this Part has a meaning affected by section 50AA of the Corporations Act.

264 General modifications to applied provisions of Chapter 2M of Corporations Act

(1) This section applies to the provisions of Chapter 2M of the Corporations Act as they apply under this Part.

(2) In those provisions:

(a) a reference to a company that is an auditor of a co-operative is to be read as a reference to a company and not a co-operative; and

(b) a reference to a small proprietary company is to be read as a reference to a small co-operative (which is defined in section 4 as a co-operative of a class or description prescribed by the National Regulations); and

(c) a reference to an order of exemption is to be read as a reference to an exemption under Division 14 of this Part.

(3) Subsection (2) does not apply to the extent to which this Law or the National Regulations provide otherwise, whether expressly or by implication.

Division 2 Financial records

265 Obligation to keep financial records (cf Corporations Act s 286)

(1) A co-operative must keep written financial records that:

(a) correctly record and explain its transactions and financial position and performance; and

(b) would enable true and fair financial statements to be prepared and audited.

The obligation to keep financial records of transactions extends to transactions undertaken as trustee.

Maximum penalty: $2,500.

(2) The co-operative must retain the financial records for 7 years after the transactions covered by the records are completed.

Maximum penalty: $2,500.

(3) An offence based on subsection (1) or (2) is an offence of strict liability.

266 Language requirements (cf Corporations Act s 287)

(1) The financial records may be kept in any language.

(2) A co-operative must ensure that an English translation of financial records not kept in English is made available within a reasonable time to a person who:

(a) is entitled to inspect the records; and

(b) asks for the English translation.

Maximum penalty: $2,500.

(3) An offence based on subsection (2) is an offence of strict liability.

267 Physical format (cf Corporations Act s 288)

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

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

(3) An offence based on subsection (1) or (2) is an offence of strict liability.

Maximum penalty: $2,500.

268 Place where records are kept (cf Corporations Act s 289)

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

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

Maximum penalty: $2,500.

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

Maximum penalty: $2,500.

(4) The Registrar may direct a co-operative to produce specified financial records that are kept outside this jurisdiction. The co-operative must comply with the direction.

Maximum penalty: $2,000.

(5) The direction must:

(a) be in writing; and

(b) specify a place in this jurisdiction where the records are to be produced (the place must be reasonable in the circumstances); and

(c) specify a day (at least 14 days after the direction is given) by which the records are to be produced.

(6) An offence based on subsection (2), (3) or (4) is an offence of strict liability.

269 Director access(cf Corporations Act s 290)

(1) A director of a co-operative has a right of access to the financial records at all reasonable times.

(2) On application by a director, the Supreme Court may authorise a person to inspect the financial records on the director's behalf.

(3) A person authorised to inspect records may make copies of the records unless the Supreme Court orders otherwise.

(4) The Supreme Court may make any other orders it considers appropriate, including either or both of the following:

(a) an order limiting the use that a person who inspects the records may make of information obtained during the inspection;

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

Division 3 Annual financial reports and directors' reports generally

270 Who has to prepare annual financial reports and directors' reports

(1) **Large co-operatives—requirement to prepare reports in accordance with this Part** (cf Corporations Act s 292 (1))

A large co-operative must prepare a financial report and a directors' report in accordance with this Part for each financial year.

(2) **Small co-operatives—requirement to prepare reports if directed to do so** (cf Corporations Act s 292 (2))

A small co-operative must prepare a financial report and a directors' report if and as directed under section 271 or 272.

(3) **Small co-operatives—where no direction**

A small co-operative that is not the subject of a direction under either section 271 or 272:

(a) is not required to prepare reports in accordance with this Part; and

(b) must comply with the requirements (if any) of the National Regulations regarding the preparation and provision of reports to members.

Note. The rules of a co-operative may provide for the preparation of financial reports that would be additional to those required by the National Regulations.

271 Small co-operative—direction by members
(cf Corporations Act s 293 and s 315 (2))

(1) **Direction to prepare reports** (cf Corporations Act s 293 (1))

Members with at least 5% of the votes in a small co-operative may give the co-operative a direction to:

(a) prepare a financial report or directors' report or both for a financial year in accordance with all or with specified requirements of this Part; and

(b) send them to all members.

(2) **Manner of giving direction** (cf Corporations Act s 293 (2))

The direction must be:

(a) signed by the members giving the direction; and

(b) made no later than 12 months after the end of the financial year concerned.

(3) **Matters that may be included in direction** (cf Corporations Act s 293 (3))

The direction may specify all or any of the following:

(a) that the financial report does not have to comply with some or all of the accounting standards;

(b) that a directors' report or a part of that report need not be prepared in accordance with this Part;

(c) that the financial report is to be audited or reviewed.

(4) **Direction regarding auditing or review**

If the direction specifies that the financial report is to be audited or reviewed, the direction may specify that the audit or review is to be conducted:

(a) in accordance with Division 3 of Part 2M.3 of the Corporations Act (as applying under section 283); or

(b) in accordance with requirements prescribed by the National Regulations.

(5) **Direction given during financial year**

If a direction is given to a small co-operative under this section before the end of the financial year, the direction must specify the date by which the documents have to be prepared, sent or lodged. The date must be a reasonable one in view of the nature of the direction.

(6) **Direction given after end of financial year** (cf Corporations Act s 315 (2))

If a direction is given to a small co-operative under this section after the end of the financial year, the co-operative must report to members under section 284 by the later of:

(a) 2 months after the date on which the direction is given; and

(b) 5 months after the end of the financial year.

272 Small co-operative—direction by Registrar (cf Corporations Act s 294)

(1) The Registrar may give a small co-operative a direction to comply with all or specified requirements of this Division and Divisions 4, 5, 7, 8, 9 and 10 for a financial year.

(2) The small co-operative must comply with the direction.

Maximum penalty: $1,000.

(3) An offence based on subsection (2) is an offence of strict liability.

(4) The direction may specify any or all of the matters referred to in section 271 (3) and (4).

(5) The direction may be general or may specify the particular requirements that the co-operative is to comply with.

(6) The direction must specify the date by which the documents have to be prepared, sent or lodged. The date must be a reasonable one in view of the nature of the direction.

(7) The direction must:

(a) be made in writing; and

(b) specify the financial year concerned; and

(c) be made no later than 6 years after the end of that financial year.

Division 4 Annual financial reports

273 Contents of annual financial report (cf Corporations Act s 295)

(1) **Basic contents**

The ***financial report*** for a financial year consists of:

(a) the financial statements for the year; and

(b) the notes to the financial statements; and

(c) the directors' declaration about the statements and notes.

(2) **Financial statements**

The ***financial statements*** for the year are:

(a) the financial statements in relation to the entity reported on that are required by the accounting standards; and

(b) if the accounting standards require financial statements in relation to a consolidated entity—the financial statements in relation to the consolidated entity that are required by the accounting standards.

(3) **Notes to financial statements**

The ***notes to the financial statements*** are:

(a) disclosures required by the National Regulations; and

(b) notes required by the accounting standards; and

(c) any other information necessary to give a true and fair view (see section 275).

(4) **Directors' declaration**

The ***directors' declaration*** is a declaration by the directors:

(a) whether, in the directors' opinion, there are reasonable grounds to believe that the co-operative will be able to pay its debts as and when they become due and payable; and

(b) whether, in the directors' opinion, the financial statements and notes are in accordance with this Law, including:

(i) section 274; and

(ii) section 275; and

(c) if the co-operative has quoted securities—that the directors have been given the declarations required by section 295A of the Corporations Act (as applying under section 277).

Note. Section 295A of the Corporations Act (as applying under section 277) requires the chief executive officer and chief financial officer of a co-operative with quoted securities to make an additional declaration described in that section.

(5) **Directors' declaration—particular requirements**

The directors' declaration must:

(a) be made in accordance with a resolution of the directors; and

(b) specify the date on which the declaration is made; and

(c) be signed by a director.

274 Compliance with accounting standards and regulations (cf Corporations Act s 296)

(1) The financial report for a financial year must comply with the accounting standards.

(2) However, a small co-operative's financial report does not have to comply with particular accounting standards if:

(a) the report is prepared in response to a direction under section 271 or 272; and

(b) the direction specifies that the report does not have to comply with those accounting standards.

(3) The financial report must comply with any further requirements in the National Regulations.

275 True and fair view (cf Corporations Act s 297)

(1) The financial statements and notes for a financial year must give a true and fair view of:

(a) the financial position and performance of the co-operative; and

(b) if consolidated financial statements are required—the financial position and performance of the consolidated entity.

(2) This section does not affect the obligation under section 274 for a financial report to comply with accounting standards.

Note. If the financial statements and notes prepared in compliance with the accounting standards would not give a true and fair view, additional information must be included in the notes to the financial statements under section 273 (3) (c).

276 Audit of annual financial report

(1) **Large co-operative—audit to be conducted in accordance with** (cf Corporations Act s 301 (1))

A large co-operative must have the financial report for a financial year audited in accordance with Division 3 of Part 2M.3 of the Corporations Act (as applying under section 283) and obtain an auditor's report.

(2) **Small co-operative—where audit not required** (cf Corporations Act s 301 (2))

A small co-operative's financial report for a financial year does not have to be audited if:

(a) the report is prepared in response to a direction under section 271 or 272; and

(b) the direction did not ask for the financial report to be audited.

(3) **Small co-operative—where manner of required audit is specified in direction**

If a small co-operative's financial report for a financial year is prepared in response to a direction under section 271 or 272 and the direction asked for the financial report to be audited:

(a) in accordance with Division 3 of Part 2M.3 of the Corporations Act (as applying under section 283); or

(b) in some other specified manner;

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

(4) **Small co-operative—where manner of required audit is not specified in direction**

If a small co-operative's financial report for a financial year is prepared in response to a direction under section 271 or 272 and the direction asked for the financial report to be audited without specifying the manner in which the audit is to be conducted, the co-operative must have the financial report audited in accordance with Division 3 of Part 2M.3 of the Corporations Act (as applying under section 283) and obtain an auditor's report.

277 Application of Corporations Act—co-operatives with quoted securities—declaration about financial statements by certain officers

A co-operative with quoted securities is declared to be an applied Corporations legislation matter for the purposes of the Corporations application legislation of this jurisdiction in relation to section 295A of the Corporations Act, subject to the modifications referred to in sections 13 (3) and 264 of this Law so far as they are relevant.

Note. See section 13, including Note 1 to that section.

Division 5 Annual directors' reports

278 Annual directors' report (cf Corporations Act s 298)

(1) A co-operative must prepare a directors' report for each financial year.

(2) The directors' report must include:

(a) the general information required by:

(i) section 279 of this Law (all co-operatives); and

(ii) section 299A of the Corporations Act (as applying under section 281) (co-operatives with quoted securities); and

(b) the specific information required by:

(i) section 280 of this Law (all co-operatives); and

(ii) sections 300 and 300A of the Corporations Act (as applying under section 281) (co-operatives with quoted securities); and

(c) a copy of the auditor's declaration under section 307C of the Corporations Act (as applying under section 283) in relation to the audit for the financial year.

(3) If the financial report for a financial year includes additional information under section 273 (3) (c) (information included to give a true and fair view of financial position and performance), the directors' report for the financial year must also:

(a) set out the directors' reasons for forming the opinion that the inclusion of that additional information was necessary to give the true and fair view required by section 275; and

(b) specify where that additional information can be found in the financial report.

(4) The directors' report must:

(a) be made in accordance with a resolution of the directors; and

(b) specify the date on which the report is made; and

(c) be signed by a director.

(5) A small co-operative does not have to comply with subsection (1) for a financial year if:

(a) it is preparing financial statements for that year in response to a direction under section 271 or 272; and

(b) the direction specified that a directors' report need not be prepared.

279 Annual directors' report—general information
(cf Corporations Act s 299)

(1) General information about operations and activities

The directors' report for a financial year must:

(a) contain a review of operations during the year of the entity reported on and the results of those operations; and

(b) give details of any significant changes in the entity's state of affairs during the year; and

(c) state the entity's principal activities during the year and any significant changes in the nature of those activities during the year; and

(d) give details of any matter or circumstance that has arisen since the end of the year that has significantly affected, or may significantly affect:

(i) the entity's operations in future financial years; or

(ii) the results of those operations in future financial years; or

(iii) the entity's state of affairs in future financial years; and

(e) refer to likely developments in the entity's operations in future financial years and the expected results of those operations; and

(f) if the entity's operations are subject to any particular and significant environmental regulation under a law of the Commonwealth or of a State or Territory—give details of the entity's performance in relation to environmental regulation.

(2) The entity reported on is:

(a) the co-operative (if consolidated financial statements are not required); or

(b) the consolidated entity (if consolidated financial statements are required).

(3) Prejudicial information need not be disclosed

The directors' report may omit material that would otherwise be included under subsection (1) (e) if it is likely to result in unreasonable prejudice to:

(a) the co-operative; or

(b) if consolidated financial statements are required—the consolidated entity or any entity (including the co-operative) that is part of the consolidated entity.

(4) Statement of omission of material

If material is omitted, the directors' report must say so.

280 Annual directors' report—specific information

(1) **Details to be included** (cf Corporations Act s 300 (1))

The directors' report for a financial year must include details of:

(a) dividends or distributions paid to members during the year; and

(b) dividends or distributions recommended or declared for payment to members, but not paid, during the year; and

(c) the name of each person who has been a director of the co-operative at any time during or since the end of the year and the period for which they were a director; and

(d) the name of each person who:

(i) is an officer of the co-operative at any time during the year; and

(ii) was a partner in an audit firm, or a director of an audit company, that is an auditor of the co-operative for the year; and

(iii) was such a partner or director at a time when the audit firm or the audit company undertook an audit of the co-operative; and

(e) options that are:

(i) granted over unissued shares or unissued interests during or since the end of the year; and

(ii) granted to any of the directors or any of the 5 most highly remunerated officers of the co-operative (other than the directors); and

(iii) granted to them as part of their remuneration (see subsections (4)–(6)); and

(f) unissued shares or interests under option as at the day the report is made (see subsections (4) and (6)); and

(g) shares or interests issued during or since the end of the year as a result of the exercise of an option over unissued shares or interests (see subsections (4) and (7)); and

(h) indemnities given and insurance premiums paid during or since the end of the year for a person who is or has been an officer or auditor (see subsections (8) and (9)).

(2) **Details included in financial report** (cf Corporations Act s 300 (2))

Details do not have to be included in the directors' report under this section if they are included in the co-operative's financial report for the financial year.

(3) **Details included in financial report—to be identified as "Non-audit** (cf Corporations Act s 300 (2A))

If subsection (2) is relied on to not include in the directors' report for a financial year details that would otherwise be required to be included in that report under section 300 (11B) (a) or (11C) (b) of the Corporations Act (as applying under section 281), that report must specify, in the section headed "Non-audit services", where those details may be found in the co-operative's financial report for that financial year.

(4) **Options** (cf Corporations Act s 300 (3))

Subsection (1) (e)–(g) cover:

(a) options over unissued shares and interests of the co-operative; and

(b) if consolidated financial statements are required—options over unissued shares and interests of any entity forming part of the consolidated entity.

(5) **Options details** (cf Corporations Act s 300 (5))

The details of an option granted are:

(a) the entity granting the option; and

(b) the name of the person to whom the option is granted; and

(c) the number and class of shares or interests over which the option is granted.

(6) **Option details—unissued shares or interests** (cf Corporations Act s 300 (6))

The details of unissued shares or interests under option are:

(a) the entity that will issue shares or interests when the options are exercised; and

(b) the number and classes of those shares or interests; and

(c) the issue price, or the method of determining the issue price, of those shares or interests; and

(d) the expiry date of the options; and

(e) any rights that option holders have under the options to participate in any share issue or interest issue of the co-operative or any other entity.

(7) **Shares or interests issued as a result of exercise of option** (cf Corporations Act s 300 (7))

The details of shares or interests issued as a result of the exercise of an option are:

(a) the entity issuing the shares or interests; and

(b) the number of shares or interests issued; and

(c) if the entity has different classes of shares or interests—the class to which each of those shares or interests belongs; and

(d) the amount unpaid on each of those shares or interests; and

(e) the amount paid, or agreed to be considered as paid, on each of those shares or interests.

(8) **Indemnities and insurance premiums for officers or auditors** (cf Corporations Act s 300 (8))

The directors' report for a co-operative must include details of:

(a) any indemnity that is given to a current or former officer or auditor against a liability, or any relevant agreement under which an officer or auditor may be given an indemnity of that kind; and

(b) any premium that is paid, or agreed to be paid, for insurance against a current or former officer's or auditor's liability for legal costs.

(9) **Indemnities and insurance premiums—details required** (cf Corporations Act s 300 (9))

The details required under subsection (8) are:

(a) for an officer—their name or the class of officer to which they belong or belonged; and

(b) for an auditor—their name; and

(c) the nature of the liability; and

(d) for an indemnity given—the amount the co-operative paid and any other action the co-operative took to indemnify the officer or auditor; and

(e) for an agreement to indemnify—the amount that the relevant agreement requires the co-operative to pay and any other action the relevant agreement requires the co-operative to take to indemnify the officer or auditor; and

(f) for an insurance premium—the amount of the premium.

The directors' report need not give details of the nature of the liability covered by, or the amount of the premium payable under, a contract of insurance to the extent that disclosure of those details is prohibited by the insurance contract.

(10) **Details relating to directors and secretary** (cf Corporations Act s 300 (10))

The report for a co-operative must also include details of:

(a) each director's qualifications, experience and special responsibilities; and

(b) the number of meetings of the board of directors held during the year and each director's attendance at those meetings; and

(c) the number of meetings of each board committee held during the year and each director's attendance at those meetings; and

(d) the qualifications and experience of each person who is the secretary of the co-operative as at the end of the year.

(11) **Proceedings on behalf of a co-operative—application for leave** (cf Corporations Act s 300 (14))

The report for a co-operative must also include the following details of any application for leave under Part 7.4 made in respect of the co-operative:

(a) the applicant's name;

(b) a statement as to whether leave was granted.

(12) **Proceedings on behalf of a co-operative—with leave granted** (cf Corporations Act s 300 (15))

The report for a co-operative must also include the following details of any proceedings that a person has brought or intervened in on behalf of the co-operative with leave under Part 7.4:

(a) the person's name;

(b) the names of the parties to the proceedings;

(c) sufficient information to enable members to understand the nature and status of the proceedings (including the cause of action and any orders made by the court).

281 Application of Corporations Act—co-operatives with quoted securities—additional information to be provided in directors' annual report

A co-operative with quoted securities is declared to be an applied Corporations legislation matter for the purposes of the Corporations application legislation of this jurisdiction in relation to sections 299A, 300 (11)–(11E) and 300A of the Corporations Act, subject to the modifications referred to in sections 13 (3) and 264 of this Law so far as they are relevant.

Note. See section 13, including Note 1 to that section.

Division 6 Half-year financial report and directors' report

282 Application of Corporations Act—co-operatives that are disclosing entities—half-year financial reports and directors' reports

A co-operative that is a disclosing entity within the meaning of the Corporations Act is declared to be an applied Corporations legislation matter for the purposes of the Corporations application legislation of this jurisdiction in relation to Division 2 of Part 2M.3 of the Corporations Act, subject to the modifications referred to in sections 13 (3) and 264 of this Law so far as they are relevant.

Note. See section 13, including Note 1 to that section.

Division 7 Audit and auditor's report

283 Application of Corporations Act—audit and auditor's report

A co-operative is declared to be an applied Corporations legislation matter for the purposes of the Corporations application legislation of this jurisdiction in relation to Division 3 of Part 2M.3 of the Corporations Act, subject to the following modifications:

(a) section 308 (3AA) of the applied provisions is to be read as if the words "company limited by guarantee" were omitted and the words "small co-operative" were substituted;

(b) section 311 (5) of the applied provisions is to be read as if the reference to section 344 of the Corporations Act were a reference to section 328 of this Law;

(c) the modifications referred to in sections 13 (3) and 264 of this Law so far as they are relevant.

Note. See section 13, including Note 1 to that section.

Division 8 Annual financial reporting to members

284 Annual financial reporting to members

(1) **Annual reports for members of large co-operatives**
(cf Corporations Act s 314 (1))

A large co-operative must report to members for a financial year by providing either of the following in accordance with subsection (5) or (9):

(a) all of the following reports:

(i) the financial report for the year;

(ii) the directors' report for the year;

(iii) the auditor's report on the financial report;

(b) a concise report for the year that complies with subsection (3).

Maximum penalty: $1,000.

(2) **Annual reports for members of small co-operatives** (cf Corporations Act s 314 (1))

Subject to any direction under section 271 or 272, a small co-operative must provide financial reports to members for a financial year that comply with any requirements prescribed by the National Regulations.

Maximum penalty: $1,000.

(3) **Concise report** (cf Corporations Act s 314 (2))

A concise report of a large co-operative for a financial year consists of:

(a) a concise financial report for the year drawn up in accordance with accounting standards applying for the purposes of this paragraph; and

(b) the directors' report for the year; and

(c) a statement by the auditor:

(i) that the financial report has been audited; and

(ii) whether, in the auditor's opinion, the concise financial report complies with the accounting standards applying for the purposes of paragraph (a); and

(d) a copy of any qualification in, and of any statements included in the emphasis of matter section of, the auditor's report on the financial report; and

(e) a statement that the report is a concise report and that the full financial report and auditor's report will be sent to the member free of charge if the member asks for them.

(4) **Where accounting standards require discussion and analysis for** (cf Corporations Act s 314 (3))

If the accounting standards applying for the purposes of subsection (3) (a) require a discussion and analysis to be included in a concise financial report:

(a) the auditor must report on whether the discussion and analysis complies with the requirements that the accounting standards lay down for the discussion and analysis; and

(b) the auditor does not otherwise need to audit the statements made in the discussion and analysis.

(5) **Manner of providing reports** (cf Corporations Act s 314 (1AA))

A co-operative may provide the reports, or the concise report, for a financial year by doing all of the following:

(a) sending, to each member who has made the election referred to in subsection (6) (a):

(i) a hard copy of the reports, or the concise report; or

(ii) if the member has elected to receive the reports, or the concise report, as an electronic copy in accordance with subsection (6) (c)—an electronic copy of the reports, or the concise report;

(b) making a copy of the reports, or the concise report, readily accessible on a website;

(c) directly notifying, in writing, all members who did not make the election referred to in subsection (6) (a) that the copy is accessible on the website, and specifying the direct address on the website where the reports, or the concise report, may be accessed.

Note. A direct address may be specified, for example, by specifying the URL of the reports or the concise report.

(6) **Election by members as to how reports are to be provided** (cf Corporations Act s 314 (1AB))

For the purposes of subsection (5) (a), a co-operative must, on at least one occasion, directly notify in writing each member that:

(a) the member may elect to receive, free of charge, a copy of the reports for each financial year, or a copy of the concise report for each financial year; and

(b) if the member does not so elect—the member may access the reports, or the concise report, on a specified website; and

(c) if the member does so elect and the co-operative offers to send the report either as a hard copy or an electronic copy—the member may elect to receive the copy as either a hard copy or an electronic copy.

Maximum penalty: $1,000.

(7) **Election continues until changed** (cf Corporations Act s 314 (1AC))

An election made under subsection (6) is a standing election for each later financial year until the member changes his, her or its election.

Note. The member may request the co-operative not to send them material under this section—see section 316 of the Corporations Act as applying under this Part.

(8) **Restriction on electronic notification of members** (cf Corporations Act s 314 (1AD))

A member may, for the purposes of subsection (5) (c) or subsection (6), be notified by electronic means only if the member has previously nominated that means as one by which the member may be notified.

(9) **Providing reports** (cf Corporations Act s 314 (1AE))

A co-operative may provide the reports, or the concise report, by sending each member:

(a) a hard copy of the reports, or the concise report; or

(b) an electronic copy of the reports, or the concise report, if the member has nominated that means as one by which the member may be sent the reports or the concise report.

(10) **Strict liability** (cf Corporations Act s 314 (1A))

An offence based on subsection (1), (2) or (6) is an offence of strict liability.

285 Deadline for reporting to members

(1) **General rule** (cf Corporations Act s 315 (4))

A co-operative must report to members under section 284 within 5 months after the end of the financial year, except where section 315 (1) of the Corporations Act as applying under subsection (2) applies to the co-operative.

(2) **Application of Corporations Act—rule for co-operatives that are disclosing entities**

A co-operative that is a disclosing entity within the meaning of the Corporations Act is declared to be an applied Corporations legislation matter for the purposes of the Corporations application legislation of this jurisdiction in relation to section 315 (1) of the Corporations Act, subject to the following modifications:

(a) the applied provision is to be read as if the words "four months" were omitted and the words "5 months" were substituted;

(b) the modifications referred to in sections 13 (3) and 264 of this Law so far as they are relevant.

Note. See section 13, including Note 1 to that section.

286 Member's choices for annual financial information

(1) **Member's request** (cf Corporations Act s 316 (1))

A member may request the co-operative:

(a) not to send them the material required by section 284; or

(b) to send them a full financial report and the directors' report and auditor's report.

A request may be a standing request or for a particular financial year. The member is not entitled to a report for a financial year earlier than the one before the financial year in which the request is made.

(2) **Time for complying with request** (cf Corporations Act s 316 (2))

The co-operative must comply with a request under subsection (1) (b):

(a) within 7 days after the request is received; or

(b) by the deadline for reporting under section 285;

whichever is later.

(3) **Reports to be sent free of charge** (cf Corporations Act s 316 (3))

When sending a full financial report, directors' report and auditor's report, the co-operative must do so free of charge unless the member has already received a copy of them free of charge.

(4) **Strict liability** (cf Corporations Act s 316 (4))

An offence based on subsection (2) or (3) is an offence of strict liability.

Maximum penalty: $1,000 penalty units or imprisonment for 3 months, or both.

287 Consideration of reports at annual general meeting (cf Corporations Act s 317)

(1) The directors of a co-operative that is required to hold an annual general meeting must lay before the annual general meeting:

(a) in the case of a large co-operative:

(i) the financial report; and

(ii) the directors' report; and

(iii) the auditor's report; or

(b) in the case of a small co-operative—the financial reports required under section 284;

for the last financial year that ended before the annual general meeting.

Note. If the co-operative's first annual general meeting is held before the end of its first financial year, there will be no reports to lay before the meeting.

Maximum penalty: $1,000 or imprisonment for 3 months, or both.

(2) An offence based on subsection (1) is an offence of strict liability.

288 Application of Corporations Act—additional reporting by debenture issuers

A co-operative is declared to be an applied Corporations legislation matter for the purposes of the Corporations application legislation of this jurisdiction in relation to section 318 of the Corporations Act, subject to the modifications referred to in sections 13 (3) and 264 of this Law so far as they are relevant.

Note. See section 13, including Note 1 to that section.

Division 9 Lodging reports and returns with Registrar

289 Lodgment of annual reports by large co-operatives with Registrar (cf Corporations Act s 319)

(1) A large co-operative that has to prepare or obtain a report for a financial year under Divisions 3–5 must lodge the report with the Registrar. This obligation extends to a concise report provided to members under section 284.

Maximum penalty: $2,500.

(2) An offence based on subsection (1) is an offence of strict liability.

(3) The time for lodgment is:

(a) within 3 months after the end of the financial year for a co-operative that is a disclosing entity within the meaning of the Corporations Act; and

(b) within 5 months after the end of the financial year for any other co-operative.

290 Lodgment of half-year reports with Registrar (cf Corporations Act s 320)

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

Maximum penalty: $2,500.

(2) An offence based on subsection (1) is an offence of strict liability.

291 Registrar's power to require lodgment (cf Corporations Act s 321)

(1) The Registrar may give a co-operative a direction to lodge with the Registrar a copy of reports prepared or obtained by it under Divisions 3–6, and the co-operative must comply with the direction.

Maximum penalty: $1,000.

(2) An offence based on subsection (1) is an offence of strict liability.

(3) The direction must:

(a) be made in writing; and

(b) specify the period or periods concerned; and

(c) be made no later than 6 years after the end of the period or periods; and

(d) specify the date by which the documents have to be lodged.

(4) The date specified under subsection (3) (d) must be at least 14 days after the date on which the direction is given.

292 Relodgment if financial statements or directors' reports amended (cf Corporations Act s 322)

(1) If a financial report or directors' report is amended after it is lodged with the Registrar, the co-operative must:

(a) lodge the amended report with the Registrar within 14 days after the amendment; and

(b) give a copy of the amended report free of charge to any member who asks for it.

Maximum penalty: $1,000.

(2) If the amendment is a material one, the co-operative must also notify members as soon as practicable of:

(a) the nature of the amendment; and

(b) their right to obtain a copy of the amended report under subsection (1).

Maximum penalty: $1,000.

(3) An offence based on subsection (1) or (2) is an offence of strict liability.

293 Lodgment by small co-operatives of annual returns with Registrar

(1) A small co-operative must lodge an annual return with the Registrar for each financial year.

Maximum penalty: $1,000.

(2) An offence based on subsection (1) is an offence of strict liability.

(3) The contents of an annual return are to be as prescribed by the National Regulations.

(4) The time for lodgment is within 5 months after the end of the financial year.

Division 10 Special provisions about consolidated financial statements

294 Application of Corporations Act—special provisions about consolidated statements

A co-operative is declared to be an applied Corporations legislation matter for the purposes of the Corporations application legislation of this jurisdiction in relation to Division 6 of Part 2M.3 of the Corporations Act, subject to the modifications referred to in sections 13 (3) and 264 of this Law so far as they are relevant.

Note. See section 13, including Note 1 to that section.

Division 11 Financial years and half-years

295 Financial year (cf Corporations Act s 323D)

(1) The financial year of a co-operative ends on the day in each year that is provided for by the rules of the co-operative.

(2) The first financial year of a co-operative may extend from the date of its registration to a date not more than 18 months after its registration.

(3) On an amendment of the rules of a co-operative amending its financial year, the amendment may provide either:

(a) that the current financial year (as at the date of the amendment) is to be extended for not more than 6 months; or

(b) that the next financial year is to be a period of more than one year but not more than 18 months.

(4) Without limitation, the National Regulations may make provision for or with respect to requiring the adoption by a co-operative of the same financial year for each entity that the co-operative controls.

296 Half-year(cf Corporations Act s 323D (5))

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

Division 12 Auditors

Subdivision 1 General provisions relating to auditors

297 Application of Corporations Act—auditors

(1) A co-operative is declared to be an applied Corporations legislation matter for the purposes of the Corporations application legislation of this jurisdiction in relation to Divisions 1–5 of Part 2M.4 of the Corporations Act, subject to the following modifications:

(a) section 324BA in Division 2 of Part 2M.4 is to be read as if the words "Subject to section 324BD," were omitted;

(b) section 324BD in Division 2 of Part 2M.4 is taken to be omitted;

(c) the modifications referred to in sections 13 (3) and 264 of this Law so far as they are relevant.

Note. See section 13, including Note 1 to that section.

(2) A reference in the provisions of the Corporations Act as applying under this section to a registered company auditor is taken to be a reference to a registered company auditor within the meaning of the Corporations Act (and accordingly a reference in that term to a company is not a reference to a co-operative).

Subdivision 2 Appointment of auditors

298 Appointment of auditor of small co-operative
(cf Corporations Act s 325)

(1) The directors of a small co-operative may appoint an auditor for the co-operative if an auditor has not been appointed by the co-operative in general meeting.

(2) An auditor appointed under subsection (1) holds office, subject to this Part, until the co-operative's next annual general meeting.

299 Initial appointment of auditor of large co-operative
(cf Corporations Act s 327A)

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

(2) Subject to this Part, an auditor appointed under subsection (1) holds office until the co-operative's first annual general meeting.

(3) A director of a co-operative must take all reasonable steps to comply with, or to secure compliance with, subsection (1).

Maximum penalty: $2,500 or imprisonment for 6 months, or both.

300 Annual appointment at annual general meeting of auditor of large co-operative to fill vacancy

(1) **Large co-operative required to appoint auditor**
(cf Corporations Act s 327B (1))

A large co-operative must:

(a) appoint an auditor of the co-operative at its first annual general meeting; and

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

Maximum penalty: $2,500.

(2) **Tenure of auditor** (cf Corporations Act s 327B (2))

An auditor appointed under subsection (1) holds office until the auditor:

(a) dies; or

(b) is removed, or resigns, from office in accordance with section 310; or

(c) ceases to be capable of acting as auditor because of Division 2 of Part 2M.4 of the Corporations Act as applying under this Part; or

(d) ceases to be auditor under subsection (3), (4) or (5).

(3) **Termination of appointment of individual auditor** (cf Corporations Act s 327B (2A))

An individual auditor ceases to be auditor of a large co-operative under this subsection if:

(a) on a particular day (the start day), the individual auditor:

(i) informs the Registrar of a conflict of interest situation in relation to the co-operative under section 324CA (1A) of the Corporations Act as applying under this Part; or

(ii) informs the Registrar of particular circumstances in relation to the co-operative under section 324CE (1A) of the Corporations Act as applying under this Part; and

(b) the individual auditor does not give the Registrar a notice, before the notification day (see subsection (6)), that that conflict of interest situation has, or those circumstances have, ceased to exist before the end of the period (the remedial period) of 21 days, or such longer period as the Registrar approves in writing, from the start day.

(4) **Termination of appointment of audit firm** (cf Corporations Act s 327B (2B))

An audit firm ceases to be auditor of a large co-operative under this subsection if:

(a) on a particular day (the start day), the Registrar is:

(i) informed of a conflict of interest situation in relation to the co-operative under section 324CB (1A) of the Corporations Act as applying under this Part; or

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

(b) the Registrar has not been given a notice on behalf of the audit firm, before the notification day (see subsection (6)), that that conflict of interest situation has, or those circumstances have, ceased to exist before the end of the period (the remedial period) of 21 days, or such longer period as the Registrar approves in writing, from the start day.

(5) **Termination of appointment of audit company** (cf Corporations Act s 327B (2C))

An audit company ceases to be auditor of a large co-operative under this subsection if:

(a) on a particular day (the start day), the Registrar is:

(i) informed of a conflict of interest situation in relation to the co-operative under section 324CB (1A) or 324CC (1A) of the Corporations Act as applying under this Part; or

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

(b) the Registrar has not been given a notice on behalf of the audit company, before the notification day (see subsection (6)), that that conflict of interest situation has, or those circumstances have, ceased to exist before the end of the period (the remedial period) of 21 days, or such longer period as the Registrar approves in writing, from the start day.

(6) **Meaning of notification day** (cf Corporations Act s 327B (2D))

The ***notification day*** is:

(a) the last day of the remedial period; or

(b) such later day as the Registrar approves in writing (whether before or after the remedial period ends).

(7) **Compliance with requirement to appoint auditor** (cf Corporations Act s 327B (3))

A director of a large co-operative must take all reasonable steps to comply with, or to secure compliance with, subsection (1).

Maximum penalty: $2,500 or imprisonment for 6 months, or both.

(8) **Member of audit firm ceases to be auditor when firm ceases to be** (cf Corporations Act s 327B (4))

If an audit firm ceases to be the auditor of a large co-operative under subsection (2) at a particular time, each member of the firm who:

(a) is taken to have been appointed as an auditor of the co-operative under section 324AB (1) or 324AC (4) of the Corporations Act as applying under this Part; and

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

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

301 Appointment by directors or annual general meeting of auditor of (cf Corporations Act s 327C)

(1) If:

(a) a vacancy occurs in the office of auditor of a large co-operative; and

(b) the vacancy is not caused by the removal of an auditor from office; and

(c) there is no surviving or continuing auditor of the co-operative;

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

(2) An auditor appointed under subsection (1) holds office, subject to this Part, until the co-operative's next annual general meeting.

(3) A director of a large co-operative must take all reasonable steps to comply with, or to secure compliance with, subsection (1).

Maximum penalty (for subsection (3)): $2,500 or imprisonment for 6 months, or both.

302 Appointment to replace auditor removed from office (cf Corporations Act s 327D)

(1) This section deals with the situation in which an auditor of a co-operative is removed from office at a general meeting in accordance with section 310.

(2) The co-operative may at that general meeting (without adjournment), by special resolution immediately appoint an individual, firm or company as auditor of the co-operative if a copy of the notice of nomination has been sent to the individual, firm or company under section 308 (3).

(3) If a special resolution under subsection (2):

(a) is not passed; or

(b) could not be passed merely because a copy of the notice of nomination has not been sent to an individual, firm or company under section 308 (3);

the general meeting may be adjourned and the co-operative may, at the adjourned meeting, by ordinary resolution appoint an individual, firm or company as auditor of the co-operative if:

(c) a member of the co-operative gives the co-operative notice of the nomination of the individual, firm or company for appointment as auditor; and

(d) the co-operative receives the notice at least 14 clear days before the day to which the meeting is adjourned.

(4) The day to which the general meeting is adjourned must be:

(a) not earlier than 20 days after the day of the meeting; and

(b) not later than 30 days after the day of the meeting.

(5) Subject to this Part, an auditor appointed under subsection (2) or (3) holds office until the co-operative's next annual general meeting.

303 Registrar to be notified of appointment of auditor

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

Maximum penalty: $2,000.

304 Registrar may appoint auditor if auditor removed but not replaced (cf Corporations Act s 327E)

(1) This section deals with the situation in which a large co-operative fails to appoint an auditor under section 302 (2) or (3) (the ***auditor replacement failure***).

(2) The co-operative must give the Registrar written notice of the auditor replacement failure within the period of 7 days commencing on the day of the auditor replacement failure (the ***notification period***).

(3) If the co-operative gives the Registrar the notice required by subsection (2), the Registrar must appoint an auditor of the co-operative as soon as practicable after receiving the notice. This subsection has effect subject to section 306.

(4) If the co-operative does not give the Registrar the notice required by subsection (2), the Registrar may appoint an auditor of the co-operative at any time:

(a) after the end of the notification period; and

(b) before the Registrar receives notice of the auditor replacement failure from the co-operative.

This subsection has effect subject to section 306.

(5) If the co-operative:

(a) does not give the Registrar the notice required by subsection (2); and

(b) gives the Registrar notice of the auditor replacement failure after the end of the notification period;

the Registrar must appoint an auditor of the co-operative as soon as practicable after receiving the notice. This subsection has effect subject to section 306.

(6) Subject to this Part, an auditor appointed under this section holds office until the co-operative's next annual general meeting.

305 Registrar's general power to appoint auditor of large co-operative (cf Corporations Act s 327F)

(1) The Registrar may appoint an auditor of a large co-operative if:

(a) the co-operative does not appoint an auditor when required by this Law to do so; and

(b) a member of the co-operative applies to the Registrar in writing for the appointment of an auditor under this section.

This subsection has effect subject to section 306.

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

306 Restrictions on Registrar's powers to appoint auditor of large (cf Corporations Act s 327G)

(1) The Registrar may appoint an individual, firm or company as auditor of a co-operative under section 304 or 305 only if the individual, firm or company consents to being appointed.

(2) The Registrar must not appoint an auditor of a co-operative under section 304 or 305 if:

(a) there is another auditor of the co-operative (the continuing auditor); and

(b) the Registrar is satisfied that the continuing auditor is able to carry out the responsibilities of auditor alone; and

(c) the continuing auditor agrees to continue as auditor.

(3) The Registrar must not appoint an auditor of a co-operative under section 304 or 305 if:

(a) the co-operative does not give the Registrar the notice required by section 304 (2) before the end of the notification period; and

(b) the Registrar has already appointed an auditor of the co-operative under section 304 after the end of the notification period.

307 Remaining auditors may act during vacancy (cf Corporations Act s 327I)

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

308 Nomination of auditor (cf Corporations Act s 328B)

(1) Subject to this section, a co-operative may appoint an individual, firm or company as auditor of the co-operative at its annual general meeting only if a member of the co-operative gives the co-operative written notice of the nomination of the individual, firm or company for appointment as auditor:

(a) before the meeting was convened; or

(b) not less than 21 days before the meeting.

This subsection does not apply if an auditor is removed from office at the annual general meeting.

(2) If a co-operative purports to appoint an individual, firm or company as auditor of the co-operative in contravention of subsection (1):

(a) the purported appointment is of no effect; and

(b) the co-operative is guilty of an offence.

Maximum penalty: $2,500.

(3) If a member gives a co-operative notice of the nomination of an individual, firm or company for appointment as auditor of the co-operative, the co-operative must send a copy of the notice to:

(a) each individual, firm or company nominated; and

(b) each auditor of the co-operative; and

(c) each person entitled to receive notice of general meetings of the co-operative;

and this is so whether the appointment is to be made at a meeting or an adjourned meeting referred to in section 302 or at an annual general meeting.

(4) The copy of the notice of nomination must be sent:

(a) not less than 7 days before the meeting; or

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

309 Auditor's consent to appointment (cf Corporations Act s 328A)

(1) A co-operative or the directors of a co-operative must not appoint an individual, firm or company as auditor of the co-operative unless that individual, firm or company:

(a) has consented, before the appointment, to act as auditor; and

(b) has not withdrawn that consent before the appointment is made;

and for the purposes of this section, a consent, or the withdrawal of a consent, must be given by written notice to the co-operative or the directors.

(2) A notice under subsection (1) given by a firm must be signed by a member of the firm who is a registered company auditor both:

(a) in the firm name; and

(b) in his or her own name.

(3) A notice under subsection (1) given by a company must be signed by a director or senior manager of the company both:

(a) in the company's name; and

(b) in his or her own name.

(4) If a co-operative or the directors of a co-operative appoint an individual, firm or company as auditor of a co-operative in contravention of subsection (1):

(a) the purported appointment does not have any effect; and

(b) the co-operative is guilty of an offence.

Maximum penalty (for subsection (4)): $2,500.

Subdivision 3 Removal and resignation of auditors

310 Removal and resignation of auditors (cf Corporations Act s 329)

(1) An auditor of a co-operative may be removed from office by resolution of the co-operative at a general meeting of which notice under subsection (2) has been given, but not otherwise.

(2) Notice of intention to move the resolution must be given to the co-operative at least 2 months before the meeting is to be held. However, if the co-operative calls a meeting after the notice of intention is given under this subsection, the meeting may pass the resolution even though the meeting is held less than 2 months after the notice of intention is given.

(3) Where notice under subsection (2) of a resolution to remove an auditor is received by a co-operative, it must as soon as possible send a copy of the notice to the auditor and lodge a copy of the notice with the Registrar.

(4) Within 7 days after receiving a copy of the notice, the auditor may make representations in writing, not exceeding a reasonable length, to the co-operative and request that, before the meeting at which the resolution is to be considered, a copy of the representations be sent by the co-operative at its expense to every member of the co-operative to whom notice of the meeting is sent.

(5) Unless the Registrar on the application of the co-operative otherwise orders, the co-operative must send a copy of the representations in accordance with the auditor's request, and the auditor may, without prejudice to his or her right to be heard orally or, where a firm is the auditor, to have a member of the firm heard orally on its behalf, require that the representations be read out at the meeting.

(6) An auditor of a co-operative may, by notice in writing given to the co-operative, resign as auditor of the co-operative if:

(a) the auditor has, by notice in writing given to the Registrar, applied for consent to the resignation and stated the reasons for the application and, at or about the same time as the notice was given to the Registrar, notified the co-operative in writing of the application to the Registrar; and

(b) the consent of the Registrar has been given.

(7) The Registrar must, as soon as practicable after receiving a notice from an auditor under subsection (6), notify the auditor and the co-operative whether the Registrar consents to the resignation of the auditor.

(8) A statement made by an auditor in an application to the Registrar under subsection (6) or in answer to an inquiry by the Registrar relating to the reasons for the application:

(a) is not admissible in evidence in any civil or criminal proceedings against the auditor; and

(b) may not be made the ground of a prosecution, action or suit against the auditor;

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

(9) Subject to subsection (10), the resignation of an auditor takes effect:

(a) on the day (if any) specified for the purpose in the notice of resignation; or

(b) on the day on which the Registrar gives its consent to the resignation; or

(c) on the day (if any) fixed by the Registrar for the purpose;

whichever last occurs.

(10) The resignation of an auditor of a small co-operative does not require the consent of the Registrar under subsection (6), and takes effect:

(a) on the day (if any) specified for the purpose in the notice of resignation; or

(b) on the day on which the notice is received by the co-operative;

whichever is the later.

(11) Where on the retirement or withdrawal from a firm of a member the firm will no longer be capable, by reason of the provisions of section 324BB (1) (b) (i) or (2) (b) (i) of the Corporations Act (as applying under this Part) of acting as auditor of a co-operative, the member so retiring or withdrawing is (if not disqualified from acting as auditor of the co-operative) taken to be the auditor of the co-operative until he or she obtains the consent of the Registrar to his or her retirement or withdrawal.

(12) Within 14 days after:

(a) the removal from office of an auditor of a co-operative; or

(b) the receipt of a notice of resignation from an auditor of a co-operative;

the co-operative must:

(c) lodge with the Registrar a notice of the removal or resignation in the approved form; and

(d) where there is a trustee for the holders of debentures or CCUs of the co-operative—give to the trustee a copy of the notice lodged with the Registrar.

311 Effect of winding up on office of auditor (cf Corporations Act s 330)

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

(a) a special resolution is passed for the voluntary winding up of the co-operative; or

(b) in a case to which paragraph (a) does not apply—an order is made by the Supreme Court for the winding up of the co-operative.

Subdivision 4 Auditors' fees and expenses

312 Fees and expenses of auditors (cf Corporations Act s 331)

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

Subdivision 5 Protection of auditors

313 Protection of auditors

(1) An auditor of a co-operative has qualified privilege in proceedings for defamation in relation to:

(a) a statement the auditor makes, orally or in writing, in the course of his or her duties as auditor; or

(b) the giving of notice, or the sending of a copy of financial reports or another report, to the Registrar under this Law.

(2) A person has qualified privilege in proceedings for defamation in relation to:

(a) the publishing of a document prepared by an auditor in the course of the auditor's duties and required under this Law to be filed with the Registrar, whether or not the document has been so filed; or

(b) the publishing of a statement made by an auditor as referred to in subsection (1).

(3) This section does not limit or affect a right, privilege or immunity an auditor or other person has, apart from this section, as defendant in proceedings for defamation.

Division 13 Accounting and auditing standards

314 Accounting and auditing standards

(1) A reference in this Part (including provisions of the Corporations Act as applying under this Part) to ***accounting or auditing standards*** is a reference to:

(a) the accounting or auditing standards made for the purposes of the Corporations Act, except as provided by paragraphs (b) and (c); or

(b) the accounting or auditing standards referred to in paragraph (a) but as modified by the National Regulations; or

(c) the accounting or auditing standards prescribed by or determined under the National Regulations in substitution for all or any accounting or auditing standards referred to in paragraph (a).

(2) If an accounting or auditing standard referred to in subsection (1) (a) applies for the purposes of a particular provision of the Corporations Act, the accounting or auditing standard is (subject to subsection (1) (b) and (c)) taken to apply for the purposes of the corresponding provision of this Law (if any).

(3) The National Regulations may provide that an accounting or auditing standard referred to in subsection (1) (a) does not apply for the purposes of:

(a) this Law; or

(b) a particular provision of this Law; or

(c) a particular aspect or application of this Law;

and may do so without substituting another accounting or auditing standard.

315 Interpretation of accounting and auditing standards (cf Corporations Act s 337)

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

(a) expressions used in the standard have the same meanings as they have in this Part or in Chapter 2M of the Corporations Act, as the case requires; and

(b) the provisions of Part 1.2 of this Law or of Part 1.2 of the Corporations Act apply as if the standard's provisions were provisions of this Part or Chapter 2M of the Corporations Act, as the case requires.

Division 14 Exemptions and modifications

316 Exemptions—individual co-operatives (cf Corporations Act s 340)

(1) On an application made in accordance with subsection (4) in relation to a co-operative, the Registrar may, by designated instrument, exempt any of the following from compliance with all or specified requirements of the target provisions referred to in subsection (2):

(a) the directors;

(b) the co-operative;

(c) the auditor.

Note. For the criteria for granting exemptions under this section, see section 318.

(2) The ***target provisions*** are:

(a) Divisions 2–11 of this Part, including provisions of the Corporations Act (as applying under any of the provisions of those Divisions), but not including Division 4 of Part 2M.4 of the Corporations Act as so applying; and

(b) sections 324BA, 324BB and 324BC of the Corporations Act (as applying under section 297 of this Law).

Note. The target provisions generally correspond to the provisions of the Corporations Act referred to in section 340 of that Act (being Parts 2M.2, 2M.3 and 2M.4 (other than Division 4)).

(3) The exemption may:

(a) be expressed to be subject to conditions; and

(b) be indefinite or limited to a specified period; and

(c) if indefinite, be expressed to commence on a specified date.

(4) The application must be:

(a) authorised by a resolution of the directors; and

(b) in writing and signed by a director; and

(c) lodged with the Registrar.

(5) The Registrar must give the applicant written notice of the granting, revocation or suspension of the exemption.

317 Exemptions—classes of co-operatives (cf Corporations Act s 341)

(1) The Registrar may, by designated instrument in respect of a specified class of co-operatives, exempt any of the following from compliance with all or specified requirements of the target provisions referred to in subsection (2):

(a) directors;

(b) the co-operatives themselves;

(c) auditors of the co-operatives.

Note. For the criteria for granting exemptions under this section, see section 318.

(2) The ***target provisions*** are:

(a) Divisions 2–11 of this Part, including provisions of the Corporations Act (as applying under any of the provisions of those Divisions), but not including Division 4 of Part 2M.4 of the Corporations Act as so applying; and

(b) sections 324BA, 324BB and 324BC of the Corporations Act (as applying under section 297 of this Law).

Note. The target provisions generally correspond to the provisions of the Corporations Act referred to in section 341 of that Act (being Parts 2M.2, 2M.3 and 2M.4 (other than Division 4)).

(3) The exemption may:

(a) be expressed to be subject to conditions; and

(b) be indefinite or limited to a specified period; and

(c) if indefinite, be expressed to commence on a specified date.

318 Exemptions—criteria for exemptions for individual co-operatives or (cf Corporations Act s 342)

(1) To grant an exemption under section 316 or 317, the Registrar must be satisfied that complying with the relevant requirements of the target provisions would:

(a) make the financial report or other reports misleading; or

(b) be inappropriate in the circumstances; or

(c) impose unreasonable burdens.

(2) In deciding for the purposes of subsection (1) whether the audit requirements for a small co-operative, or a class of small co-operatives, would impose an unreasonable burden on the co-operative or co-operatives, the Registrar is to have regard to:

(a) the expected costs of complying with the audit requirements; and

(b) the expected benefits of having the co-operative or co-operatives comply with the audit requirements; and

(c) any practical difficulties that the co-operative or co-operatives face in complying effectively with the audit requirements (in particular, any difficulties that arise because a financial year is the first one for which the audit requirements apply or because the co-operative or co-operatives are likely to move frequently between the small and large co-operative categories from one financial year to another); and

(d) any unusual aspects of the operation of the co-operative or co-operatives during the financial year concerned; and

(e) any other matters that the Registrar considers relevant.

(3) In assessing expected benefits under subsection (2), the Registrar is to take account of:

(a) the number of creditors and potential creditors; and

(b) the position of creditors and potential creditors (in particular, their ability to independently obtain financial information about the co-operative or co-operatives); and

(c) the nature and extent of the liabilities of the co-operative or co-operatives.

319 Exemptions—non-auditor members and former members of audit (cf Corporations Act s 342AA)

(1) On an application made in accordance with subsection (4) by any of the following, the Registrar may, by designated instrument, exempt the applicant from all or specified requirements of the target provisions referred to in subsection (2):

(a) a member of the firm who is not a registered company auditor;

(b) a person who has ceased to be:

(i) a member of an audit firm; or

(ii) a director of an audit company; or

(iii) a professional employee of an audit company.

Note. For the criteria for granting exemptions under this section, see section 321.

(2) The ***target provisions*** are the provisions of Division 3 of Part 2M.4 of the Corporations Act (as applying under Division 12 of this Part).

Note. The target provisions correspond to the provisions of the Corporations Act referred to in section 342AA of that Act.

(3) The exemption may:

(a) be expressed to be subject to conditions; and

(b) be indefinite or limited to a specified period; and

(c) if indefinite, be expressed to commence on a specified date.

(4) The application must be:

(a) in writing and signed by the applicant; and

(b) lodged with the Registrar.

(5) The Registrar must give the applicant written notice of the granting, revocation or suspension of the exemption.

320 Exemptions—classes of non-auditor members etc
(cf Corporations Act s 342AB)

(1) The Registrar may, by designated instrument in respect of a specified class of audit firms or audit companies, exempt any of the following from all or specified requirements of the target provisions referred to in subsection (2):

(a) members of firms who are not registered company auditors;

(b) persons who have ceased to be:

(i) members of audit firms; or

(ii) directors of audit companies; or

(iii) professional employees of audit companies.

Note. For the criteria for granting exemptions under this section, see section 321.

(2) The ***target provisions*** are the provisions of Division 3 of Part 2M.4 of the Corporations Act (as applying under Division 12 of this Part).

Note. The target provisions correspond to the provisions of the Corporations Act referred to in section 342AB of that Act.

(3) The exemption may:

(a) be expressed to be subject to conditions; and

(b) be indefinite or limited to a specified period; and

(c) if indefinite, be expressed to commence on a specified date.

321 Exemptions—criteria for exemptions for non-auditor members etc (cf Corporations Act s 342AC)

To grant an exemption under section 319 or 320, the Registrar must be satisfied that complying with the relevant requirements of the target provisions would:

(a) make the financial report or other reports misleading; or

(b) be inappropriate in the circumstances; or

(c) impose unreasonable burdens.

322 Exemptions from National Regulations

(1) The Registrar may, by designated instrument, exempt:

(a) a specified co-operative, a specified person or firm proposed to be appointed as an auditor, or a specified director or auditor of a co-operative; or

(b) a specified class of co-operatives, a specified class of persons or firms proposed to be appointed as auditors, or a specified class of directors or auditors of co-operatives;

from compliance with a provision of the National Regulations made under this Part.

(2) The exemption may:

(a) be expressed to be subject to conditions; and

(b) be indefinite or limited to a specified period; and

(c) if indefinite, be expressed to commence on a specified date.

323 Registrar's power to modify the operation of section 324DA of (cf Corporations Act s 342A)

(1) On an application made in accordance with this section, the Registrar may:

(a) declare that section 324DA (1) of the Corporations Act (as applying under Division 12 of this Part) applies to a registered company auditor, in relation to the audit of an audited body or a class of audited bodies, as if the references in that subsection to 5 successive financial years were references to:

(i) 6 successive financial years; or

(ii) 7 successive financial years; or

(b) declare that section 324DA (2) of the Corporations Act (as applying under Division 12 of this Part) applies to a registered company auditor, in relation to the audit of an audited body or a class of audited bodies during a particular period of 7 successive financial years, as if the reference in that subsection to 5 out of 7 successive financial years were a reference to 6 out of 7 successive financial years.

(2) The following persons may apply for the declaration:

(a) the registered company auditor;

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

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

(3) The application must be:

(a) in writing; and

(b) signed by the applicant; and

(c) lodged with the Registrar.

(4) If the application is made by a registered company auditor who engages, or is to engage, in audit activities on behalf of a firm or company, the application must include the firm's or company's written consent to the application.

(5) If the application is made by a firm or company in relation to a registered company auditor, the application must include the registered company auditor's written consent to the application.

(6) To make a declaration under subsection (1), the Registrar must be satisfied that, without the modification, Division 4 of Part 2M.4 of the Corporations Act (as applying under Division 12 of this Part) would impose an unreasonable burden on:

(a) a registered company auditor; or

(b) a firm or company that is applying for the declaration; or

(c) the audited body or bodies in relation to which the application was made.

(7) In deciding for the purposes of subsection (6) whether, without the modification, Division 4 of Part 2M.4 of the Corporations Act (as applying under Division 12 of this Part) would impose an unreasonable burden on a person referred to in that subsection, the Registrar is to have regard to:

(a) the nature of the audited body or bodies, including whether the activity in which the audited body or bodies engage is such that specialist knowledge about that activity is necessary to carry out the audit properly; and

(b) the availability of other registered company auditors capable of providing satisfactory audit services for the audited body or bodies; and

(c) any other matters which the Registrar considers relevant.

(8) The Registrar must give the applicant written notice of the making, revocation or suspension of the declaration.

324 Auditor to notify co-operative of declaration
(cf Corporations Act s 342B)

(1) If a registered company auditor plays a significant role in the audit of a co-operative in reliance on a declaration by the Registrar under section 323, the auditor must give the co-operative written notice of the declaration.

Maximum penalty: $500.

(2) The notice must specify:

(a) the name of the registered company auditor; and

(b) the additional financial years for which the registered company auditor is, because of the declaration under section 323, eligible to play a significant role in the audit of the co-operative.

(3) The notice must be given:

(a) as soon as practicable after the declaration is made if the auditor has been appointed before the declaration is made; or

(b) before the auditor is appointed if the declaration is made before the auditor is appointed.

325 Modification by National Regulations (cf Corporations Act s 343)

(1) The National Regulations may modify the operation of this Part in relation to:

(a) a specified co-operative; or

(b) all co-operatives of a specified kind.

(2) This section does not affect the power to make National Regulations prescribing modifications to applied provisions.

326 Amendment, suspension or revocation of exemption

(1) The Registrar may amend, suspend or revoke an exemption granted under this Division.

(2) The power to amend, suspend or revoke an exemption granted under this Division is exercisable in the same way, and subject to the same conditions, as the power to grant the exemption.

Division 15 Miscellaneous

327 Disclosure by directors

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

Maximum penalty: $2,000.

328 Contravention by directors of provisions of this Part
(cf Corporations Act s 344)

(1) A director of a co-operative contravenes this subsection if they fail to take all reasonable steps to comply with or to secure compliance with:

(a) section 272, 284 (1) or (2), 289, 290, 291, 292 or 293; or

(b) section 315 (1) of the Corporations Act as applying under section 285 (2) of this Law; or

(c) section 318 of the Corporations Act as applying under section 288 of this Law.

Note. This subsection is a civil penalty provision (see section 554).

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

Maximum penalty: $200,000 or imprisonment for 5 years, or both.

329 Submission of financial reports to Financial Reporting Panel

Without limitation, the National Regulations may make provision for or with respect to requiring the submission of financial reports to the Financial Reporting Panel.

Note. The Financial Reporting Panel is established under the ASIC Act.

330 Notification of ASIC by Registrar of certain matters relating to auditor independence

The Registrar may notify ASIC of any investigation or prosecution undertaken for a contravention, or an alleged or possible contravention, of section 324CA, 324CB, 324CC, 324CD, 324CE, 324CF or 324CG of the Corporations Act as applying under this Law.

Part 3.4 Funds and property

Division 1 Power to raise money

331 Meaning of "obtaining of 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.

332 Fundraising to be in accordance with National Regulations

The National Regulations may impose requirements and restrictions on the obtaining of financial accommodation and the giving of security for obtaining financial accommodation by a co-operative.

333 Limits on deposit taking

A co-operative must not accept money on deposit unless:

(a) the co-operative is authorised by its rules to accept money on deposit and was authorised by its rules immediately before the commencement of this section in this jurisdiction to accept money on deposit; or

(b) the co-operative was a deposit-taking corporation immediately before it became a co-operative and it is authorised by its rules to accept money on deposit; or

(c) for a merged co-operative—one or more of the co-operatives involved in the merger was a deposit-taking co-operative immediately before the registration of the merged co-operative and the merged co-operative is authorised by its rules to accept money on deposit.

Note. Paragraph (a) prevents a co-operative from accepting money on deposit unless it was authorised to do so before the commencement of this section. Accordingly, co-operatives registered before that commencement but not so authorised and all co-operatives registered after that commencement are prevented from accepting money on

deposit. Authorisation under previous legislation commenced at various times in the various jurisdictions.

334 Members and other persons not required to see to application of money

A member or other person from whom a co-operative obtains financial accommodation is not required to see to its application and is not affected or prejudiced by the fact that in doing so the co-operative contravened a provision of this Law, the National Regulations or the rules of the co-operative.

335 Registrar's directions about obtaining financial accommodation

(1) The Registrar may, by written notice served on a co-operative, give a direction to the co-operative as to the way in which it is to exercise its functions in relation to the activities of the co-operative in obtaining financial accommodation.

(2) A direction under subsection (1) may make provision for one or more of the following matters:

(a) requiring the co-operative to stop obtaining financial accommodation or to stop obtaining financial accommodation in a particular way;

(b) requiring the co-operative to repay in accordance with the direction all or part of financial accommodation obtained;

(c) requiring the co-operative to refinance in a stated way financial accommodation repaid in accordance with the Registrar's direction;

(d) the way in which the co-operative is permitted to invest or use the proceeds of financial accommodation it obtains.

(3) The co-operative may, within 28 days after the direction is given, apply to the designated tribunal for a review of the direction, and the designated tribunal may confirm, modify or rescind the direction or substitute another direction.

336 Subordinated debt

(1) A co-operative may incur subordinated debt.

(2) ***Subordinated debt*** is debt incurred under an agreement under which, in the event of the winding up of the co-operative, a claim of the creditor against the co-operative for the debt is to rank in priority:

(a) equally with the claim of another creditor who is a party to a similar agreement; and

(b) except as provided by paragraph (a)—after the claims of another creditor of the co-operative and before the claims of members to repayment of share capital in the co-operative.

(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 applying under this Law.

337 Application of Corporations Act—issues of debentures

(1) The debentures of a co-operative are declared to be applied Corporations legislation matters for the purposes of the Corporations application legislation of this jurisdiction in relation to Part 1.2A, Chapters 2L, 6CA and 6D, and Part 7.10 of the Corporations Act, subject to the following modifications:

(a) sections 111AS and 283I of the Corporations Act are taken to be omitted;

(b) the modifications referred to in section 13 (3) of this Law so far as they are relevant.

Note. See section 13, including Note 1 to that section.

(2) However, the provisions of the Corporations Act applying to debentures of a co-operative by this section do not apply to:

(a) a loan to which section 343 applies; or

(b) an issue of debentures of a co-operative that is made:

(i) solely to members of the co-operative; or

(ii) solely to members and employees of the co-operative; or

(iii) to a person who on becoming an inactive member of the co-operative has had his or her share capital converted to debt.

(3) The following provisions of the Corporations Act as applying under this section are civil penalty provisions under this Law (see section 554) and are not civil penalty provisions under that Act:

(a) section 674 (2) and (2A);

(b) section 675 (2) and (2A);

(c) section 1041A;

(d) section 1041B (1);

(e) section 1041C (1);

(f) section 1041D;

(g) section 1043A (1) and (2).

(4) Words used in subsection (2) that are not defined in this Law have the same meanings as they have in the Corporations Act.

338 Disclosure statement

(1) This section applies to the issue of debentures of a co-operative if the issue is made:

(a) solely to members; or

(b) solely to members and employees of the co-operative;

but does not apply to the issue of debentures under section 108 (1), 128 (2) or 163 (2).

(2) Before issuing to a person debentures to which this section applies, a co-operative must:

(a) inform the person in writing that the person is entitled to receive a disclosure statement on request to the co-operative; and

(b) give the person a disclosure statement if the person requests it.

(3) The ***disclosure statement*** is a statement, approved by the Registrar, and containing the information that is reasonably necessary to enable a person to make an informed assessment of the financial prospects of the co-operative, including:

(a) the purpose for which the money raised by the co-operative by the issue of debentures is to be used; and

(b) the rights and liabilities attaching to the debentures; and

(c) the financial position of the co-operative; and

(d) the interests of the directors of the co-operative in the issue of the debentures; and

(e) compensation or consideration to be paid to officers or members of the co-operative in connection with the issue of debentures; and

(f) other matters the Registrar directs.

(4) A draft disclosure statement must be submitted to the Registrar at least 28 days (or the shorter period the Registrar may allow in a particular case) before the issue of debentures.

(5) Section 25 (except subsections (1), (2) and (3)) applies to a disclosure statement under this section with any necessary modifications, and in particular as if a reference in that section to a formation meeting were a reference to the issue of debentures.

(6) The Registrar may, by designated instrument, exempt a co-operative or class of co-operatives from complying with this section.

(7) An exemption may be given unconditionally or subject to conditions.

339 Restrictions on advertising and publicity

(1) A person must not:

(a) advertise; or

(b) publish a statement that directly or indirectly refers to;

an offer, or intended offer, of debentures in a co-operative unless a disclosure statement relating to the debentures is approved by the Registrar under section 338.

Maximum penalty: $1,000.

(2) A person does not contravene subsection (1) by publishing an advertisement or statement if they publish it in the ordinary course of a business of:

(a) publishing a newspaper or magazine; or

(b) broadcasting by radio or television;

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

(3) An offence based on subsection (1) is an offence of strict liability.

340 Application money to be held on trust (cf Corporations Act s 722)

(1) If a person offers debentures for issue under a disclosure statement, the person must hold:

(a) all application money received from people applying for debentures under the disclosure statement; and

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

in trust under this section for the applicants until:

(c) the debentures are issued; or

(d) the money is returned to the applicants.

Maximum penalty: $2,500 or imprisonment for 6 months, or both.

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

Maximum penalty: $2,500 or imprisonment for 6 months, or both.

(3) An offence based on subsection (1) or (2) is an offence of strict liability.

341 Approval of board for transfer of debentures

A debenture of a co-operative cannot be sold or transferred except with the consent of the board and under the rules of the co-operative.

342 Application of Corporations Act—reissue of redeemed debentures

Debentures issued by a co-operative to any of its members or employees are declared to be applied Corporations legislation matters for the purposes of the Corporations application legislation of this jurisdiction in relation to section 563AAA of the Corporations Act, subject to the following modifications:

(a) the section applies as if a co-operative were a company;

(b) the modifications referred to in section 13 (3) of this Law so far as they are relevant.

Note. See section 13, including Note 1 to that section.

343 Compulsory loan by member to co-operative

(1) A co-operative may, by levy, require its members to lend money, with or without security, to the co-operative, in accordance with a proposal approved by special resolution of the co-operative passed by a special postal ballot.

(2) The term of the loan cannot be for more than 7 years or any shorter period prescribed in the National Regulations.

(3) The proposal must:

(a) be accompanied by a disclosure statement, approved by the Registrar, explaining the purpose for which the money raised by the co-operative under the proposal is to be used and including the other information the Registrar directs; and

(b) clearly show the total amount of the loan to be raised by the co-operative and the basis on which the money required to be lent by each member is to be calculated; and

(c) be accompanied by a statement informing the member that the member may inform the board by notice on or before the date of closing of the ballot for the special postal ballot that the member resigns on the registration of the special resolution.

(4) If the proposal allows, the board of the co-operative may, under the terms of the proposal, deduct the money required to be lent by a member to the co-operative from money payable from the co-operative to the member for his or her dealings with the co-operative.

(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 way of making the deductions.

(6) When the special resolution is registered, the proposal is binding on:

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

(b) all persons who become members of the co-operative after the date and before the total amount of the loan to be raised under the proposal has been raised.

(7) A draft disclosure statement must be submitted to the Registrar before notice of the ballot is given to members.

(8) Section 25 (except subsections (1), (2) and (3)) applies to a disclosure statement under this section with any necessary modifications, and in particular as if a reference in that section to the holding of a formation meeting were a reference to the giving of notice of the ballot to members.

(9) The National Regulations may prescribe the maximum amount that may be levied in any period of 12 months on either or both of the following:

(a) an individual member of the co-operative;

(b) all members of the co-operative or all members of a class of members.

(10) The Registrar may, by designated instrument, exempt a co-operative or class of co-operatives from complying with all or specified provisions of this section.

(11) An exemption may be given unconditionally or subject to conditions.

344 Interest payable on compulsory loan

(1) The rate of interest payable by a co-operative for a loan under section 343 during a period is:

(a) for a co-operative with share capital:

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

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

(iii) if a rate of dividend has never been decided for the share capital of the co-operative—the rate the board of the co-operative considers reasonable; or

(b) for a co-operative without share capital—the rate the board of the co-operative considers reasonable; or

(c) if the rules of the co-operative provide for a rate to be payable that is higher than the rate applicable under paragraph (a) or (b)—the higher rate.

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

Division 2 Co-operative capital units (CCUs)

345 General nature of CCU

(1) A co-operative capital unit (in this Law referred to as a ***CCU***) is an interest issued by a co-operative conferring an interest in the capital (but not the share capital) of the co-operative.

(2) A CCU:

(a) is personal property; and

(b) is transferable or transmissible as provided by this Law and the rules of the co-operative, subject to the terms of issue of the CCU; and

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

(3) Subject to subsection (2):

(a) the laws applicable to ownership of and dealing with personal property apply to a CCU in the same way as they apply to other property; and

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

(4) A transferor of a CCU remains the holder of the CCU until the transfer is registered and the name of the transferee is entered in the register of CCUs and their holders (referred to in section 212 (1) (e)) in respect of the CCU.

(5) Despite any rule of law or equity to the contrary, a condition subject to which a CCU is issued is not invalid merely because the CCU is, by the condition, made irredeemable or redeemable only on the happening of a contingency however remote or at the end of a period however long.

346 Priority of CCUs on winding up

(1) On a winding up of a co-operative, a debt owed to a person as the holder or former holder of a CCU issued by the co-operative is to rank for priority of payment in accordance with the terms of issue of the CCU.

(2) Such a debt may rank as a secured debt if it is secured but if it is unsecured may not rank in priority to other unsecured debts.

(3) Such a debt may rank equally with or behind unsecured debts and (if the debt ranks behind unsecured debts) may rank in priority to, equally with or behind debts due to contributories.

347 Financial accommodation provisions apply to issue of CCUs

(1) The issuing of CCUs is to be considered to be the obtaining of financial accommodation and accordingly Division 1 applies to the issue of CCUs.

(2) For the purpose of that Division, a CCU is to be considered to be a debenture.

348 CCUs can be issued to non-members

CCUs may be issued to persons whether or not they are members of the co-operative.

349 Minimum requirements for rules concerning CCUs

The rules of a co-operative that permit the co-operative to issue CCUs must contain provision to the effect of the following provisions and must not contain provisions that are inconsistent with the following provisions:

(a) either (as specified in the rules):

(i) each holder of a CCU is entitled to one vote only at a meeting of the holders of CCUs; or

(ii) each holder of a CCU is entitled to one vote per CCU held at a meeting of the holders of CCUs;

(b) the rights of the holders of CCUs may be varied only in the manner and to the extent provided by their terms of issue and only with the consent of at least 75% of the holders of CCUs given in writing or at a meeting;

(c) the holder of a CCU has, in the person's capacity as a holder, none of the rights or entitlements of a member of the co-operative;

(d) the holder of a CCU is entitled to receive notice of all meetings of the co-operative and all other documents in the same manner as the holder of a debenture of the co-operative.

350 CCUs not to be issued unless terms of issue approved by Registrar

(1) A co-operative is not to issue CCUs unless:

(a) the terms of issue have been approved by a special resolution of the co-operative; and

(b) the issue is made pursuant to an offer accompanied by a copy of a statement approved by the Registrar for the purposes of the issue; and

(c) the Registrar approves of the terms of the issue.

(2) The terms of issue must specify the following (but this subsection does not limit the contents of the terms of issue):

(a) details of entitlement to repayment of capital;

(b) details of entitlement to participate in surplus assets and profits;

(c) details of entitlement to interest on capital (whether cumulative or non-cumulative interest);

(d) details of how capital and interest on capital are to rank for priority of payment on a winding up;

(e) whether there is a limit on the total holding of CCUs that may be acquired by persons who are not members of the co-operative and, if there is a limit, what the limit is.

(3) The statement approved by the Registrar for the purposes of the issue is to set out the terms of the issue, the rights of the holders of CCUs, the terms of redemption and the manner of transferability of CCUs.

(4) The Registrar is not to approve of the terms of issue unless satisfied that they will not result in a failure to comply with co-operative principles and are not contrary to the rules of the co-operative or this Law.

351 Directors' duties concerning CCUs

In discharging their duties, it is proper for the directors of a co-operative to take into account that the holders of CCUs, in their capacity as holders of CCUs, have none of the rights and entitlements of, and are not entitled to be regarded as, members of the co-operative.

352 Redemption of CCUs

(1) The redemption of CCUs is not to be considered to be a reduction in the share capital of the co-operative.

(2) A co-operative may redeem CCUs but only on the terms and in the way that are provided by the terms of their issue and only if they are fully paid up.

(3) CCUs may not be redeemed except out of:

(a) profits; or

(b) the proceeds of a fresh issue of shares, or an approved issue of CCUs, made for the purpose of the redemption.

(4) An issue of CCUs is an approved issue for the purposes of subsection (3) if there is the same entitlement to priority of payment of capital and dividend in relation to shares in the co-operative as there was for the redeemed CCUs.

(5) Any premium payable on redemption is to be provided for out of profits or out of the share premium account or an account created for that purpose.

353 Capital redemption reserve

(1) This section applies if CCUs are redeemed out of profits.

(2) Out of profits there is to be transferred to a reserve called the capital redemption reserve a sum equal to the nominal amount of the CCUs redeemed.

(3) Subject to subsection (5), the provisions of this Law relating to the reduction of share capital of a co-operative apply as if the capital redemption reserve were paid up share capital of the co-operative.

(4) Subject to subsection (5), the capital redemption reserve may be applied in paying up unissued shares of the co-operative to be issued to members of the co-operative as fully paid bonus shares.

(5) Subsections (3) and (4) do not apply to a non-distributing co-operative.

Note. Section 448 provides that, on a winding up of a non-distributing co-operative, the surplus property of the co-operative must be distributed as required by the rules of the co-operative.

354 Issue of shares in substitution for redemption

(1) If a co-operative has redeemed or is about to redeem CCUs held by an active member of the co-operative, it may:

(a) issue shares to the member up to the sum of the nominal value of the CCUs redeemed or to be redeemed, as if those CCUs had never been issued; or

(b) pay up amounts unpaid on shares held by the member up to the sum of the nominal value of the CCUs redeemed or to be redeemed, as if those CCUs had never been issued.

(2) This section applies only if the terms of issue of the CCUs provide for the conversion of CCUs held by an active member of the co-operative into shares of the co-operative.

Division 3 Disposal of surplus from activities

355 Retention of surplus for benefit of co-operative

The board of a co-operative may resolve to retain all or part of the surplus arising in a year from the business of the co-operative to be applied for the benefit of the co-operative.

356 Application for charitable purposes or approved activities

(1) A co-operative may apply a part of the surplus arising in a year from the business of the co-operative for any charitable purpose.

(2) A distributing co-operative may apply a part of the surplus arising in a year from the business of the co-operative for supporting an activity approved by the co-operative.

(3) The rules of a co-operative must limit the amount that may be applied under subsection (1) or (2) to a stated proportion of the surplus.

357 Distribution of surplus or reserves to members

(1) A distributing co-operative may apply a part of the surplus arising in a year from the business of the co-operative or a part of the reserves of the co-operative by:

(a) distribution to members as a rebate in proportion to:

(i) the value of business done by each member with the co-operative; or

(ii) profits earned by the co-operative on business done by each member with the co-operative; or

(b) the issue to members of bonus shares in proportion to:

(i) the value of business done by each member with the co-operative; or

(ii) profits earned by the co-operative on business done by each member with the co-operative; or

(iii) shares held by each member; or

(c) the issue to members of a limited dividend for shares held by each member.

(2) The amount of a rebate payable to a member under subsection (1) (a) may be applied:

(a) in payment for the issue to the member of bonus shares, with the consent of the member; or

(b) as a loan to the co-operative:

(i) with the consent of the member; or

(ii) if the rules of the co-operative authorise the amount of a rebate payable to a member under subsection (1) (a) to be applied as a loan to the co-operative.

(3) The amount of a dividend payable to a member under subsection (1) (c) may be applied:

(a) in payment for the issue to the member of bonus shares, with the consent of the member; or

(b) as a loan to the co-operative:

(i) with the consent of the member; or

(ii) if the rules of the co-operative authorise the amount of a dividend payable to a member under subsection (1) (c) to be applied as a loan to the co-operative.

(4) A loan to the co-operative authorised by the rules (as referred to in subsection (2) (b) (ii) or (3) (b) (ii)) is repayable at call and must bear interest at a rate not lower than the rate prescribed by the National Regulations.

(5) In this section:

limited dividend means a dividend that is not more than the amount prescribed by the National Regulations.

358 Application of surplus to other persons

(1) Part of the surplus arising in a year from the business of a distributing co-operative may be credited to a person who is not a member, but is qualified to be a member, by way of rebate in proportion to the value of business done by the person with the co-operative or to the profit earned by the co-operative, if:

(a) the person was a member when the business was done and the membership has lapsed; or

(b) the person has applied for membership after the business was done.

(2) Nothing in this section precludes the payment of a bonus to an employee under the terms of his or her employment.

Division 4 Acquisition and disposal of assets

359 Acquisition and disposal of assets

(1) A co-operative must not do any of the following things except as approved by special resolution by a special postal ballot:

(a) sell or lease the undertaking of the co-operative as a going concern;

(b) sell or lease a part of the undertaking of the co-operative that relates to its primary activities and the value of which represents a percentage prescribed by the National Regulations or more of the total book value of the undertaking;

(c) acquire from or dispose of to:

(i) a director or employee of the co-operative; or

(ii) a relative (within the meaning of the Corporations Act) of a director or employee of the co-operative or of the spouse or de facto partner of a director or employee of the co-operative;

property the value of which represents a percentage prescribed by the National Regulations or more of the total book value of all the assets of the co-operative relating to its primary activities;

(d) acquire an asset the value of which represents a percentage prescribed by the National Regulations or more of the total book value of the undertaking of the co-operative, if the acquisition would result in the co-operative commencing to carry on an activity that is not one of its primary activities;

(e) dispose of an asset, if the disposal would result:

(i) in the co-operative ceasing to carry on a primary activity of the co-operative; or

(ii) in the ability of the co-operative to carry on a primary activity of the co-operative being substantially impaired.

Maximum penalty: $6,000.

(2) If a co-operative contravenes this section, each person who is a member of the board of the co-operative is taken to have committed the offence, if the person:

(a) was in a position to influence the conduct of the co-operative in relation to the commission of the offence by it; and

(b) did not use all due diligence to prevent the commission of the offence by it.

(3) The Registrar may, by designated instrument, exempt a co-operative from compliance with a provision of this section and section 248 in relation to a matter to which this section applies.

(4) An exemption may be given unconditionally or subject to conditions.

(5) In this section:

undertaking of a co-operative means all the assets of the co-operative.

Note. This section applies to non-distributing co-operatives as well as to distributing co-operatives.

Part 3.5 Restrictions on acquisition of interests in co-operatives

Division 1 Restrictions on share and voting interests

360 Notice required to be given of voting interest

(1) A person (whether or not a member of the co-operative) must give notice to a co-operative within 5 business days after becoming aware the person has a relevant interest in the right to vote of a member of the co-operative.

Maximum penalty: $2,000.

(2) A person (whether or not a member of the co-operative) who has ceased to have a relevant interest in the right to vote of a member of a co-operative must give notice to the co-operative within 5 business days after becoming aware of the fact.

Maximum penalty: $2,000.

(3) Section 233 provides for the effect of a person having a relevant interest in the right to vote of a member of a co-operative.

Note. See Part 1 of Schedule 2 for the term "relevant interest".

361 Notice required to be given of substantial share interest

(1) A person must give notice to a co-operative within 5 business days after becoming aware the person has a substantial share interest in the co-operative.

Maximum penalty: $2,000.

(2) A person who has a substantial share interest in a co-operative must give notice to the co-operative within 5 business days after becoming aware a substantial change has occurred in the share interest.

Maximum penalty: $2,000.

(3) A person who has ceased to have a substantial share interest in a co-operative must give notice to the co-operative within 5 business days after becoming aware the person has ceased to have the interest.

Maximum penalty: $2,000.

(4) A person has a ***substantial share interest*** in a co-operative if the nominal value of the shares in the co-operative in which the person has a relevant interest represents 5% or more of the nominal value of the issued share capital of the co-operative.

(5) A ***substantial change*** takes place in a person's share interest in a co-operative if there is an increase or decrease in the number of shares in the co-operative in which the person has a relevant interest and the increase or decrease represents at least 1% of the nominal value of the issued share capital of the co-operative.

362 Requirements for notices

A notice required under this Division must:

(a) be in the approved form; and

(b) state the particulars prescribed by the National Regulations of the interest or change being notified.

363 Maximum permissible level of share interest

(1) A person must not have a relevant interest in shares of a co-operative the nominal value of which is more than a maximum of 20% of the nominal value of the issued share capital of the co-operative.

(2) The Registrar may, by designated instrument, state a maximum greater than 20% as the maximum for subsection (1) for a particular co-operative or class of co-operatives.

Note. For example, a co-operative group may not have enough members to allow each member to comply with subsection (1).

(3) The maximum of 20% stated by subsection (1) may be increased for a particular person by special resolution of the co-operative concerned passed by a special postal ballot.

(4) A resolution under subsection (3) does not have effect unless it is approved by the Registrar.

(5) The Registrar's approval of the resolution may be given subject to conditions.

364 Shares to be forfeited to remedy contravention

(1) If a person has a relevant interest in a share of a co-operative in contravention of this Division that is not remedied within 14 days of a notice of that contravention being issued by the board, the board of the co-operative must declare to be forfeited enough of the shares in which the person has a relevant interest to remedy the contravention.

(2) The shares to be forfeited are:

(a) the shares nominated by the person for the purpose; or

(b) in the absence of that 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 163, 164 and 165 apply to shares forfeited under this section as if the shares had been forfeited under Part 2.6.

365 Powers of board in response to suspected contravention

(1) If the board of a co-operative is satisfied on reasonable grounds that a person has contravened section 361 in relation to the co-operative, the board may do either or both of the following:

(a) refuse to register a share transfer involving the person;

(b) suspend a stated right or entitlement a person has as a member of the co-operative or attaching to any shares of the co-operative in which the person has a relevant interest.

(2) The board may ask a person who it suspects has a relevant interest in shares of the co-operative to give stated information to the board about the interest.

(3) A failure by a person to comply with a request under subsection (2) is a reasonable ground for being satisfied the person has contravened section 361.

366 Powers of Supreme Court about contravention

(1) If a person has contravened section 360 or 361 in relation to a co-operative, the Supreme Court may, on the application of the co-operative or the Registrar, make any order it considers appropriate.

(2) Without limiting subsection (1), an order may include:

(a) a remedial order; and

(b) for securing compliance with any other order made under this section—an order directing the co-operative or another person to do or refrain from doing a stated act.

(3) An order may be made whether or not the contravention continues.

(4) Proof to the satisfaction of the Supreme Court at the hearing of an application that:

(a) a person has a relevant interest in a share of a co-operative because an associate (within the meaning of Part 2 of Schedule 2) of the person has a relevant interest in a share; and

(b) the associate became entitled to the relevant interest within 6 months before the application was filed with the 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.

367 Co-operative to inform Registrar of interest over 20%

(1) A co-operative must inform the Registrar in writing within 14 days after the board becomes aware that:

(a) a particular person has a relevant interest in shares of the co-operative the nominal value of which is more than 20% of the nominal value of the issued share capital of the co-operative; or

(b) there has been a change in the number of shares in which a person referred to in paragraph (a) holds a relevant interest.

(2) The notification must give details of the relevant interest or change concerned.

368 Co-operative to keep register

(1) A co-operative must keep a register of notifiable interests.

(2) The co-operative must enter in the register the names of persons from whom the co-operative has received a notice under this Division together with the information contained in the notice.

(3) The register must be open for inspection by a member of the co-operative free of charge.

369 Unlisted companies to provide list of shareholders etc

(1) This section applies to a company registered under the Corporations Act that is not a listed corporation (within the meaning of that Act).

(2) The Registrar or the board of a co-operative may at any time request a company to which this section applies that is a member of a co-operative to give the Registrar and the board a list showing:

(a) the name of each member of the company; and

(b) if the company is limited by shares (or by shares and by guarantee):

(i) the number of shares in the company held by each member; and

(ii) the name of each person who has a relevant interest in a share of the company together with details of the interest; and

(c) the name of each person who is an associate (within the meaning of the Corporations Act) of the company.

(3) A list under subsection (2) must be given within 28 days after a written request for the list is made to the company by the Registrar or board.

(4) The details to be shown on the list are the details as at the date stated in the request.

Note. Section 91 provides that the board of a co-operative may give directions about disclosure of relevant interests and instructions.

370 Excess share interest not to affect loan liability

(1) This section applies if a co-operative has made a loan to a member and the member had or has a relevant interest in shares of the co-operative in contravention of this Division.

(2) Until the amount lent to the member has been repaid to the co-operative (with the interest payable), the member is liable to make to the co-operative the payments the member would be liable to make if all the shares concerned were lawfully held by the member.

(3) Security for the repayment of the loan is not affected by a contravention of this Division.

371 Extent of operation of this Division

This Division:

(a) applies to all individuals, whether resident in this jurisdiction 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 this jurisdiction or in Australia or not; and

(b) extends to acts done or omitted to be done outside this jurisdiction, whether in Australia or not.

372 Exemptions

(1) The Registrar may, by designated instrument, exempt a person or class of persons from the operation of this Division.

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

Division 2 Restrictions on certain share offers

373 Share offers to which this Division applies

(1) This Division applies to the following offers to purchase shares in a co-operative:

(a) an offer made as part of a proposal for, or that is conditional on, the sale of the business or part of the business, as a going concern, of the co-operative;

(b) an offer made as part of a proposal for, or that is conditional on, the registration of the co-operative as a company under the Corporations Act;

(c) an offer made as part of a proposal for, or that is conditional on, the winding up of the co-operative;

(d) an offer that would result in a contravention of section 363 were the offerer 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 offerer having a substantial share interest in the co-operative, or to a substantial change taking place in a substantial share interest the offerer has in the co-operative, were the offerer 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*** and ***substantial change*** have the same meanings as they have in section 361.

374 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 a special postal ballot; and

(b) by the Registrar.

(2) Despite subsection (1), an offer referred to in section 373 (1) (e) can be made even if it has not been approved as referred to in subsection (1) if it is made in circumstances stated in, and in accordance with the requirements of, the National Regulations.

375 Some offers totally prohibited if they discriminate

An offer referred to in section 373 (1) (a)–(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.

376 Offers to be submitted to board first

(1) A proposal to make an offer to which this Division applies must in the first instance be submitted to the board of the co-operative.

(2) 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 co-operative of the expenses involved in holding the ballot.

(3) The board may require payment under subsection (2) in advance.

(4) A requisition for a special postal ballot for this Division cannot be served unless the board has had a reasonable opportunity to consider the proposed offer concerned.

(5) A period of 28 days is a reasonable opportunity for considering a proposed offer but the Registrar may extend the period in a particular case, whether before or after the end of the 28 days, by written notice to the co-operative.

377 Announcements of proposed takeovers about proposed company

(1) This section applies to an offer to purchase shares in a co-operative made as part of a proposal for, or that is conditional on, the registration of the co-operative as a company (the ***proposed company***) under the Corporations Act.

(2) A person must not make a public announcement to the effect the person proposes, or 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 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 the person, or the person and the other person or persons, will be able to perform obligations arising under the scheme or announcement or under the Corporations Act in relation to the scheme or announcement if a substantial proportion of the offers or the offers made under the announcement are accepted.

Maximum penalty: $20,000 or imprisonment for 5 years, or both.

(3) If a person makes a public announcement to the effect the person proposes, or 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.

Maximum penalty: $10,000 or imprisonment for 2 years, or both.

(4) A person is not liable to be convicted of more than one offence under subsection (3) for any one public announcement.

(5) A person who contravenes this section (whether or not the person is convicted of an offence for the contravention) is liable to pay compensation to a person who suffered loss because of entering into a share transaction in reliance on the public announcement concerned.

(6) The amount of the compensation is the difference between the price of the shares at which the transaction was entered into and the price of the shares at which the transaction would have been likely to have been entered into if the person had not made the public announcement.

(7) A person does not contravene subsection (3) and is not liable to pay compensation for the contravention if it is proved the person could not reasonably have been expected to make the takeover bid concerned:

(a) because of circumstances that existed when the public announcement was made but of which the person had no knowledge and could not reasonably have been expected to have knowledge; or

(b) because of a change in circumstances after the announcement was made, other than a change in circumstances caused directly or indirectly by the person.

(8) Expressions used in this section have the same meanings as they had in section 746 of the Corporations Law as applying on 12 March 2000.

378 Additional disclosure requirements for offers involving conversion to company

If an offer is part of a proposal for, or is conditional on, the registration of the co-operative as a company under the Corporations Act, the disclosure statement required to be sent to members for the special postal ballot must contain the following additional information:

(a) full particulars of any proposal by which a director will acquire a relevant interest in a share of the company to be formed;

(b) other information that:

(i) is material to the making of a decision by a member whether or not to agree to the making of the offer; and

(ii) is within the knowledge of the directors; and

(iii) has not previously been disclosed to the members;

(c) other information the Registrar directs.

379 Consequences of prohibited offer

(1) If a person makes an offer to purchase shares in a co-operative in contravention of this Division:

(a) the person cannot be registered as the holder of the shares concerned; and

(b) if the transfer of the shares is registered—the person cannot vote at a meeting of the co-operative.

(2) A vote cast by or for a member when the member cannot vote because of this section must be disregarded.

380 Exemptions

(1) The Registrar may, by designated instrument, exempt a co-operative from compliance with a provision of this Division and section 248 in relation to a matter to which this Division applies.

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

Chapter 4 Structural and other events for co-operatives

Part 4.1 Appointment of administrator

Division 1 Introductory

381 Operation of this Part

This Part provides 2 methods for the administration of a co-operative, as follows:

(a) administration under the Corporations Act as applying under Division 2;

(b) administration under Division 3.

Division 2 Administration under Corporations Act

382 Application of Corporations Act—administration of co-operative

A co-operative is declared to be an applied Corporations legislation matter for the purposes of the Corporations application legislation of this jurisdiction in relation to Part 5.3A and Division 3 of Part 5.9 of the Corporations Act, subject to the following modifications:

(a) a reference in the provisions to sections 128 and 129 of the Corporations Act is to be read as a reference to Division 3 of Part 2.2 of this Law;

(b) a reference in section 436D of the Corporations Act to "section 436A, 436B or 436C" is to be read as including a reference to section 385 of this Law;

(c) a reference in section 436E (4) (a) or 448B of the Corporations Act to an administrator is to be read as not including a reference to an administrator appointed under section 385 of this Law;

(d) a reference in section 440D (2) (b) of the Corporations Act to prescribed proceedings is to be read as a reference to proceedings prescribed by the local regulations;

(e) section 444GA of the Corporations Act is taken to include a provision to the effect that the section has effect subject to Divisions 7 and 8 of Part 2.4 of this Law;

(f) section 446B of the Corporations Act is taken to be omitted;

(g) the reference in section 600H (2) of the Corporations Act to "a compromise or arrangement under part 5.1" is to be read as a reference to a compromise or arrangement under Part 4.4 of this Law;

(h) the modifications referred to in section 13 (3) of this Law so far as they are relevant.

Note. See section 13, including Note 1 to that section.

383 Appointment of administrator by Registrar in the case of insolvency

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

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

Division 3 Administration—alternative procedure

384 Operation of this Division

(1) The provisions of the Corporations Act as applying under Division 2 do not apply to the appointment of an administrator under this Division or to an administrator so appointed.

(2) This Division does not apply to the appointment of an administrator under section 383 or to an administrator so appointed.

385 Appointment of administrator by Registrar

(1) The Registrar may, by written notice, appoint an administrator to conduct the affairs of a co-operative.

(2) A notice of appointment must state:

(a) the date of appointment; and

(b) the appointee's name; and

(c) the appointee's business address.

(3) If the appointee's name or business address changes, the appointee must immediately give written notice of the change to the Registrar.

(4) The Registrar must not appoint an administrator unless the necessary grounds for taking the action exist, as referred to in section 455.

386 Effect of appointment of administrator

(1) On the appointment of an administrator of a co-operative:

(a) the directors of the co-operative cease to hold office; and

(b) all contracts for the provision of secretarial or administrative services for the co-operative are terminated; and

(c) the administrator may terminate any contract of employment with the co-operative or any contract for providing other services to the co-operative.

(2) An administrator of a co-operative has the functions of the board of the co-operative, including the board's powers of delegation.

(3) A director of a co-operative must not be appointed or elected while the administrator is in office except as provided by this Division.

387 Revocation of appointment

(1) An administrator holds office until the administrator's appointment is revoked.

(2) The Registrar may, by written notice, revoke the appointment of an administrator.

(3) When a liquidator of a co-operative is appointed, the appointment of an administrator of the co-operative is automatically revoked.

(4) Immediately on the revocation of an administrator's appointment, the administrator must prepare and give to the Registrar a report showing how the administration was carried out, and for that purpose an administrator has access to the co-operative's books.

(5) On giving the report and accounting fully for the administration of the co-operative to the satisfaction of the Registrar, the administrator is released from any further duty to account for the administration of the co-operative other than because of fraud, dishonesty, negligence or wilful failure to comply with this Law.

(6) Before revoking the appointment of an administrator of a co-operative, the Registrar must:

(a) appoint another administrator; or

(b) appoint a liquidator; or

(c) ensure directors of the co-operative have been elected under the rules of the co-operative at a meeting called by the administrator under the rules of the co-operative; or

(d) appoint directors of the co-operative.

(7) Directors elected or appointed under subsection (6):

(a) take office on revocation of the administrator's appointment; and

(b) in the case of directors appointed under subsection (6)—hold office until the next annual general meeting of the co-operative after the revocation of the administrator's appointment.

(8) This section has effect subject to section 390.

388 Expenses of administration

(1) The expenses of and incidental to the conduct of a co-operative's affairs by an administrator are payable from the co-operative's funds.

(2) The expenses of conducting a co-operative's affairs include:

(a) if the administrator is not a public sector official—remuneration of the administrator at a rate approved by the Registrar; or

(b) if the administrator is a public sector official—the amount the Registrar certifies should be paid to the Registrar as repayment of the administrator's remuneration.

(3) An amount certified under subsection (2) (b) may be recovered by the Registrar in a court of competent jurisdiction.

(4) An administrator has, in relation to the expenses referred to in subsection (1), the same priority on the winding up of a co-operative as a liquidator appointed under the Corporations Act as applying under this Law has.

Note. Subdivision D of Division 6 of Part 5.6 of the Corporations Act contains provisions relating to the priority of payments.

389 Liabilities arising from administration

(1) If a co-operative incurs loss because of fraud, dishonesty, negligence or wilful failure to comply with this Law or the rules of the co-operative by an administrator, the administrator is liable for the loss.

(2) An administrator is not liable for a loss that is not a loss to which subsection (1) applies but must account for the loss in a report given under section 387.

390 Additional powers of Registrar

(1) If the Registrar appoints directors of a co-operative under section 387, the Registrar may, by written notice given to the co-operative, state:

(a) a time during which this section is to apply to the co-operative; and

(b) the terms on which all or any of the directors hold office; and

(c) the rules that are to be the rules of the co-operative.

(2) While this section applies to a co-operative, the Registrar may:

(a) remove and appoint directors; and

(b) vary, revoke or state new terms in place of all or any of the terms stated under subsection (1); and

(c) amend all or any of the rules stated under subsection (1).

(3) The Registrar may, by written notice given to the co-operative, extend the time for which this section is to apply to a co-operative.

(4) A rule stated by the Registrar under this section to be a rule of a co-operative:

(a) must not to be amended other than in the way set out in this section; and

(b) if it is inconsistent with another rule of the co-operative—prevails over the other rule (and the other rule is inoperative to the extent of the inconsistency); and

(c) has the same evidentiary value as is by this Law accorded to the rules of the co-operative and to copies of them.

391 Stay of proceedings

(1) If the Registrar appoints an administrator to conduct a co-operative's affairs, a person must not begin or continue proceedings in a court against the co-operative until the administrator's appointment is revoked other than with the leave of the designated tribunal and, if the tribunal gives leave, in accordance with any terms the tribunal imposes.

(2) A person intending to apply for leave of the designated tribunal under subsection (1) must give the Registrar at least 10 days notice of intention to apply.

(3) On the hearing of an application under subsection (1), the Registrar may be represented and may oppose the application.

392 Administrator to report to Registrar

On receipt of a request from the Registrar, the administrator of a co-operative must, without delay, prepare and give to the Registrar a report showing how the administration is being carried out.

Part 4.2 Receivers and other controllers of property

393 Application of Corporations Act—receivers and other controllers of property of co-operatives

A co-operative is declared to be an applied Corporations legislation matter for the purposes of the Corporations application legislation of this jurisdiction in relation to Part 5.2 of the Corporations Act, subject to the following modifications:

(a) section 416 of the applied provisions is to be read as including the following definitions:

administrator means an administrator of a deed of arrangement appointed under Part 5.3A of the Corporations Act, as applying under section 382 of the Co-operatives National Law.

senior manager:

(a) of a co-operative—means a person referred to in paragraph (b) of the definition of ***officer*** in section 4 of the Co-operatives National Law; or

(b) of a corporation other than a co-operative—means a senior manager within the meaning of the Corporations Act.

(b) section 416 of the applied provisions is to be read as if the following definition were substituted for the definition of officer:

officer of a co-operative has the meaning given by section 4 of the Co-operatives National Law and, in relation to a participating co-operative, includes a local agent of the participating co-operative.

(c) section 417 of the applied provisions is taken to be omitted and the following section substituted:

417 Application of Part

Except so far as the contrary intention appears, this Part applies in relation to a receiver of property of a co-operative who is appointed after the commencement of section 393 of the Co-operatives National Law in this jurisdiction, even if the appointment arose out of a transaction entered into, or an act or thing done, before that commencement.

(d) section 418A (1) of the applied provisions is to be read as if "23 June 1993" wherever occurring were omitted and "the commencement of section 393 of the Co-operatives National Law in this jurisdiction" were substituted;

(e) section 429 (1) of the applied provisions is to be read as if the following definition were substituted for the definition of reporting officer:

reporting officer, in relation to a co-operative for property of which a person is controller, means a person who was on the control day:

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

(b) for a participating co-operative—a local agent of the participating co-operative.

(f) a reference in section 432 of the applied provisions to ASIC is to be read as a reference to the Registrar, but this paragraph does not limit the operation of section 15 of this Law;

(g) the modifications referred to in section 13 (3) of this Law so far as they are relevant.

Note. See section 13, including Note 1 to that section.

Part 4.3 Mergers and transfers of engagements

Division 1 Merger or transfer of engagements

394 Application of this Division

This Division does not apply to a merger or transfer of engagements to which Chapter 5 applies.

395 Mergers and transfers of engagements of local co-operatives

Any 2 or more co-operatives may consolidate all or any of their assets, liabilities and undertakings by way of merger or transfer of engagements approved under this Division.

396 Requirements before application can be made

(1) Before co-operatives can apply for approval under this Division of a merger or transfer of engagements, the proposed merger or transfer must have been approved by each of the co-operatives by:

(a) a special resolution passed by a special postal ballot; or

(b) if permitted by subsection (2)—a resolution of the board of the co-operative.

(2) The proposed merger or transfer of engagements may be approved by resolution of the board of a co-operative if the Registrar consents to the procedure applying in the particular case.

397 Disclosure statement required

(1) A resolution of a co-operative is not effective for the purposes of this Division unless this section has been complied with.

(2) Each co-operative must send to each of its members a disclosure statement approved by the Registrar stating:

(a) the financial position of each co-operative concerned in the proposed merger or transfer of engagements as shown in financial statements prepared as at a date not more than 6 months before the date of the statement; and

(b) any interest any officer of each co-operative has in the proposed merger or transfer of engagements; and

(c) compensation or other consideration proposed to be paid, or other incentive proposed to be given, to any officer or member of each co-operative in relation to the proposed merger or transfer of engagements; and

(d) whether the proposal is a merger or transfer of engagements and the reason for the merger or transfer of engagements; and

(e) for a transfer of engagements—whether it is a total or partial transfer of engagements; and

(f) other information the Registrar directs.

(3) The disclosure statement must be sent to the members of each co-operative so that it will, in the ordinary course of post, reach each member who is entitled to vote on the special resolution no later than 21 days before the day on or before which the ballot papers must be returned by members voting in the special postal ballot.

(4) The Registrar may, by designated instrument, exempt a co-operative from complying with this section.

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

398 Making an application

(1) An application for approval of a merger or transfer of engagements under this Division must be made to the Registrar in the approved form.

(2) An application for approval of a merger must be accompanied by 2 copies of the proposed rules of the merged co-operative and other particulars required by the Registrar.

399 Approval of merger

(1) The Registrar must approve a merger under an application under this Division if satisfied:

(a) this Division and the National Regulations have been complied with in relation to the application; and

(b) the proposed rules of the merged co-operative are consistent with this Law and may reasonably be approved; and

(c) the certificates of registration of the co-operatives have been surrendered to the Registrar; and

(d) there is no good reason why the merged co-operative and its rules should not be registered.

(2) On approving an application for merger, the Registrar must:

(a) cancel the registration of the co-operatives involved in the merger; and

(b) register the merged co-operative and its rules; and

(c) issue to the merged co-operative a certificate of registration under this Law.

(3) A merger takes effect on the issue of the certificate of registration for the merged co-operative.

400 Approval of transfer of engagements

(1) The Registrar must approve a transfer of engagements under an application under this Division if satisfied:

(a) this Division has been complied with in relation to the application; and

(b) the rules or proposed rules of the transferee co-operative are adequate; and

(c) for a total transfer of engagements from a co-operative—the certificate of registration of the co-operative has been surrendered to the Registrar; and

(d) there is no good reason why the transfer of engagements should not take effect.

(2) A transfer of engagements takes effect on the day stated in the approval of the Registrar.

401 Transfer of engagements by direction of Registrar

(1) The Registrar may, with the approval of the Minister, direct a co-operative:

(a) to transfer its engagements to a co-operative approved by the Registrar; and

(b) within a period fixed by the Registrar when giving the direction, or the further period the Registrar allows, to enter into an agreement approved by the Registrar to give effect to the transfer of engagements directed.

(2) The Registrar must not give the direction to a co-operative unless the necessary grounds exist for giving the direction, as referred to in section 455.

(3) The transfer of engagements must make provision in a way approved by the Registrar for the members of the transferor co-operative who wish to do so to become members of the transferee co-operative.

(4) If a co-operative fails to comply with a direction under this section, the Registrar may elect to treat the failure as the necessary grounds:

(a) for winding up the co-operative on a certificate of the Registrar; or

(b) for appointing an administrator of the co-operative.

(5) The Registrar must notify the co-operative of the Registrar's decision under subsection (4).

(6) The Registrar may revoke a direction under this section at any time up until the co-operative has agreed under the direction to transfer its engagements.

(7) A transfer of engagements directed under this section takes effect on a day notified by the Registrar by designated instrument.

(8) An officer of a co-operative must not:

(a) fail to take all reasonable steps to secure compliance by the co-operative with a direction given under this section; or

(b) by a wilful act or omission be the cause of a failure by the co-operative to comply with a direction given under this section.

Maximum penalty (for subsection (8)): $2,000.

Division 2 Transfer of incorporation

402 Meaning of "new body" and "transfer"

The registration or incorporation of a co-operative as a corporation because of an application under this Division is referred to in this Division as its transfer and the corporation concerned is referred to in this Division as the new body.

403 Application for transfer

A co-operative may, subject to obtaining any necessary approvals under this Division, apply to become registered, incorporated or otherwise established as one of the following:

(a) a company under the Corporations Act;

(b) a corporation under legislation of this or any other jurisdiction that is prescribed by the National Regulations or the local regulations.

404 Requirements before application can be made

(1) Before an application is made under section 403, the co-operative must, by special resolution passed by a special postal ballot:

(a) approve the proposed application; and

(b) decide under what name the co-operative is to apply to be registered, incorporated or otherwise established; and

(c) adopt constituent documents that may be necessary or considered desirable.

(2) An application cannot be made under section 403 in respect of a co-operative without share capital unless:

(a) the application is made at least 2 weeks after a notice has been published in a newspaper circulating generally in the district in which the registered office of the co-operative is situated advising of the proposal to submit the proposed special resolution to members of the co-operative; and

(b) either:

(i) in a case where the new body will have share capital—all the members of the co-operative will have an equal shareholding; or

(ii) in any case—the Registrar approves in writing of the making of the application.

(3) The name applied for need not be the same as that of the co-operative and must not include the word "Co-operative" or another word or abbreviation importing a similar meaning.

(4) The Registrar may, by designated instrument, exempt a co-operative from compliance with a provision of this section and section 248 in relation to a matter to which this section applies.

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

405 New body ceases to be registered as co-operative

On the transfer of a co-operative under this Division, it ceases to be registered as a co-operative under this Law.

406 Transfer not to impose greater liability etc

(1) The constituent documents adopted in the transfer must not:

(a) impose on the members of the new body who were members of the co-operative at the date of transfer any greater or different liability to contribute to the assets of the new body than the liability to which they were subject as members of the co-operative; or

(b) deprive a member of the new body of preferential rights to dividends or capital to which the member was entitled as a member of the co-operative at the date of transfer.

(2) The transfer must result in all persons who were members of the co-operative at the date of transfer becoming members of the new body.

(3) In the case of a transfer of a co-operative having share capital to a new body having share capital, the transfer must result in every member of the co-operative at the date of transfer who held shares in the co-operative being the holder of shares in the capital of the new body equal in number and nominal value to the shares held by the member as a member of the co-operative.

Note. Section 168 (1) provides that "Even though a person's shares in a co-operative have been forfeited under [Part 2.6], the person is to be taken to be the holder of shares in the co-operative (the same in all respects as those that were forfeited) for the following purposes: [...] (b) the entitlement of a shareholder when the co-operative becomes registered as a company if the relevant special resolution under section 404 is passed within 2 years after the person's shares were forfeited".

407 Effect of new certificate

A certificate of registration, incorporation or establishment as the new body issued by the appropriate officer under the law applicable to the new body is evidence that all requirements of this Division about the registration, incorporation or establishment have been complied with.

408 Copy of new certificate to be given to Registrar

On the transfer of a co-operative under this Division, the new body must immediately give the Registrar a copy of its new certificate of registration, incorporation or establishment.

Maximum penalty: $1,000.

409 New body is a continuation of the co-operative

(1) When a co-operative transfers to a new body, the corporation constituted by the new body is taken to be the same entity as the corporation constituted by the co-operative.

Note. Division 3 also applies to a transfer of incorporation under this Division—see section 412.

(2) If the new body is a company under the Corporations Act, subsection (1) and Division 3 have effect subject to the provisions of section 601BM of that Act.

Note. Section 601BM of the Corporations Act provides that the registration of a body as a company under Part 5B.1 of that Act does not:

(a) create a new legal entity; or

(b) affect the body's existing property, rights or obligations (except as against the members of the body in their capacity as members); or

(c) render defective any legal proceedings by or against the body or its members.

Division 3 Effect of merger or transfer on assets and liabilities

410 How this Division applies to a merger

(1) This Division applies to a merger of co-operatives under Division 1.

(2) In the application of this Division to the merger:

new body means the co-operative resulting from the merger.

original body means each co-operative that is a party to the merger.

relevant day means the day on which the merged co-operative is registered under this Law.

411 How this Division applies to a transfer of engagements

(1) This Division applies to a transfer of engagements of a co-operative to another co-operative under Division 1.

(2) In the application of this Division to the transfer of engagements:

new body means the co-operative to which the engagements are transferred.

original body means the co-operative that transfers its engagements.

relevant day means the day on which the transfer of engagements takes effect.

412 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 the transfer of incorporation:

new body means the corporation resulting from the transfer.

original body means the co-operative transferring its incorporation.

relevant day means the day on which the transfer takes effect.

413 Effect of merger or transfer on assets and liabilities

(1) In this section:

assets means a legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) 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 Law) that creates, changes or extinguishes rights or liabilities (or would do so if filed or registered under any law), and includes a judgment, order and process of a court.

liabilities means liabilities, debts and obligations (whether present or future, whether vested or contingent and whether personal or assignable).

rights means any rights, powers, privileges or immunities (whether present or future, whether vested or contingent and whether personal or assignable).

(2) On and from the relevant day for an event to which this Division applies:

(a) the assets of the original body vest in the new body without the need for a conveyance, transfer, assignment or assurance; and

(b) the rights and liabilities of the original body become the rights and liabilities of the new body; and

(c) all proceedings by or against the original body pending immediately before the relevant day are taken to be proceedings pending by or against the new body; and

(d) an act, matter or thing done or omitted to be done by, to or in relation to the original body before the relevant day is (to the extent to which the act, matter or thing has any force or effect) taken to have been done or omitted by, to or in relation to the new body; and

(e) a reference in an instrument or in a 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 a contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or

(c) as giving rise to a remedy by a party to an instrument, or as causing or permitting the termination of an instrument, because of a change in the beneficial or legal ownership of an asset, right or liability.

Part 4.4 Compromises and arrangements

Division 1 General requirements

414 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 co-operative and any of its creditors—at a court ordered meeting by a majority in number of the creditors concerned who are present and voting (in person or by proxy), being a majority whose debts or claims against the co-operative amount to at least 75% of the total of the debts and claims of all creditors who are present and voting (in person or by proxy); or

(b) if the compromise or arrangement is between the co-operative and any of its members—by the members concerned, by special resolution passed by a special postal ballot.

(2) The court ordered meeting referred to in subsection (1) (a) is a meeting called in accordance with an order of the Supreme Court under this Part.

(3) The Supreme Court may give its approval to a compromise or arrangement subject to the amendments or conditions it considers appropriate.

(4) An order of the Supreme Court approving a compromise or arrangement does not have effect until an office copy of the order is filed with the Registrar.

(5) On the copy being filed, the order takes effect from the date of filing or the earlier date the Supreme Court states in the order.

415 Court ordered meeting of creditors

(1) If a compromise or arrangement is proposed between a co-operative and any of its creditors, the Supreme Court may, on application by an appropriate person, order a meeting or meetings of the creditors concerned.

(2) An ***appropriate person*** to apply for an order is:

(a) the co-operative; or

(b) a member of the co-operative; or

(c) one of the creditors concerned; or

(d) for a co-operative being wound up—the liquidator.

(3) The meeting must be called in the way and be held in the place or places (in this jurisdiction or elsewhere) 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.

416 Registrar to be given notice and opportunity to make submissions

(1) The Supreme Court may make an order under this Division if the court is satisfied:

(a) at least 14 days notice of the hearing of the application for the order, or a shorter period of notice the court or the Registrar permits, has been given to the Registrar; and

(b) the Registrar has had a reasonable opportunity to examine the terms of, and make submissions to the court in relation to, the proposed compromise or arrangement concerned and a draft explanatory statement relating to it.

(2) In this section:

draft explanatory statement means a statement:

(a) explaining the effect of the proposed compromise or arrangement and, in particular, stating:

(i) material interests of the directors of the co-operative, whether as directors, as members or creditors of the co-operative or otherwise; and

(ii) the effect on the interests of the proposed compromise or arrangement in so far as the effect is different from the effect on the like interests of other persons; and

(b) setting out information prescribed by the National Regulations; and

(c) setting out other information that:

(i) is material to the making of a decision by a creditor or member of the co-operative whether or not to agree to the proposed compromise or arrangement; and

(ii) is within the knowledge of the directors of the co-operative; and

(iii) has not previously been disclosed to the creditors or members of the co-operative.

417 Results of 2 or more meetings

If the Supreme Court orders 2 or more meetings of creditors to be held in relation to a proposed compromise or arrangement:

(a) the meetings are taken to form a single meeting; and

(b) the votes in favour of the proposed compromise or arrangement cast at each of the meetings are to be totalled; and

(c) the votes against the proposed compromise or arrangement cast at each of the meetings are to be totalled.

418 Persons disqualified from administering compromise or arrangement

(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 Law between a co-operative and any of its creditors or members, whether by the terms of the compromise or arrangement or under a power given by the terms of a compromise or arrangement, if the person:

(a) is a mortgagee of a property of the co-operative; or

(b) is an auditor or an officer of the co-operative; or

(c) is an officer of a corporation that is a mortgagee of property of the co-operative; or

(d) is not a registered liquidator, unless the person is a corporation authorised under a law of this jurisdiction to administer the compromise or arrangement concerned; or

(e) is an officer of a corporation related to the co-operative; or

(f) unless the Registrar directs in writing that this paragraph does not apply in relation to the person and the co-operative—has within the last year been an officer or promoter of the co-operative or of a related corporation.

(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 in this jurisdiction.

419 Application of Corporations Act to person appointed to administer compromise or arrangement

The provisions of sections 425, 427 (1A) and (2), 428, 432 and 434 of the Corporations Act as applying under this Law apply to a person appointed to administer a compromise or arrangement in relation to a co-operative, as if:

(a) the appointment were an appointment of the person as a receiver and manager of property of the co-operative; and

(b) a reference in those sections to a receiver were a reference to the person.

420 Application of Corporations Act—person appointed to administer compromise or arrangement

A person appointed to administer a compromise or arrangement is declared to be an applied Corporations legislation matter for the purposes of the Corporations application legislation of this jurisdiction in relation to section 536 of the Corporations Act, subject to the following modifications:

(a) that section applies as if the appointment were an appointment of the person as a liquidator of the co-operative;

(b) a reference in that section to a liquidator is taken to be a reference to the person;

(c) the modifications referred to in section 13 (3) of this Law so far as they are relevant.

Note. See section 13, including Note 1 to that section.

421 Copy of order to be attached to rules

(1) A co-operative must ensure a copy of an order of the Supreme Court approving a compromise or arrangement is attached to each copy of the rules of the co-operative issued after the order is made.

Maximum penalty: $2,000.

(2) The Supreme Court may, by order, exempt a co-operative from compliance with this section or decide the period during which the co-operative must comply.

422 Directors to arrange for reports

(1) When a compromise or arrangement (whether or not for a scheme for the reconstruction of a co-operative or the merger of 2 or more co-operatives) has been proposed, the directors of the co-operative must:

(a) if a meeting of the members of the co-operative by resolution 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 the report or reports available at the registered office of the co-operative for inspection by the members and creditors of the co-operative at least 7 days before the day of the meeting ordered by the Supreme Court or the holding of the special postal ballot, as appropriate.

(2) If this section is not complied with, each director of the co-operative commits an offence.

Maximum penalty: $2,000.

(3) An offence based on subsection (2) is an offence of strict liability.

423 Power of Court to restrain further proceedings

(1) If a proposed compromise or arrangement is made between a co-operative and any of its creditors and no order has been made or resolution passed for the winding up of the co-operative, the Supreme Court may restrain further proceedings in an action or other civil proceedings against the co-operative except by leave of the court and on the terms the 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 co-operative or a creditor or member of the co-operative.

424 Court need not approve compromise or arrangement takeovers

(1) The Supreme Court need not approve a compromise or arrangement unless:

(a) it is satisfied the compromise or arrangement has not been proposed for enabling a person to avoid the operation of any provision of Division 2 of Part 3.5; and

(b) there is produced to the court a written statement by the Registrar stating the Registrar has no objection to the compromise or arrangement.

(2) The Supreme Court need not approve a compromise or arrangement merely because a statement by the Registrar stating the Registrar has no objection to the compromise or arrangement has been produced to the court.

425 Provisions for facilitating reconstructions and mergers

(1) This section applies if an application is made to the Supreme Court under this Division 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 a scheme for the reconstruction of a co-operative or the merger of a co-operative with another co-operative or another corporation; and

(b) under the scheme all or part of the business or of the property of a co-operative concerned in the scheme (the transferor) is to be transferred to another corporation (the transferee), except a company within the meaning of the Corporations Act.

(2) If this section applies, the Supreme Court may, either by the order approving the compromise or arrangement or by a later order, provide for any one or more of the following:

(a) the transfer to the transferee of all or part of the business and 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 a person;

(c) the continuation by or against the transferee of legal proceedings pending by or against the transferor;

(d) the deregistration, without winding up, of the transferor;

(e) provision to be made for persons who, within the time and in the way the court directs, dissent from the compromise or arrangement;

(f) the transfer or allotment of an interest in property to a person concerned in the compromise or arrangement;

(g) the incidental, consequential and supplemental matters necessary to ensure the reconstruction or merger is fully and effectively carried out.

(3) 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, for a particular property if the order so directs, from a security interest that is under the compromise or arrangement to cease to have effect; and

(b) the liabilities are transferred to and become the liabilities of the transferee.

(4) 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, file with the Registrar an office copy of the order.

(5) In this section:

co-operative includes a participating co-operative registered, formed or incorporated under a law of another jurisdiction.

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.

426 Costs for Registrar

Without limiting any power of the Supreme Court to award costs, the court may make an order as to costs in favour of the Registrar in connection with an appearance by or on behalf of the Registrar in proceedings under this Division.

Division 2 Explanatory statements

427 Explanatory statement required to accompany notice of meeting etc

(1) An explanatory statement must accompany every notice sent:

(a) to a creditor of a co-operative calling the court ordered meeting to obtain agreement to the compromise or arrangement; or

(b) to a member of a co-operative for 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) given by advertisement, there must be included either a copy of the explanatory statement or notification of the place at which and the way in which creditors entitled to attend the meeting may obtain copies of the explanatory statement.

(3) The explanatory statement must:

(a) explain the effect of the compromise or arrangement and, in particular, state:

(i) material interests of the directors, whether as directors, as members or creditors of the co-operative or otherwise; and

(ii) the effect on the interests of the compromise or arrangement in so far as the effect is different from the effect on the like interests of other persons; and

(b) state the information prescribed by the National Regulations; and

(c) state other information that:

(i) is material to the making of a decision by a creditor or member whether or not to agree to the compromise or arrangement; and

(ii) is within the knowledge of the directors; and

(iii) has not previously been disclosed to the creditors or members.

(4) Subsection (1) (a) does not apply to a creditor whose debt is not more than $200 (or another amount prescribed by the National Regulations) unless the Supreme Court otherwise orders.

(5) The notice calling the meeting sent to a creditor referred to in subsection (1) (a) must state a place at which a copy of the explanatory statement can be obtained on request.

(6) The co-operative must comply with a request under subsection (5) as soon as practicable.

428 Requirements for explanatory statement

(1) An explanatory statement must be as approved by the Registrar.

(2) If the compromise or arrangement affects the rights of debenture holders, the explanatory statement must state:

(a) material interests of the trustees for the debenture holders, whether as trustees for the debenture holders, as members or creditors of the co-operative or otherwise; and

(b) the effect on the interests of the compromise or arrangement to the extent that the effect is different from the effect on the like interests of other persons.

(3) If a notice given by advertisement includes a notification that copies of the explanatory statement can be obtained in a particular way, the co-operative must give a copy of the statement free of charge to each creditor or member entitled to attend the meeting or vote in the ballot who applies for it in the appropriate way.

(4) Each person who is a director or trustee for debenture holders must give notice to the co-operative of the matters relating to the person required to be included in the explanatory statement.

429 Contravention of this Division—offence by co-operative

(1) If a provision of this Division is contravened, the co-operative concerned and any other person involved in the contravention commits an offence.

Maximum penalty: $2,000.

Note. Section 9 defines "involved" in a contravention.

(2) It is a defence to a prosecution for an offence under subsection (1) if it is proved the contravention was because of the failure of a person (other than the defendant), who is a director of the co-operative or a trustee for debenture holders of the co-operative, to supply for the explanatory statement particulars of the person's interests.

Division 3 Acquisition of shares of dissenting shareholders

430 Definitions

In this Division:

dissenting shareholder, in relation to a scheme or contract, means a shareholder who has not assented to the scheme or contract or who has failed to transfer the shareholder's shares under the scheme or contract.

excluded shares, in relation to a scheme or contract involving a transfer to a person of shares in a class of shares in a co-operative, means shares in the class that, when the offer relating to the scheme or contract is made, are held by:

(a) in any case—the person or a nominee of the person; or

(b) if the person is a corporation—a subsidiary of the corporation.

431 Schemes and contracts to which this Division applies

(1) This Division applies to a scheme or contract involving a transfer of shares in a co-operative (the transferor) to a person (the transferee) that has, within 4 months after the making of the offer relating to the scheme or contract by the transferee, been approved by the holders of at least 90% in nominal value of all the shares 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 3.5 applies.

432 Acquisition of shares pursuant to notice to dissenting shareholder

(1) The transferee under the scheme or contract may, within 2 months after the offer is approved, give notice as prescribed by the National Regulations (a ***compulsory acquisition notice***) to a dissenting shareholder that the transferee wishes to acquire the shares held by the shareholder.

(2) If a compulsory acquisition notice is given, the dissenting shareholder may, by written notice given to the transferee within one month after the day 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 the 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 the later of 28 days after the compulsory acquisition notice was given or 14 days after any statement asked for under subsection (2) was given.

(5) If alternative terms are offered to the approving shareholders:

(a) the dissenting shareholder is entitled to elect which of the terms are preferred but must make the election within the time allowed for making an application to the Supreme Court under subsection (4); and

(b) if the dissenting shareholder fails to make the election within the time—the transferee may, unless the Supreme Court otherwise orders, decide which of the terms is to apply to the acquisition of the shares of the dissenting shareholder.

433 Restrictions when excluded shares are more than 10%

If the nominal value of excluded shares is more than 10% of the total nominal value of all the shares (including excluded shares) to be transferred under the scheme or contract, section 432 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 the shares (with joint owners of shares being counted as one person).

434 Remaining shareholders may require acquisition

(1) If, under a scheme or contract to which this Division applies, the transferee becomes beneficially entitled to shares in the transferor that, together with other shares in the transferor to which the transferee or a corporation related to the transferee is beneficially entitled, comprise or include 90% in nominal value of the shares concerned:

(a) the transferee must, within 28 days after becoming beneficially entitled to the shares, give notice of the fact as prescribed by the National Regulations to the holders of the remaining shares concerned who, when the notice was given, had not:

(i) assented to the scheme or contract; or

(ii) been given a compulsory acquisition notice by the transferee under this Division; and

(b) a holder referred to in paragraph (a) may, within 3 months after being given the notice, by notice to the transferee require the transferee to acquire the holder's shares and, if alternative terms were offered to the approving shareholders, elect which of the terms the holder will accept.

(2) If a shareholder gives notice under this section in relation to the shareholder's shares, the transferee is entitled and bound to acquire them:

(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 the shareholders, on the terms for which the shareholder has elected, or, if no election is made, for whichever of the terms the transferee decides; or

(b) on other terms that may be agreed or as the Supreme Court, on the application of the transferee or of the shareholder, considers appropriate to order.

435 Transfer of shares pursuant to compulsory acquisition

(1) A transferee who has given a compulsory acquisition notice must:

(a) send a copy of the notice to the transferor together with an instrument of transfer for the shares the transferee is entitled to acquire under this Division and executed, on the shareholder's behalf, by a person appointed by the transferee and, on the transferee's own behalf, by the transferee; and

(b) pay, allot or transfer to the transferor the consideration for the shares.

(2) The transferee must do so within 14 days after whichever of the following happens last:

(a) the period of 28 days after the day on which the compulsory acquisition notice was given ends;

(b) the period of 14 days after a statement of the names and addresses of dissenting shareholders is supplied under this Division ends;

(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.

436 Disposal of consideration for shares compulsorily acquired

(1) **Amounts received to be paid to ADI account and held in trust**

Amounts received by the transferor under this Division must be paid into a separate authorised deposit-taking institution account and the amounts, and any other consideration received, are to be held by the transferor in trust for the persons entitled to the shares in relation to which they were respectively received.

(2) **Transfer of amounts or property to Registrar after 2 years**

If an amount or other property received by the transferor under this Division has been held in trust by the transferor for a person for at least 2 years, the transferor must pay the amount or transfer the consideration, and any accretions to it and any property that may become substituted for it or for part of it, to the Registrar.

(3) **Application of Corporations Act**

Anything paid or transferred to the Registrar under subsection (2) is declared to be an applied Corporations legislation matter for the purposes of the Corporations application legislation of this jurisdiction in relation to Part 9.7 of the Corporations Act, subject to the following modifications:

(a) a reference in the provisions to unclaimed property is to be read as a reference to whatever was paid or transferred to the Registrar under subsection (2);

(b) if the Co-operatives National Law Act of this jurisdiction or the local regulations so provide:

(i) references in section 1339 of the Corporations Act to crediting an amount to the Companies and Unclaimed Moneys Special Account are to be read as references to dealing with the amount in a manner specified in the Co-operatives National Law Act of this jurisdiction or the local regulations for the purposes of this subparagraph; or

(ii) section 1341 (1) and (2) of the Corporations Act are taken to be omitted and replaced by provisions specified in the Co-operatives National Law Act of this jurisdiction or the local regulations for the purposes of this subparagraph;

or both;

(c) the modifications referred to in section 13 (3) of this Law so far as they are relevant.

Note. See section 13, including Note 1 to that section.

(4) **Timing for transfer to Registrar**

The transferor must comply with subsection (2) before the end of 10 years after the day on which the amount was paid, or the consideration was allotted or transferred, to the transferor.

Division 4 Miscellaneous

437 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 file with the Registrar a written notice of the appointment.

Maximum penalty: $1,000.

438 Power of Supreme Court to require reports

If an application is made to the Supreme Court under this Part in relation to a proposed compromise or arrangement, the court may:

(a) before making an order on the application, require the Registrar or another person to give to the court a report as to:

(i) the terms of the compromise or arrangement or of the scheme for, or in relation to, which the compromise or arrangement has been proposed; and

(ii) the conduct of the officers of the body or bodies concerned; and

(iii) any other matters that, in the opinion of the Registrar or the person, ought to be brought to the attention of the court; and

(b) in deciding the application, have regard to anything contained in the report; and

(c) make any order as to the payment of the costs of preparing and giving the report as the court considers appropriate.

439 Effect of out-of-jurisdiction compromise or arrangement

(1) A compromise or arrangement that is binding on any creditors of a participating co-operative because of a provision of the law of another jurisdiction that corresponds to this Part is also binding on the creditors of the participating co-operative whose debts are recoverable by action in a court of this jurisdiction.

(2) If a court of another jurisdiction makes an order under a provision of the law of that jurisdiction that corresponds to a provision of this Part, the order is taken to have been made by the Supreme Court of this jurisdiction under the corresponding provision of this Law, and has effect and may be enforced accordingly.

440 Jurisdiction to be exercised in harmony with Corporations Act jurisdiction

The jurisdiction of the Supreme Court under this Part is intended to complement the Supreme Court's jurisdiction under the Corporations Act (as applying under this Law) and should be exercised in harmony with the jurisdiction.

441 Registrar may appear and be heard

In proceedings before the Supreme Court under this Part, the Registrar is entitled to appear and be heard, either in person or by the Registrar's properly appointed representative.

Part 4.5 Winding up

442 Methods of winding up

A co-operative may be wound up:

(a) on a certificate of the Registrar; or

(b) voluntarily; or

(c) by the Supreme Court.

443 Winding up on Registrar's certificate

(1) A co-operative may be wound up on a certificate of the Registrar only if the necessary grounds for taking the action exist, as referred to in section 455.

(2) A winding up on a certificate of the Registrar starts when the certificate is given.

(3) On the giving of a certificate, the Registrar may appoint a person to be the liquidator of the co-operative.

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

(5) The liquidator must, within 10 days after appointment, give notice of his or her appointment by designated instrument.

(6) A vacancy occurring in the office of liquidator is to be filled by a person appointed by the Registrar.

(7) The Registrar may fix:

(a) the security to be given by a liquidator; and

(b) the fees payable to a liquidator.

444 Application of Corporations Act—voluntary winding up and court-ordered winding up

(1) **Application of this section**

This section applies to the winding up of a co-operative:

(a) voluntarily; or

(b) by the Supreme Court.

(2) **Winding up of co-operatives**

A co-operative may be wound up in the same way and in the same circumstances as a company under the Corporations Act may be wound up.

(3) **Application of Corporations Act**

The winding up of a co-operative is declared to be an applied Corporations legislation matter for the purposes of the Corporations application legislation of this jurisdiction in relation to Parts 5.4, 5.4A, 5.4B, 5.5 and 5.6 of the Corporations Act, subject to the following modifications:

(a) a reference in section 459B or 459C of the Corporations Act to section 234 of that Act is to be read as a reference to section 133 of this Law;

(b) section 462 (2) (h) of the Corporations Act is taken to be omitted;

(c) the reference in section 464 of the Corporations Act to an investigation under Division 1 of Part 3 of the ASIC Act is to be read as a reference or an investigation or inquiry under this Law;

(d) a reference in section 467B of the Corporations Act to section 233 is to be read as a reference to section 134 of this Law;

(e) section 470 (3) of the Corporations Act is to be read as if the words ", and subsection 1274 (2) applies in relation to the document containing those particulars and to the office copy as if they were documents lodged with ASIC" were omitted;

(f) section 495 of the Corporations Act is to be read as being subject to section 445 of this Law;

(g) section 513B of the Corporations Act is to be read as if it were amended by inserting after paragraph (d):

(da) if, when the resolution was passed, a winding up of the co-operative on the certificate of the Registrar was already in progress—on the date that the certificate was given; or

(h) section 516 of the Corporations Act is to be read as if it were amended by inserting after "past member", "together with any charges payable by him or her to the co-operative in accordance with the rules of the co-operative";

(i) section 521 of the Corporations Act is to be read as being subject to section 450 of this Law;

(j) references in section 544 of the Corporations Act to dealing with money under Part 9.7 of that Act are to be read as references to dealing with the money under Part 9.7 of that Act as applying under section 436 of this Law;

(k) references in sections 565–567 of the Corporations Act to 23 June 1993 are, if the Co-operatives National Law Act of this jurisdiction so provides, to be read as references to a date specified in that Act of this jurisdiction for the purposes of this paragraph;

(l) the definition of external administration matter in section 580 of the Corporations Act is taken to be omitted and the following definition substituted:

external administration matter means a matter relating to a winding up of a co-operative or participating co-operative under Part 4.5 of the Co-operatives National Law.

(m) section 15 (2) (g) of this Law does not apply to the definition of prescribed country in section 580 of the Corporations Act;

Note. The meaning of the term "prescribed country" accordingly is determined by regulations under the Corporations Act.

(n) a reference in the provisions to a registered liquidator is to be read as including a reference to a person approved by the Registrar as a liquidator of a co-operative;

(o) a reference in the provisions to any provision of Part 2F.1 of the Corporations Act is to be read as a reference to the appropriate provision of Division 4 of Part 2.5 of this Law;

(p) for the purposes of the application of the provisions to a winding up on the certificate of the Registrar, the winding up is to be considered to be a voluntary winding up (but section 490 of the Corporations Act does not apply);

(q) the provisions are to be read subject to sections 121 and 450 of this Law for the purposes of determining the liability of members and former members to contribute on a winding up of a co-operative;

(r) the modifications referred to in section 13 (3) of this Law so far as they are relevant.

Note. See section 13, including Note 1 to that section.

(4) **Where applied provisions of Corporations Act prevail over other provisions of this Law**

Despite any other provisions of this Law:

(a) a copy of a special resolution for the voluntary winding up of a co-operative referred to in section 491 (2) (a) of the Corporations Act as applying under this section is to be filed with the Registrar:

(i) within the period referred to in that paragraph (and not the period of 28 days referred to in section 243 (2) of this Law); or

(ii) within a longer period approved by the Registrar; and

(b) the form of a notice or account required to be given or lodged by a liquidator under section 496, 497, 537 or 539 of the Corporations Act as applying under this section is the form required under the section concerned but with any necessary modifications (and not a form approved under this Law); and

(c) the quorum for a meeting referred to in section 509 of the Corporations Act as applying under this section is the quorum referred to in that section (and not a quorum determined under section 255 of this Law); and

(d) the time when a voluntary winding up is taken to commence is to be determined under section 513B of the Corporations Act as applying under this section and is not affected by section 242 of this Law.

(5) **Where other provisions of this Law prevail over applied provisions of Corporations Act**

The provisions of the Corporations Act applying under this section have effect subject to any other sections of this Part.

445 Voluntary winding up—restrictions

(1) A co-operative may be wound up voluntarily only:

(a) by a creditors' voluntary winding up; or

(b) if a special resolution is passed by a special postal ballot in favour of voluntary winding up.

(2) 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 to wind up the affairs and distribute the assets of the co-operative; and

(b) fix the remuneration to be paid to the liquidator.

(3) The Registrar may, by designated instrument, exempt a co-operative or class of co-operatives from compliance with a provision of this section or section 248.

(4) An exemption may be given unconditionally or subject to conditions.

446 Voluntary winding up—start of members' voluntary winding up

A members' voluntary winding up of a co-operative starts when the result of the special postal ballot is noted in the minutes by the secretary of the co-operative.

447 Voluntary winding up—liquidator vacancy may be filled by Registrar

If a co-operative is being wound up voluntarily, a vacancy occurring in the office of liquidator is to be filled by a person appointed by the Registrar.

448 Distribution of surplus—non-distributing co-operatives

(1) On a winding up of a non-distributing co-operative, the surplus property of the co-operative must be distributed as required by the rules of the co-operative.

(2) The rules of a non-distributing co-operative must make provision for the way in which the surplus property of the co-operative is to be distributed in a winding up.

(3) In this section:

surplus property means property of the co-operative remaining after satisfaction of the debts and liabilities of the co-operative and the costs, charges and expenses of the winding up.

449 Review of liquidator's remuneration

(1) A member or creditor of a co-operative or the liquidator may, at any time before the completion of the winding up of the co-operative, apply to:

(a) the Supreme Court, except where paragraph (b) applies; or

(b) the Registrar, where the liquidator was appointed by the Registrar;

to review the amount of the remuneration of the liquidator.

(2) The Supreme Court or the Registrar, respectively, may review the remuneration and (if thought fit) vary the amount of the remuneration.

450 Liability of member to contribute in a winding up if shares forfeited etc

(1) If a person's membership of a co-operative is cancelled under Part 2.6 within 2 years before the start of the winding up of the co-operative, the person is liable on the winding up to contribute to the property of the co-operative the nominal value of shares forfeited under that cancellation (being their nominal value immediately before cancellation).

(2) If, under section 107, a co-operative:

(a) purchases a share of a member in the co-operative; or

(b) repays to a member the whole or part of the amount paid up on a share held by a member;

within 2 years before the start of the winding up of the co-operative, the member or former member is liable on the winding up to contribute to the property of the co-operative the amount paid by the co-operative to the member or former member for the purchase or repayment, together with any amount unpaid on the shares immediately before the purchase or repayment.

(3) If a person contributes to the property of a co-operative under a liability under this section, the amount contributed is, for the purposes of the winding up, to be treated as having been paid up by the person on shares of the co-operative.

(4) The liability of a member or former member of a co-operative under this section is in addition to any other liability of the member or former member to contribute to the property of the co-operative on a winding up of the co-operative.

Part 4.6 Insolvency

451 Application of Corporations Act—insolvent co-operatives

(1) A co-operative is declared to be an applied Corporations legislation matter for the purposes of the Corporations application legislation of this jurisdiction in relation to Part 5.7B of the Corporations Act, subject to the following modifications:

(a) a reference in the provisions to any provision of sections 286–290 of the Corporations Act is to be read as a reference to the appropriate provision of Division 2 of Part 3.3 (sections 265–269) of this Law;

(b) section 588G of the Corporations Act is to be read as if item 2 of the table to section 588G (1A) of that Act were omitted;

(c) section 588G of the Corporations Act is to be read as if item 3 of the table to section 588G (1A) of that Act read as follows:

"repaying share capital	when the obligation to repay share capital is effective
receiving the resignation of a member under the rules of the co-operative	when the resignation is effective
expelling a member	when the expulsion occurs";

(d) section 588G of the Corporations Act is to be read as if a reference (however expressed) in items 4 and 5 of the table to section 588G (1A) of that Act to redeemable preference shares were a reference to CCUs;

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

(i) a corporation were a reference to a co-operative (as provided in section 15 (2) of this Law); and

(ii) "the holding company" were a reference to that co-operative; and

(iii) "a company" were a reference to a company that is a subsidiary of that co-operative (and accordingly that reference to a "company" is not to be read as a reference to a co-operative);

(f) the reference in section 588Z (b) of the Corporations Act to 23 June 1993 is, if the Co-operatives National Law Act of this jurisdiction so provides, to be read as a reference to a date specified in that Act of this jurisdiction for the purposes of this paragraph;

(g) the modifications referred to in section 13 (3) of this Law so far as they are relevant.

Note. See section 13, including Note 1 to that section.

(2) Section 588G (2) of the Corporations Act as applying under this section is a civil penalty provision under this Law (see section 554) and is not a civil penalty provision under that Act.

Part 4.7 Deregistration

452 Method of deregistration

A co-operative may be deregistered under:

(a) the Corporations Act as applying under section 453; or

(b) section 454.

453 Application of Corporations Act—deregistration

The deregistration of a co-operative and a deregistered co-operative are declared to be applied Corporations legislation matters for the purposes of the Corporations application legislation of this jurisdiction in relation to Part 5A.1 of the Corporations Act, subject to the following modifications:

(a) references in sections 601AA and 601AB of the Corporations Act to ASIC database are to be read as references to the register of co-operatives kept under section 599 of this Law;

(b) section 601AB (1A) of the Corporations Act is taken to be omitted;

(c) the reference in section 601AC (1) (a) of the Corporations Act to section 413 (1) (d) of that Act is to be read as a reference to section 425 (2) (d) of this Law;

(d) references in sections 601AD–601AF of the Corporations Act to the Commonwealth are to be read as references to an entity specified in the Co-operatives National Law Act of this jurisdiction for the purposes of this paragraph;

(e) references in section 601AE of the Corporations Act to crediting an amount to a Special Account (within the meaning of the Financial Management and Accountability Act 1997 of the Commonwealth) are to be read as references to dealing with the amount in a manner specified in the Co-operatives National Law Act of this jurisdiction or the local regulations for the purposes of this paragraph;

(f) the modifications referred to in section 13 (3) of this Law so far as they are relevant.

Note. See section 13, including Note 1 to that section.

454 Deregistration of co-operative ceasing to exist

(1) As soon as practicable after a co-operative ceases to exist, other than on deregistration of the co-operative under section 444, the Registrar must deregister the co-operative by registering the cessation and cancelling the registration of the co-operative.

(2) The Registrar may remove from a register kept by the Registrar the name of a co-operative that has been deregistered or otherwise ceased to exist.

(3) A co-operative that has transferred its engagements to another co-operative is taken to have ceased to exist.

Part 4.8 Grounds for certain actions

455 Grounds for appointment of administrator, transfer of engagements or winding up of co-operative

(1) This section applies to the following actions:

(a) the appointment of an administrator of a co-operative by the Registrar under Division 3 of Part 4.1;

(b) a direction by the Registrar to a co-operative to transfer its engagements under section 401;

(c) the winding up of a co-operative on a certificate of the Registrar under section 443.

(2) The necessary grounds for taking action to which this section applies exist if the Registrar certifies:

(a) the number of members is reduced to less than the minimum number of persons allowed by or under section 119; or

(b) the co-operative has not started business within one year of registration or has suspended business for more than 6 months; or

(c) the registration of the co-operative has been obtained by mistake or fraud; or

(d) the co-operative exists for an illegal purpose; or

(e) the co-operative has wilfully and after notice from the Registrar violated the provisions of this Law or the rules of the co-operative; or

(f) the board of the co-operative has, after notice from the Registrar, failed to ensure the rules of the co-operative contain active membership provisions required under Part 2.6; or

(g) there are, and have been for one month immediately before the date of the Registrar's certificate, insufficient directors of the co-operative to form a quorum under the rules of the co-operative; or

(h) after an inquiry under this Law into the affairs of a co-operative or the working and financial condition of a co-operative—in the interests of members or creditors of the co-operative or the public, the action concerned should be taken.

(3) Alternatively, the necessary grounds for winding up a co-operative on a certificate of the Registrar exist if the Registrar certifies:

(a) the period (if any) fixed for the duration of the co-operative by its rules has ended; or

(b) an event (to be stated in the certificate) has occurred on the occurrence of which the National Regulations or the rules provide the co-operative is to be wound up.

(4) The Registrar must not certify under this section as to a matter unless the matter has been proved to the Registrar's satisfaction.

Chapter 5 Participating co-operatives

Part 5.1 Introductory

456 What constitutes carrying on business

For the purposes of this Chapter and without limiting the definition of ***carry on business*** in section 4 in its application to a participating co-operative, a participating co-operative carries on business in this jurisdiction if it:

(a) solicits for members in this jurisdiction; or

(b) seeks share capital in this jurisdiction, takes deposits in this jurisdiction or offers other securities in the co-operative in this jurisdiction (including the issue of CCUs and debentures).

Part 5.2 Participating co-operatives carrying on business in this jurisdiction

457 Operation of participating co-operatives in this jurisdiction

A participating co-operative must not carry on business in this jurisdiction as a co-operative unless it is authorised under this Part to do so.

Maximum penalty: $24,000.

458 Authorisation to carry on business in this jurisdiction

A participating co-operative is, by this Law, authorised to carry on business in this jurisdiction unless it ceases to be so authorised under section 460.

459 Authorisation to carry on business in this jurisdiction is subject to conditions and restrictions of participating jurisdiction

The authorisation of a participating co-operative is subject to the same conditions or restrictions that apply to the carrying on of its business under its registration in the participating jurisdiction.

460 Ceasing to be authorised to carry on business in this jurisdiction

A participating co-operative ceases to be authorised to carry on business in this jurisdiction if:

(a) it is deregistered or otherwise ceases to exist as a co-operative under the laws of the place in which it is registered, incorporated or formed; or

(b) its authorisation to carry on business in this jurisdiction is withdrawn under section 461.

461 Withdrawal of authorisation to carry on business

(1) The Registrar may give written notice to a participating co-operative requiring it to show cause (a show cause notice), within the period specified in the notice, why its authorisation to carry on business in this jurisdiction should not be withdrawn on any one or more of the following grounds:

(a) that the name under which the co-operative carries on business or proposes to carry on business in this jurisdiction does not comply with this Part;

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

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

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

(c) that the co-operative has contravened a direction given to it under section 468.

(2) A show cause notice may be given if the Registrar is of the opinion that there are reasonable grounds to do so.

(3) The show cause notice must specify the period, being at least 14 days, within which it must be complied with.

(4) The participating co-operative may, within the period specified in the show cause notice, make oral or written submissions to the Registrar and provide evidence with respect to any of the matters to which the notice relates.

(5) The Registrar must consider any submissions made, or evidence adduced, within the period required by the show cause notice and may, if the Registrar is satisfied that any of the grounds referred to in subsection (1) have been established in relation to the participating co-operative, give the co-operative a written notice withdrawing its authorisation to carry on business in this jurisdiction.

(6) The Registrar may withdraw a show cause notice or other notice given under this section.

(7) The Registrar may, on application or otherwise, by notice given to a participating co-operative, revoke the cancellation of its authorisation to carry on business in this jurisdiction. The co-operative is taken to be authorised to carry on business in this jurisdiction on and from the date the notice is given to the co-operative or a later date specified in the notice.

462 Name of participating co-operative

A participating co-operative carrying on business in this jurisdiction must do so under a name that is not likely to be confused with the name of a body corporate or a registered business name.

463 Application of Law and National Regulations to participating co-operatives

(1) A participating co-operative that is authorised to carry on business in this jurisdiction under this Chapter must comply with such provisions of this Law and the National Regulations as are prescribed by the National Regulations (including any modifications prescribed by the National Regulations).

(2) The provisions referred to in subsection (1) are in addition to the provisions of this Chapter, and any other provisions of this Law or the National Regulations, that are expressed to apply to participating co-operatives.

Note. For example, Part 6.4 applies to a participating co-operative.

Part 5.3 General

464 False copies of rules

(1) A person must not give to:

(a) a member of a participating co-operative; or

(b) a person intending or applying to become a member of a participating co-operative;

a copy of any rules or any amendments of rules of the participating co-operative, other than those that have been registered under the relevant corresponding co-operatives law, representing that they are binding on the members of the participating co-operative.

(2) A person must not circulate a copy of any rules of a participating co-operative after they have been registered under the relevant corresponding co-operatives law if the copy contains amendments that have not been so registered and the person represents that they have been so registered when they have not been.

Maximum penalty: $1,000.

465 False copy of documents

(1) A person who, in purported compliance with a provision of the relevant corresponding co-operatives law that corresponds to section 122:

(a) gives a person intending or applying to become a member of a participating co-operative a document as a copy of:

(i) a special resolution of the co-operative; or

(ii) the last annual report of the co-operative; and

(b) knows or ought to know that, in a material respect, it is not a true copy of the resolution or report; and

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

is guilty of an offence.

Note. Section 464 deals with false copies of rules.

(2) A person who, in purported compliance with a provision of the relevant corresponding co-operatives law that corresponds to section 122:

(a) makes available for inspection by a person intending or applying to become a member of a participating co-operative a document as a copy of:

(i) a special resolution of the co-operative; or

(ii) the last annual report of the co-operative; and

(b) knows or ought to know that, in a material respect, it is not a true copy of the resolution or report; and

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

is guilty of an offence.

Maximum penalty: $1,000.

466 Restrictions on advertising and publicity—shares
(cf Corporations Act s 734)

(1) A person must not:

(a) advertise; or

(b) publish a statement that directly or indirectly refers to;

an offer, or intended offer, of shares in a participating co-operative that is a distributing co-operative within the meaning of the relevant corresponding co-operatives law of another jurisdiction unless:

(c) a current disclosure statement relating to the shares is:

(i) registered with the Registrar for the other jurisdiction under a provision of that corresponding co-operatives law that corresponds to section 68; or

(ii) lodged with that Registrar for registration under that provision; and

(d) any other applicable requirements specified in the National Regulations for the purposes of this section are complied with.

Maximum penalty: $1,000.

(2) Subsection (1) applies in relation to shares in a distributing co-operative only if:

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

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

(3) A person does not contravene subsection (1) by publishing an advertisement or statement if they publish it in the ordinary course of a business of:

(a) publishing a newspaper or magazine; or

(b) broadcasting by radio or television;

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

(4) An offence based on subsection (1) is an offence of strict liability.

467 Restrictions on advertising and publicity—debentures or CCUs

(1) A person must not:

(a) advertise; or

(b) publish a statement that directly or indirectly refers to;

an offer, or intended offer, of debentures or CCUs in a participating co-operative unless:

(c) a disclosure statement relating to the debentures or CCUs is approved under a provision of the relevant corresponding co-operatives law of another jurisdiction that corresponds to section 338 by the Registrar for the other jurisdiction; and

(d) any other applicable requirements specified in the National Regulations for the purposes of this section are complied with.

Maximum penalty: $1,000.

(2) A person does not contravene subsection (1) by publishing an advertisement or statement if they publish it in the ordinary course of a business of:

(a) publishing a newspaper or magazine; or

(b) broadcasting by radio or television;

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

(3) An offence based on subsection (1) is an offence of strict liability.

468 Registrar's directions about obtaining financial accommodation

(1) The Registrar may, by written notice served on a participating co-operative, give a direction to the co-operative as to the way in which it is to exercise its functions in relation to the activities of the co-operative in obtaining financial accommodation in this jurisdiction.

(2) A direction under subsection (1) may make provision for one or more of the following matters:

(a) requiring the co-operative to stop obtaining financial accommodation or to stop obtaining financial accommodation in a particular way;

(b) requiring the co-operative to repay in accordance with the direction all or part of financial accommodation obtained;

(c) requiring the co-operative to refinance in a stated way financial accommodation repaid in accordance with the Registrar's direction;

(d) the way in which the co-operative is permitted to invest or use the proceeds of financial accommodation it obtains.

(3) The co-operative may, within 28 days after the direction is given, apply to the designated tribunal for a review of the direction, and the designated tribunal may confirm, modify or rescind the direction or substitute another direction.

469 Name and place of origin to appear on business and other documents

(1) A participating co-operative must ensure its name, the jurisdiction of its registration and any other information prescribed by the National Regulations appear in legible characters:

(a) on each seal of the co-operative; and

(b) in all notices, advertisements and other official publications of the participating co-operative; and

(c) in all its business documents.

Maximum penalty: $2,000.

(2) An officer of a participating co-operative or a person on its behalf must not:

(a) use any seal of the co-operative; or

(b) issue or authorise the issue of a notice, advertisement or other official publication of the co-operative; or

(c) sign or authorise to be signed on behalf of the co-operative any business document of the co-operative;

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

Maximum penalty: $2,000.

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

Maximum penalty: $2,000.

(4) An offence based on subsection (1) is an offence of strict liability.

(5) In this section:

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

(a) a business letter, statement of account, invoice or order for goods or services; or

(b) a bill of exchange, promissory note, cheque or other negotiable instrument; or

(c) a receipt or letter of credit issued by the co-operative; or

(d) a document of a class prescribed by the National Regulations as a class of business documents.

Part 5.4 Winding up of participating co-operatives in this jurisdiction

470 Winding up to relate to activities in this jurisdiction

(1) This Part applies to the winding up of the affairs of a participating co-operative in or in relation to this jurisdiction.

(2) A participating co-operative may be wound up under this Part even though it has been wound up or deregistered or has otherwise ceased to exist as a co-operative under or because of the laws of the place in which it is registered, incorporated or formed.

(3) This Part has effect in addition to, and not in derogation of, any other provisions of this Law or any other law with respect to the winding up of co-operatives.

471 Supreme Court may order winding up

(1) The Supreme Court may order the winding up of a participating co-operative if:

(a) the co-operative's authorisation to carry on business in this jurisdiction has been withdrawn under this Law; or

(b) the co-operative has been deregistered or has ceased to exist as a co-operative in the place in which it was registered, incorporated or formed or has ceased to carry on business in that place.

(2) The Registrar may apply to the Supreme Court for the winding up of a participating co-operative on any of the grounds referred to in subsection (1).

(3) The Registrar must give a copy of an application made under this section to the participating co-operative the subject of the application if it is still in existence.

472 Application of Corporations Act—winding up of participating co-operatives in this jurisdiction

(1) The winding up or deregistration of a participating co-operative is declared to be an applied Corporations legislation matter for the purposes of the Corporations application legislation of this jurisdiction in relation to Parts 5.4B and 5.6 of the Corporations Act, subject to the following modifications:

(a) a reference in those provisions of the Corporations Act to an application to wind up a company under section 464 or Part 5.4A is to be read as a reference to an application by the Registrar under Part 5.4 of this Law;

(b) a reference in those provisions to a winding up ordered by the court under a provision of Part 5.4A is a reference to a winding up ordered by the Supreme Court under Part 5.4 of this Law;

(c) a reference in those provisions to an order under a provision of Part 5.4A is a reference to an order under section 471 of this Law;

(d) for the purposes of an application by the Registrar to wind up a participating co-operative, those provisions apply, with such modifications as the circumstances require, as if a winding up application had been made by the co-operative;

(e) those provisions apply as if a ground specified in section 471 of this Law were a ground for winding up by the court specified in section 461 of the Corporations Act;

(f) a reference in those provisions to an official liquidator is to be read as a reference to a person approved by the Registrar as a liquidator of a co-operative;

(g) sections 467 (4) and (5), 480 (d), 481 (5) (b), 513B, 517, 518, 523 and 524 of the Corporations Act do not apply;

(h) a reference in section 485 (2) of the Corporations Act to persons entitled to any surplus is a reference to a person entitled to the surplus under section 473 of this Law;

(i) section 516 of the Corporations Act is to be read as if "together with any charges payable by the member to the co-operative in accordance with the rules" were inserted after "past member";

(j) Subdivision C of Division 6 of Part 5.6 of the Corporations Act does not apply;

(k) a reference in Parts 5.4B and 5.6 of the Corporations Act to section 233 is to be read as a reference to Division 4 of Part 2.5 of this Law;

(l) those provisions of the Corporations Act are to be read subject to sections 121 and 450 of this Law for the purposes of determining the liability of members and past members to contribute on a winding up of a co-operative;

(m) the modifications referred to in section 13 (3) of this Law so far as they are relevant.

Note. See section 13, including Note 1 to that section.

(2) The fact that a participating co-operative has been deregistered or has ceased to exist as a co-operative in the place in which it was registered, incorporated or formed does not affect the liability of a member or former member as a contributory on a winding up under this Part.

473 Outstanding property of participating co-operative

(1) This section applies if, after the winding up of a participating co-operative in this jurisdiction, outstanding property of the co-operative remains in this jurisdiction.

(2) The estate and interest in the property, at law or in equity, of the participating co-operative or its liquidator at that time, together with all claims, rights and remedies that the co-operative or its liquidator then had in respect of the property, vest by force of this section in the person entitled to the property under the law of the place in which the co-operative was registered, formed or incorporated.

Part 5.5 Mergers and transfers of engagements affecting participating co-operatives

474 Definitions

In this Part:

appropriate Registrar, in relation to a proposed merger or transfer of engagements, means:

(a) the local Registrar—if the merger is to result in a local co-operative or the transfer is to a local co-operative; or

(b) the participating Registrar—if the merger is to result in a co-operative under the co-operatives law of the participating jurisdiction concerned or the transfer is to such a co-operative.

assets has the same meaning as it has in section 413.

instrument has the same meaning as it has in section 413.

liabilities has the same meaning as it has in section 413.

local co-operative means a co-operative registered in this jurisdiction.

original co-operative means:

(a) in the case of a transfer of engagements—the transferor co-operative; or

(b) in the case of a merger—each of the co-operatives that are merging.

rights has the same meaning as it has in section 413.

successor co-operative means:

(a) in the case of a transfer of engagements—the transferee co-operative; or

(b) in the case of a merger—the co-operative formed by the merger.

475 Authority for merger or transfer of engagements

A local co-operative and a participating co-operative may consolidate all or any of their assets, liabilities and undertakings by way of merger or transfer of engagements approved under this Part.

476 Requirements before application can be made

(1) Before a local co-operative and a participating co-operative can apply for approval under this Part of a merger or transfer of engagements, the proposed merger or transfer must have been approved by each of the co-operatives:

(a) by a special resolution passed by special postal ballot; or

(b) if permitted by subsection (2), by a special resolution, or by a resolution of the board, of the co-operative.

(2) The proposed merger or transfer of engagements may be approved by special resolution, or by resolution of the board, of the co-operative if:

(a) the local Registrar consents to that procedure applying in the particular case; and

(b) the participating Registrar also consents to that procedure applying in the particular case.

(3) A consent referred to in subsection (2) may be granted subject to conditions, including any condition that a disclosure statement be provided to members or directors.

(4) A co-operative that contravenes a condition of a consent is taken not to have been given consent.

477 Disclosure statement required

(1) A special resolution of the local co-operative or participating co-operative is not effective for the purposes of this Part unless this section has been complied with.

(2) Each co-operative must send to each of its members a disclosure statement approved by the appropriate Registrar specifying the following:

(a) the financial position of the local co-operative and the participating co-operative as shown in financial statements that have been prepared as at a date that is not more than 6 months before the date of the statement;

(b) any interest that any officer of the local co-operative or the participating co-operative has in the proposed merger or transfer of engagements;

(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 local co-operative or participating co-operative in relation to the proposed merger or transfer of engagements;

(d) whether the proposal is a merger or transfer of engagements and the reason for the merger or transfer of engagements;

(e) in the case of a transfer of engagements—whether it is a total or partial transfer of engagements;

(f) in the case of a merger—whether the merged co-operative will result in a local co-operative or a co-operative under the co-operatives law of the participating jurisdiction concerned;

(g) any other information that the appropriate Registrar directs.

(3) The disclosure statement must be sent to the members of the local co-operative or participating co-operative so that it will in the ordinary course of post reach each member who is entitled to vote on the special resolution not later than:

(a) if the resolution is to be decided at a meeting—21 days before the date of the meeting; or

(b) if the resolution is to be decided by a postal ballot—21 days before the day on or before which the ballot papers must be returned by members voting in the ballot.

(4) The appropriate Registrar may exempt the local co-operative or participating co-operative from complying with this section.

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

478 Making an application

(1) An application for approval of a merger or transfer of engagements under this Part must be made to the local Registrar and, if the merger or transfer of engagements affects a participating co-operative, to the participating Registrar 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 co-operative; and

(b) any other information required by the Registrar to whom the application is made.

479 Approval of merger

(1) If the local Registrar is the appropriate Registrar, he or she must approve a merger pursuant to an application under this Part if satisfied that:

(a) this Part has been complied with in relation to the application; and

(b) the proposed rules of the merged co-operative are adequate; and

(c) the certificate of registration of the local co-operative has been surrendered to the local Registrar; and

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

(e) there is no good reason why the merged co-operative and its rules should not be registered.

(2) If the local Registrar is not the appropriate Registrar, he or she must approve a merger pursuant to an application under this Part if satisfied that the merger has been approved under the provision of the co-operatives law of the participating jurisdiction that corresponds with subsection (1).

(3) On approving an application for merger, the local Registrar must:

(a) cancel the registration of the local co-operative involved in the merger; and

(b) if the merger is to result in a local co-operative, register the merged co-operative and its rules and issue to it a certificate of registration under this Law.

(4) A merger takes effect on the issue of the certificate of registration for the merged co-operative (whether under this Law or under the co-operatives law of the participating jurisdiction concerned).

480 Approval of transfer of engagements

(1) If the local Registrar is the appropriate Registrar, he or she must approve a transfer of engagements pursuant to an application under this Part if satisfied that:

(a) this Part has been complied with in relation to the application; and

(b) the rules or proposed rules of the transferee co-operative are adequate; and

(c) in the case of a total transfer of engagements from a participating co-operative—the certificate of registration of the participating co-operative has been surrendered to the participating Registrar; and

(d) there is no good reason why the transfer of engagements should not take effect.

(2) If the local Registrar is not the appropriate Registrar, he or she must approve a transfer of engagements pursuant to an application under this Part if satisfied that the transfer has been approved under the provision of the co-operatives law of the participating jurisdiction that corresponds with subsection (1).

(3) A transfer of engagements takes effect on the day specified in the approval of the local Registrar.

481 Effect of merger or transfer of engagements

(1) When a merger or transfer of engagements takes effect under this Part (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 co-operative immediately before the transfer day are members of the successor co-operative in accordance with its rules;

(b) the assets of the original co-operative vest in the successor co-operative without the need for any conveyance, transfer, assignment or assurance;

(c) the rights and liabilities of the original co-operative become the rights and liabilities of the successor co-operative;

(d) all proceedings by or against the original co-operative that are pending immediately before the transfer day are taken to be proceedings pending by or against the successor co-operative;

(e) any act, matter or thing done or omitted to be done by, to or in respect of the original co-operative before the 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 co-operative;

(f) a reference in an instrument or in any document of any kind to the original co-operative is to be read as, or as including, a reference to the successor co-operative.

(2) 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.

482 Part applies instead of certain other provisions of this Law

(1) This Part applies instead of Division 1 of Part 4.3, in respect of the merger of a local co-operative with a participating co-operative.

(2) This Part applies instead of Division 1 of Part 4.3, in respect of a transfer of engagements between a local co-operative and a participating co-operative.

Chapter 6 Supervision and protection of co-operatives

Part 6.1 Introductory

483 Application of Chapter

Parts 6.4–6.6 apply to this jurisdiction except to the extent (if any) that the Co-operatives National Law Act of this jurisdiction provides otherwise, and with the modifications (if any) made by that Act.

Part 6.2 Prevention of fraud and other activities

484 Falsification of books

(1) **Offence regarding securities or books** (cf Corporations Act s 1307 (1))

An officer, former officer, employee, former employee, member or former member of a co-operative who engages in conduct that results in the concealment, destruction, mutilation or falsification of:

(a) any securities of or belonging to the co-operative; or

(b) any books affecting or relating to affairs of the co-operative; or

(c) any record required to be sent, kept or delivered under this Law;

is guilty of an offence.

Maximum penalty: $10,000 or imprisonment for 2 years, or both.

(2) **Offence—computerised and other books** (cf Corporations Act s 1307 (2))

Where matter that is used or intended to be used in connection with the keeping of any books affecting or relating to affairs of a co-operative is recorded or stored in an illegible form by means of a mechanical

device, an electronic device or any other device, a person who:

(a) records or stores by means of that device matter that the person knows to be false or misleading in a material particular; or

(b) engages in conduct that results in the destruction, removal or falsification of matter that is recorded or stored by means of that device, or has been prepared for the purpose of being recorded or stored, or for use in compiling or recovering other matter to be recorded or stored by means of that device; or

(c) having a duty to record or store matter by means of that device, fails to record or store the matter by means of that device:

(i) with intent to falsify any entry made or intended to be compiled, wholly or in part, from matter so recorded or stored; or

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

is guilty of an offence.

Maximum penalty: $10,000 or imprisonment for 2 years, or both.

(3) **Defence** (cf Corporations Act s 1307 (3))

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

485 Fraud or misappropriation

(1) A person must not:

(a) by false representation or imposition obtain possession of any property of a co-operative; or

(b) having property of a co-operative in his or her possession, withhold or misapply it or wilfully apply part of it to purposes other than purposes

authorised by the rules of the co-operative or this Law.

Maximum penalty: $6,000.

(2) A person who is found guilty of an offence under subsection (1) must, if ordered to do so by the court, deliver up all the property and repay all money improperly applied.

Maximum penalty (for subsection (2)): $6,000 or imprisonment for 6 months, or both.

486 Offering or paying commission

A person must not offer or pay commission, fee or reward, whether pecuniary or otherwise, to an officer of a co-operative in relation to a transaction or proposed transaction between the person and the co-operative.

Maximum penalty: $6,000 or imprisonment for 6 months, or both.

487 Accepting commission

(1) An officer of a co-operative must not accept a commission, fee or reward, whether pecuniary or otherwise, from a person in relation to a transaction or proposed transaction between the person and the co-operative.

Maximum penalty: $6,000 or imprisonment for 6 months, or both.

(2) An officer of a co-operative who is found guilty of an offence under subsection (1) is also liable to make good to the co-operative double the value or amount of the commission, fee or reward.

488 False statements in loan application etc

(1) A person must not in, or in relation to, an application, request, or demand for money made to or of a co-operative:

(a) give information or make a statement to the co-operative or an officer, employee or agent of the co-operative knowing it to be false or misleading in a material particular; or

(b) proffer to the co-operative or an officer, employee or agent of the co-operative any information or statement provided by another person knowing it to be false or misleading in a material particular.

Maximum penalty: $6,000 or imprisonment for 6 months, or both.

(2) If a person is found guilty of an offence under subsection (1), a co-operative from which money has been obtained by the person in relation to the commission of the offence may exercise all rights under a mortgage or other security given to it by the person to secure the repayment of money that it could exercise if there were a breach of a covenant or of a term of a contract by which the security was given.

(3) The co-operative may exercise the rights whether the mortgage or other security was executed by the person alone or by the person and another person or other persons.

Part 6.3 Examining a person about a co-operative

489 Application of Corporations Act—court-directed examinations

A co-operative is declared to be an applied Corporations legislation matter for the purposes of the Corporations application legislation of this jurisdiction in relation to Division 1 of Part 5.9 of the Corporations Act, subject to the modifications referred to in section 13 (3) of this Law so far as they are relevant.

Note. See section 13, including Note 1 to that section.

Part 6.4 Supervision and inspection

490 Definitions

In this Part:

co-operative venture means:

(a) a corporation or unit trust formed by a co-operative or in the formation of which a co-operative participated; or

(b) a partnership, joint venture or association of persons or bodies formed or entered into by a co-operative.

place includes all or part of a structure, building, aircraft, vehicle, vessel and place (whether built on or not).

relevant documents means books or other documents relating to the promotion, formation, membership, control, transactions, dealings, business or property of a co-operative.

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

A reference in this Part to a co-operative includes a reference to each of the following:

(a) a participating co-operative;

(b) a subsidiary of a co-operative or participating co-operative;

(c) a co-operative venture;

(d) a co-operative or participating co-operative, or a subsidiary of either, or a co-operative venture, that is in the course of being wound up or has been deregistered.

492 Appointment of inspectors

The designated authority may appoint a person as an inspector under this Law if:

(a) the designated authority considers the person has the necessary expertise or experience to be an inspector; or

(b) the person has satisfactorily finished training approved by the designated authority.

493 Registrar and investigators have functions of inspectors

The Registrar, and an investigator exercising functions under Part 6.5, have and may exercise all the functions of an inspector and for the purpose are taken to be inspectors.

494 Inspector's identity card

(1) The designated authority must give each inspector an identity card.

(2) The identity card must:

(a) contain a recent photo of the person; and

(b) be signed by the person; and

(c) identify the person as an inspector.

(3) A person who stops being an inspector must return the person's identity card to the designated authority as soon as possible (but within 21 days) after the person stops being an inspector, unless the person has a reasonable excuse.

Maximum penalty: $2,000.

(4) This section does not prevent the giving of a single identity card to a person for this Law and other legislation or for other purposes.

495 Production or display of inspector's identity card

(1) An inspector may exercise a power in relation to someone only if:

(a) the inspector first produces the inspector's identity card for the other person's inspection; or

(b) the inspector has the inspector's identity card displayed so it is clearly visible to the other person.

(2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the inspector must produce the identity card for inspection by the person at the first reasonable opportunity.

496 Powers of inspector

(1) An inspector is subject to the directions of the Registrar.

(2) The powers of an inspector may be limited:

(a) under a local regulation; or

(b) under a condition of appointment; or

(c) by written notice given by the Registrar to the inspector.

497 Inspector's appointment conditions

(1) An inspector holds office on the conditions stated in the instrument of appointment.

(2) An inspector:

(a) if the appointment provides for a term of appointment—stops holding office at the end of the term; and

(b) if the conditions of appointment provide—stops holding office when the inspector stops holding another office stated in the appointment conditions (the main office); and

(c) may resign by signed notice of resignation given to the Registrar.

(3) However, an inspector may not resign from the office under this Law (the ***secondary office***) if a term of employment to the main office requires the person to hold the secondary office.

498 Entry of place

(1) An inspector may enter a place if:

(a) its occupier consents to the entry; or

(b) the entry is authorised by a warrant; or

(c) it is a place at which the affairs or activities of a co-operative are managed or conducted.

(2) An inspector, without the occupier's consent or a warrant, may enter the land around the premises to ask its occupier for consent to enter the premises.

499 Consent to entry

(1) This section applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place.

(2) Before asking for the consent, the inspector must inform the occupier:

(a) of the purpose of the entry; and

(b) that the occupier is not required to consent.

(3) If the consent is given, the inspector may ask the occupier to sign an acknowledgment of the consent.

(4) The acknowledgment must state:

(a) that the occupier was informed:

(i) of the purpose of the entry; and

(ii) that the occupier is not required to consent; and

(b) that the occupier gives an inspector consent to enter the place and exercise powers under this Law or under or referred to in the Co-operatives National Law Act of this jurisdiction; and

(c) the time and date the consent was given.

(5) If the occupier signs an acknowledgment of consent, the inspector must immediately give a copy to the occupier.

(6) If:

(a) a question arises, in proceedings in or before the court, as to whether the occupier of a place consented to an inspector entering the place under this Law; and

(b) an acknowledgment under this section is not produced in evidence for the entry; and

(c) it is not proved the occupier consented to the entry;

the court may presume the occupier did not consent.

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

(1) An inspector may, by notice in the approved form:

(a) require a co-operative to produce to the inspector at a time and place stated in the notice stated relevant documents relating to the co-operative; and

(b) require a person who is involved in the activities of a co-operative to produce to the inspector at a time and place stated in the notice stated relevant documents relating to the co-operative; and

(c) require a person who is involved in the activities of a co-operative:

(i) to attend before the inspector at a time and place stated in the notice; and

(ii) to answer questions put to the person by the inspector relating to the promotion, formation, membership, control, transactions, dealings, business or property of the co-operative.

(2) A person is considered to be involved in the activities of a co-operative if the person:

(a) is or has been an officer or employee of, or an agent, authorised deposit-taking institution, Australian legal practitioner, auditor or other person acting in any capacity for, the co-operative; or

(b) has a relevant document relating to the co-operative in the person's possession or control; or

(c) was a party to the creation of a relevant document relating to the co-operative.

501 Powers of inspectors at place entered

An inspector has the following powers at a place the inspector is authorised to enter:

(a) power to search for evidence of a contravention of this Law;

(b) power to search for relevant documents and to require a person at the place to produce to the inspector any relevant document in the person's custody or under the person's control;

(c) power to require a person at the place who is apparently involved in the management or conduct of the affairs or activities of a co-operative to answer questions or provide information;

(d) power to exercise the functions of an inspector under section 502 in relation to a relevant document found at the place or produced to the inspector.

502 Functions of inspectors in relation to relevant documents

(1) An inspector has the following powers in relation to a relevant document found by an inspector at a place entered by the inspector or produced to the inspector under a requirement made under this Part:

(a) power to take possession of the document or secure it against interference;

(b) power to make copies of, or take extracts from, the document;

(c) power to require a person who was party to the creation of the document to make a statement giving any explanation the person is able to give as to any matter relating to the creation of the document or as to any matter to which the document relates;

(d) power to retain possession of the document for the period necessary to enable the document to be inspected, and copies of, or extracts from, the document to be made or taken.

(2) While an inspector retains possession of a document, the inspector must permit a person who would be entitled to inspect the document were it not in the possession of the inspector to inspect the document at a reasonable time and make a copy of, or take extracts from, the document.

(3) If an inspector takes possession of or secures against interference a relevant document and a person has a lien on the document, the inspector's actions do not prejudice the lien.

503 Protection from incrimination

(1) A person is not excused from making a statement under a requirement under this Part on the ground the statement might tend to incriminate him or her.

(2) However, 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 Part.

(3) Except as provided by subsection (2), a statement made by a person in compliance with a requirement under this Part may be used in evidence in any criminal or civil proceedings against the person.

504 Warrants

(1) An inspector may apply to the designated authority for a warrant to enter a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The designated authority may refuse to consider the application until the inspector gives the designated authority all the information the designated authority requires about the application in the way the designated authority requires.

Note. The designated authority may, for example, require additional information supporting the application to be given by statutory declaration.

(4) The designated authority may issue the warrant only if satisfied there are reasonable grounds for suspecting:

(a) the affairs or activities of a co-operative are being managed or conducted at the place; or

(b) there are relevant documents at the place; or

(c) there is a particular thing or activity (the ***evidence***) that may provide evidence of an offence against this Law; or

(d) the evidence is at the place, or may be at the place, within the next 7 days.

(5) The warrant must state:

(a) that the inspector may, with reasonable and necessary help and force, enter the place and exercise the inspector's powers under this Law; and

(b) the suspected offence (if any) for which the warrant was issued; and

(c) any evidence that may be seized under the warrant; and

(d) the hours when the place may be entered; and

(e) the date, within 7 days after the warrant's issue, when the warrant ends.

(6) A police officer may accompany an inspector executing a warrant issued under this section and may take all reasonable steps to assist in the exercise of the functions of the inspector under this Law.

505 Warrants—applications made otherwise than in person

(1) An inspector may apply for a warrant by phone, fax, radio or another form of communication if the inspector considers it necessary because of:

(a) urgent circumstances; or

(b) other special circumstances, including, for example, the inspector's remote location.

(2) Before applying for the warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.

(3) The inspector may apply for the warrant before the application is sworn.

(4) After issuing the warrant, the designated authority must immediately provide by fax or another form of communication a copy to the inspector if it is reasonably practicable to do so.

(5) If it is not reasonably practicable to provide a copy to the inspector:

(a) the designated authority must:

(i) tell the inspector what the terms of the warrant are; and

(ii) tell the inspector the date and time the warrant was issued; and

(b) the inspector must complete a form of warrant (the ***warrant form***) and write on it:

(i) the designated authority's name; and

(ii) the date and time the designated authority issued the warrant; and

(iii) the warrant's terms.

(6) The copy of the warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the other powers stated by the warrant issued by the designated authority.

(7) The inspector must, at the first reasonable opportunity, send the designated authority:

(a) the sworn application; and

(b) if the inspector completed a warrant form—the completed warrant form.

(8) On receiving the documents, the designated authority must attach them to the warrant.

(9) Subsection (10) applies to a court if:

(a) a question arises, in proceedings in or before the court, whether a power exercised by an inspector was authorised by a warrant issued under this section; and

(b) the warrant is not produced in evidence.

(10) The court may presume the exercise of the power was not authorised by a warrant issued under this section, unless the contrary is proved.

506 Requirements before executing warrant

(1) Before executing a 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.

(2) The inspector or a person assisting the inspector need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure the effective execution of the warrant is not frustrated.

(3) If an occupier or another person who apparently represents the occupier is present at a place when a warrant is being executed, the inspector must:

(a) identify himself or herself to the person by producing his or her identity card for inspection by the person; and

(b) give to the person a copy of the execution copy of the warrant.

507 General powers after entering places

(1) This section applies to an inspector who enters a place under this Part.

(2) For the purpose of monitoring or enforcing compliance with this Law, the inspector may:

(a) search any part of the place; or

(b) examine, inspect, photograph or film anything at the place; or

(c) copy a document at the place; or

(d) take into or onto the place any persons, equipment and materials the inspector reasonably requires for exercising a power under this Part; or

(e) require a person in the place to give the inspector reasonable help to exercise the powers referred to in paragraphs (a)–(d).

(3) A person required to give reasonable help under subsection (2) (e) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty: $2,000.

(4) If the help is required to be given to an inspector by:

(a) answering a question; or

(b) producing a document, other than a document required to be kept under this Law;

it is a reasonable excuse for the person to fail to answer the question, or produce the document, if complying with the requirement might tend to incriminate the person.

508 Power to seize evidence

(1) An inspector who enters a place under this Part other than under a warrant may seize a thing in the place if:

(a) the inspector reasonably believes the thing is evidence of an offence against this Law or the Co-operatives National Law Act of this jurisdiction; and

(b) seizure of the thing is consistent with the purpose of entry as told to the occupier.

(2) An inspector who enters a place under this Part under a warrant may seize the evidence for which the warrant was issued.

(3) An inspector may also seize anything else in a place referred to in subsection (1) or (2) if the inspector reasonably believes:

(a) the thing is evidence of an offence against this Law or the Co-operatives National Law Act of this jurisdiction; and

(b) the seizure is necessary to prevent the thing being hidden, lost or destroyed or used to continue or repeat the offence.

509 Receipt for seized things

(1) As soon as possible after an inspector seizes a thing, the inspector must give a receipt for it to the person from whom it was seized.

(2) However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt at the place of seizure, in a reasonably secure way and in a conspicuous position.

(3) The receipt must describe generally each thing seized and its condition.

510 Return of seized things

(1) An inspector must return a seized thing to its owner at the end of:

(a) 6 months; or

(b) if proceedings for an offence involving it is started within the 6 months—the proceedings and any appeal from the proceedings.

(2) Despite subsection (1), the inspector must return the seized thing to the person immediately the inspector stops being satisfied its retention as evidence is necessary.

511 Power to require name and address

(1) This section applies if:

(a) an inspector finds a person committing an offence against this Law or the Co-operatives National Law Act of this jurisdiction; or

(b) an inspector finds a person in circumstances that lead, or has information that leads, the inspector to reasonably suspect the person has just committed an offence against this Law or the Co-operatives National Law Act of this jurisdiction.

(2) The inspector may require the person to state the person's name and address.

(3) When making the requirement, the inspector must warn the person it is an offence to fail to state the person's name or address, unless the person has a reasonable excuse.

(4) The inspector may require the person to give evidence of the correctness of the stated name or address if the inspector reasonably suspects the stated name or address is false.

(5) A person must comply with a requirement under subsection (2) or (4), unless the person has a reasonable excuse.

Maximum penalty: $2,000.

(6) A person does not commit an offence against subsection (5) if:

(a) the person was required to state the person's name and address by an inspector who suspected the person had committed an offence against this Law or the Co-operatives National Law Act of this jurisdiction; and

(b) the person is not proved to have committed the offence referred to in paragraph (a).

512 False or misleading statements

(1) A person must not state anything to an inspector the person knows is false or misleading in a material particular.

Maximum penalty: $12,000 or imprisonment for 1 year, or both.

(2) It is sufficient for a complaint for an offence against subsection (1) to state the statement made was false or misleading to the person's knowledge without stating which.

513 Power to require production of documents

(1) An inspector may require a person to produce to the inspector, for inspection, a document this Law requires the person to hold or keep.

(2) The person must produce the document, unless the person has a reasonable excuse for not producing it.

Maximum penalty: $12,000 or imprisonment for 1 year, or both.

(3) The inspector may keep a document that is produced:

(a) to take an extract from the document; or

(b) to make a copy of it.

(4) The inspector must return the document to the person as soon as practicable after taking the extract or making the copy.

514 False or misleading documents

(1) A person must not give to the Registrar or an inspector a document containing information the person knows is false or misleading in a material particular.

Maximum penalty: $12,000 or imprisonment for 1 year, or both.

(2) Subsection (1) does not apply to a person who, when giving the document:

(a) tells the Registrar or inspector, to the best of the person's ability, how it is false, misleading or incomplete; and

(b) if the person has, or can reasonably get, the correct information—gives the correct information to the Registrar or inspector.

(3) It is sufficient for a complaint against a person for an offence against subsection (1) to state the document was false, misleading or incomplete to the person's knowledge without stating which.

515 Obstruction of inspectors

(1) A person must not obstruct an inspector, or a person helping an inspector, in the exercise of a power under this Law, unless the person has a reasonable excuse.

Maximum penalty: $12,000 or imprisonment for 1 year, or both.

(2) If a person obstructs an inspector in the exercise of a power under this Law and the inspector decides to exercise the power, the inspector must warn the person.

(3) In warning the person, the inspector must tell the person:

(a) it is an offence to obstruct the inspector, unless the person has a reasonable excuse; and

(b) the inspector considers the person's conduct is an obstruction.

(4) In this section:

obstruct includes hinder and attempt to obstruct.

516 Copies or extracts of records to be admitted in evidence

(1) In any legal proceedings (whether under this Law or otherwise), a copy of or extract from a record relating to affairs of a co-operative is admissible in evidence as if it were the original record or the relevant part of the original record.

(2) However, a copy of or extract from a record is not admissible in evidence under subsection (1) unless it is proved 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 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 part of the record.

517 Privilege

(1) An Australian legal practitioner is entitled to refuse to comply with a requirement under section 500 or 502 relating to a relevant document if:

(a) the document contains a privileged communication made by or on behalf of or to the practitioner in his or her capacity as an Australian legal practitioner; or

(b) the practitioner is not able to comply with the requirement without disclosing a privileged communication made by or on behalf of or to the practitioner in his or her capacity as an Australian legal practitioner.

(2) The practitioner is not entitled to refuse to comply with the requirement to the extent he or she is able to comply with it without disclosing the privileged communication.

(3) The 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 Law, or in the course of being wound up) the administrator or the liquidator agrees to the practitioner complying with the requirement.

(4) If the practitioner refuses to comply with the requirement, he or she must immediately give in writing to the Registrar:

(a) the name and address of the person to whom or by or on behalf of whom the communication was made (if known to the practitioner); and

(b) sufficient particulars to identify the document containing the communication (if the communication was made in writing).

Maximum penalty: $6,000.

518 Machinery and other provisions for warrants

It is intended that the Co-operatives National Law Act of this jurisdiction may contain machinery and other provisions for applications for, the issue of, and the execution of, warrants.

Part 6.5 Inquiries

519 Definitions

In this Part:

affairs of a co-operative includes:

(a) the promotion, formation, membership, control, transactions, dealings, business and property of the co-operative; and

(b) loans made to the co-operative; and

(c) matters that are concerned with identifying people who are, or have been, financially interested in the success or failure, or apparent success or failure, of the co-operative or who are, or have been, able to control or influence materially the policies of the co-operative; and

(d) the circumstances in which a person placed, withdrew or disposed of funds with, or loans to, the co-operative.

costs of an inquiry under this Part includes:

(a) the expenses of, and incidental to, the inquiry; and

(b) the expenses payable by the Registrar in proceedings instituted by the Registrar under this Part in the name of the co-operative the subject of the inquiry; and

(c) the part of the remuneration of a public sector official that the Minister decides is attributable to matters connected with the inquiry.

involved person, in relation to an inquiry into the affairs of a co-operative, means:

(a) an officer of the co-operative; or

(b) a person who acts, or has at any time acted, as authorised deposit-taking institution, Australian legal practitioner, auditor or actuary, or in another capacity, for the co-operative; or

(c) a person who has, or at any time had, in his or her possession property of the co-operative; or

(d) a person who is indebted to the co-operative; or

(e) a person who is capable of giving information relating to the affairs of the co-operative; or

(f) a person whom an investigator believes on reasonable grounds to be a person referred to in paragraphs (a)–(e).

520 Appointment of investigators

(1) The designated authority may appoint a person or persons to hold an inquiry into the affairs of a co-operative if the designated authority considers it is desirable to do so for the protection or otherwise in the interests of the public or of members or creditors of the co-operative.

(2) The designated authority may vary the terms of appointment of an investigator if the investigator agrees to the variation.

(3) In the course of an inquiry into the affairs of a co-operative, an investigator may inquire into the affairs of a subsidiary of the co-operative that, if the subsidiary were the co-operative, would be affairs of the co-operative.

(4) An inquiry into the affairs of a subsidiary of a co-operative may be conducted as if the subsidiary were the co-operative.

521 Powers of investigators

(1) An investigator inquiring into the affairs of a co-operative may, by giving an involved person a notice in the approved form, require the person:

(a) to produce any document of which the person has custody or control and that relates to those affairs; or

(b) to give the investigator all reasonable help in 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 retain it for the period 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 investigator's possession to inspect the document at any reasonable time and make a copy of, or take extracts from, the document.

522 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 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 criminal proceedings other than:

(a) proceedings under section 524 for giving a false or misleading answer to the question; or

(b) proceedings on a charge of perjury in relation to the answer.

(4) An involved person who attends for examination by an investigator is entitled to be paid the allowance and the expenses:

(a) prescribed by the National Regulations, except to the extent paragraph (b) applies; or

(b) prescribed by the local regulations.

523 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 practitioner in his or her capacity as an Australian legal practitioner.

(2) The 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 Law, or in the course of being wound up) the administrator or liquidator agrees to the practitioner producing the document.

(3) If the practitioner refuses to comply with the requirement to produce a document, he or she must immediately give in writing to the investigator:

(a) the name and address of the person to whom or by or on behalf of whom the communication was made (if known to the practitioner); and

(b) sufficient particulars to identify the document.

Maximum penalty: $6,000.

524 Offences by involved person

(1) An involved person must not:

(a) fail to comply with a lawful requirement of an investigator without showing reasonable cause for the failure; or

(b) give an investigator information knowing the information to be false or misleading in a material particular; or

(c) when appearing before an investigator:

(i) make a statement knowing the statement to be false or misleading in a material particular; or

(ii) fail to be sworn or to make an affirmation.

Maximum penalty: $24,000 or imprisonment for 2 years, or both.

(2) If an investigator considers a failure by a person to comply with a requirement of the investigator is an offence under subsection (1) (a), the investigator may certify the failure to the Supreme Court and the court may then:

(a) order the involved person to comply with the requirement of the investigator within a stated period; or

(b) instead of, or in addition to, making the order, punish the involved person as for a contempt of the Supreme Court if satisfied there was no lawful excuse for the failure to comply with the requirement of the investigator.

525 Offences relating to documents

If an inquiry into the affairs of a co-operative is being held under this Part, a person who:

(a) conceals, destroys, mutilates or alters a document relating to the co-operative; or

(b) sends, or causes to be sent, out of this jurisdiction a document or other property belonging to, or under the control of, the co-operative;

commits an offence, unless it is established the person charged did not intend to defeat, delay or obstruct the inquiry.

Maximum penalty: $12,000 or imprisonment for 1 year, or both.

526 Record of examination

(1) Except as provided by section 522, a record of an examination may be used in proceedings against the person examined, but this does not preclude the admission of other written or oral evidence.

(2) A person examined is, on written application made to the investigator, entitled to a free copy of the record of examination.

(3) The Registrar may give an Australian legal practitioner a copy of a record of examination made by an investigator if the Registrar is satisfied the practitioner is conducting, or is in good faith contemplating, proceedings about affairs of the co-operative to which the record relates.

(4) An Australian legal practitioner must not:

(a) use a copy of a record of examination otherwise than for the preparation for, institution of, or conduct of, proceedings; or

(b) publish or communicate the record or part of it for another purpose.

Maximum penalty: $6,000.

527 Report of investigator

(1) An investigator may, and if directed by the Registrar to do so must, make interim reports to the Registrar on any inquiry being held by the investigator.

(2) As soon as practicable after the end of an inquiry, the investigator must report to the Registrar:

(a) the opinion of the investigator in relation to the affairs of the co-operative the subject of the inquiry; and

(b) the findings on which the opinion is based.

(3) An investigator's report may include a recommendation as to whether:

(a) a direction should be given under section 530 (3); or

(b) an application should be made under section 530 (4) or (5); or

(c) both a direction should be given and an application should 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 Part, in which case the Registrar:

(a) may retain the document for the period the Registrar considers necessary to decide whether proceedings should be instituted as a result of the inquiry; and

(b) may retain the document for the further period the Registrar considers necessary to enable proceedings to be instituted and prosecuted; and

(c) may permit the use of the document for proceedings instituted as a result of the inquiry; and

(d) must permit inspection of the document by a person who would be entitled to inspect it if it were returned to its former custody; and

(e) may permit inspection of the document by another person while it is in the possession of the Registrar, but only if the Registrar considers the person has an interest in the inquiry and, because of the interest, refusal of the inspection would be unjust.

528 Proceedings following inquiry

(1) If proceedings are to be, or have been, instituted by the Registrar as a result of an inquiry under this Part, the Registrar may, by written notice, require a person who, in relation to the inquiry, was an involved person to give all the assistance in the proceedings the person is reasonably able to give.

(2) The Supreme Court may, on the application of the Registrar, order a person to comply with a notice under subsection (1) if the person has failed to do so.

(3) If the Registrar considers, as a result of an inquiry under this Part, proceedings should, in the public interest, be instituted by a co-operative for the recovery of:

(a) damages for fraud or other misconduct in the affairs of the co-operative; or

(b) property of the co-operative;

the proceedings may be instituted and prosecuted in the name of the co-operative.

529 Admission of investigator's report as evidence

(1) A document certified by the Registrar as being a copy of a report of an inquiry under this Part 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 522.

530 Costs of inquiry

(1) The costs of an inquiry under this Part are to be paid out of money appropriated by the Legislature of this jurisdiction.

(2) At the direction of the Minister, the Registrar must act under one or more of subsections (3), (4) and (5).

(3) The Registrar may, by written notice given to a co-operative, direct the co-operative to pay to:

(a) the Registrar, unless paragraph (b) applies; or

(b) the entity prescribed by the Co-operatives National Law Act of this jurisdiction for the purposes of this paragraph;

all or part of the costs of an inquiry under this Part into the affairs of the co-operative.

(4) If proceedings are instituted by the Registrar under section 528 in the name of a co-operative, the court may, in the course of the proceedings and on the application of the Registrar, order all or part of the costs of the inquiry that led to the proceedings be paid to the Registrar by a stated party to the proceedings.

(5) If a person is convicted of an offence in proceedings certified by the Registrar to be the result of an inquiry into the affairs of a co-operative, the court may, on the application of the Registrar made at the time of the conviction or within 14 days later, order the convicted person to pay to the Registrar all or part of the costs of the inquiry.

(6) An order under this section must state:

(a) the amount to be paid; and

(b) the time or times for payment; and

(c) the manner of payment.

(7) An amount that has not been paid by a person in accordance with an order under this section is recoverable from the person by the Registrar as a debt.

Part 6.6 Special meetings and inquiries

531 Application for special meeting or inquiry

(1) The Registrar must, on the application of a majority of the members of the board or of not less than one-third in number of the members of a co-operative:

(a) call a special meeting of the co-operative; or

(b) hold, or appoint an inspector to hold, an inquiry into the affairs of the co-operative or of a subsidiary of the co-operative.

(2) An application must be supported by the evidence the Registrar directs to show the applicants have good reason for requiring the meeting or inquiry and the application is made without malicious motive.

(3) Notice of the application must be given to the co-operative as the Registrar directs.

(4) The applicants must give security for the expenses of the meeting or inquiry as directed by the Registrar.

532 Holding of special meeting

(1) The Registrar may direct the time and place at which a special meeting is to be held and the matters to be discussed and decided at the meeting.

(2) The Registrar must give the notice to members of the holding of the special meeting that the Registrar considers appropriate (despite a provision in the rules of the co-operative as to the giving of notice).

(3) The special meeting has all the powers of a meeting called under the rules of the co-operative and has power to appoint its own chairperson (despite a rule of the co-operative to the contrary).

(4) The Registrar or another person nominated by the Registrar may attend and address the meeting.

533 Expenses of special meeting or inquiry

The expenses of and incidental to a meeting called or an inquiry held under this Part (including under section 534) must be defrayed in the proportions the Registrar directs:

(a) by the applicants (if any); or

(b) out of the funds of the co-operative to which the meeting or inquiry related or whose subsidiary was the subject of the inquiry; or

(c) by an officer, member, former officer or former member of the co-operative.

534 Power to hold special inquiry into co-operative

The Registrar may without an application hold, or appoint an inspector to hold, an inquiry into the working and financial condition of a co-operative or a subsidiary of a co-operative.

535 Special meeting following inquiry

(1) After an inquiry under this Part, the Registrar may call a special meeting of the co-operative.

(2) Sections 532 and 533 apply to the meeting.

Chapter 7 Legal proceedings and other matters

Part 7.1 Offences, enforcement and remedies

536 Notice to be given of conviction for offence

If a co-operative or an officer of a co-operative is convicted of an offence against a provision of this Law or of a corresponding co-operatives law, the co-operative must, within 28 days after the conviction is recorded, give to each member of the co-operative notice of:

(a) the conviction; and

(b) any penalty imposed; and

(c) the nature of the offence.

537 Secrecy

(1) A person who is, or at any time was, engaged in the administration of this Law or a former Act must not, other than as provided by this section, record, make use of or divulge information obtained in the course of the administration.

Maximum penalty: $6,000.

(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 Law; 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 proceedings under this Law or a corresponding co-operatives law or of an inquiry authorised by legislation of this jurisdiction or of another jurisdiction; or

(c) with the consent of the person to whom the information relates; or

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

(e) under a reciprocal arrangement under sections 616 and 617.

(4) Information may be divulged to:

(a) the Minister; or

(b) the Registrar or a participating Registrar; or

(c) a person specified in the Co-operatives National Law Act of this jurisdiction (subject to any conditions or limitations specified in that Act) for the purposes of this paragraph; or

Note. This paragraph is intended to cover the Treasurer, Auditor-General, Independent Commission Against Corruption, etc.

(d) the person who, under a law of this jurisdiction or another jurisdiction, administers a law of the jurisdiction that relates to taxation or the imposition of a duty; 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) ASIC; or

(g) a person nominated by a person referred to in paragraphs (a)–(f); or

(h) a person seeking information under a reciprocal arrangement under section 616 or 617; or

(i) a police officer exercising functions as a police officer; or

(j) a person, to whom the Registrar considers 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 Law or a former Act if the person exercises, or at any time exercised, a function as:

(a) the Registrar holding office under this Law or a former Act; or

(b) an inspector appointed under this Law or a former Act; or

(c) an investigator appointed under this Law or a former Act; or

(d) a person appointed or employed for the purposes of this Law or a former Act.

(6) In this section:

divulge information means:

(a) communicate the information orally; 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 another way.

former Act means an Act specified in the Co-operatives National Law Act of this jurisdiction for the purposes of this definition.

538 False or misleading statements

(1) A person must not, in a document required for the purposes of this Law or filed with the Registrar, make, or authorise the making of, a statement knowing it to be false or misleading in a material particular.

Maximum penalty: $12,000.

(2) A person must not, from a document required for the purposes of this Law or filed with the Registrar, omit, or authorise the omission of, anything knowing that the omission makes the document false or misleading in a material particular.

Maximum penalty: $12,000.

(3) A person who, in a document required for the purposes of this Law or filed with the Registrar, makes, or authorises the making of, a statement that is false or misleading in a material particular commits an offence, unless it is proved that the person had taken reasonable precautions aimed at avoiding the making or authorising of false or misleading statements in the document.

Maximum penalty: $6,000.

(4) If an omission makes a document required for the purposes of this Law or filed with the Registrar false or misleading in a material particular, a person who made or authorised the omission commits an offence, unless it is proved that the person had taken reasonable precautions aimed at avoiding the making or authorising of omissions that would make the document false or misleading.

Maximum penalty (for subsection (4)): $6,000.

539 Further offence for failure to do required act

(1) If a provision of this Law requires an act to be done, the obligation to do the act continues until the act is done:

(a) even if the person has been convicted of an offence for 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 the period has ended or the time passed.

(2) If a person is convicted of an offence (a ***primary conviction***) for a failure to do an act (whether it is the first or a second or subsequent offence in relation to the failure) and the failure to do the act continues after the time of the conviction, the person commits a further offence for the continuing failure.

(3) The further offence is constituted by the failure to do the act during the period (the ***further offence period***) that starts with the primary conviction and ends when proceedings for the further offence are started or the act concerned is done (whichever happens first).

(4) Proceedings for a further offence are taken to be started on the day the information or other initiating process for the further offence is laid or commenced or an earlier day stated in the information or process for the purpose.

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

540 Civil remedies

(1) If a co-operative in making, guaranteeing or raising a loan or receiving a deposit contravenes this Law or a rule of the co-operative, the civil rights and liabilities of the co-operative or another person in relation to 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 Law or the rules of the co-operative.

541 Order against person concerned with co-operative
(cf Corporations Act s 598)

(1) Subject to subsection (2), where, on application by an eligible applicant, the Supreme Court is satisfied that:

(a) a person is guilty of fraud, negligence, default, breach of trust or breach of duty in relation to a co-operative; and

(b) the co-operative has suffered, or is likely to suffer, loss or damage as a result of the fraud, negligence, default, breach of trust or breach of duty;

the court may make such order or orders as it thinks appropriate against or in relation to the person (including either or both of the orders specified in subsection (3)) and may so make an order against or in relation to a person even though the person may have committed an offence in respect of the matter to which the order relates.

(2) The Supreme Court must not make an order against a person under subsection (1) unless the court has given the person the opportunity:

(a) to give evidence; and

(b) to call witnesses to give evidence; and

(c) to bring other evidence in relation to the matters to which the application relates; and

(d) to employ, at the person's own expense, an Australian legal practitioner to put to the person, or to any other witness, such questions as the court considers just for the purpose of enabling the person to explain or qualify any answers or evidence given by the person.

(3) The orders that may be made under subsection (1) against a person include:

(a) an order directing the person to pay money or transfer property to the co-operative; and

(b) an order directing the person to pay to the co-operative the amount of the loss or damage.

(4) Nothing in this section prevents any person from instituting any other proceedings in relation to matters in respect of which an application may be made under this section.

(5) In this section:

eligible applicant, in relation to a co-operative, means:

(a) the Registrar; or

(b) a liquidator or provisional liquidator of the co-operative; or

(c) an administrator of the co-operative; or

(d) an administrator of a deed executed by the co-operative under section 382; or

(e) a person authorised in writing by the Registrar to make an application under this section in relation to the co-operative.

Note. Section 561 provides that the Supreme Court must not make a declaration of contravention or a pecuniary penalty order against a person for a contravention if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

542 Injunctions

(1) This section applies to conduct that constituted, constitutes or would constitute:

(a) a contravention of this Law; or

(b) attempting to contravene this Law; or

(c) aiding, abetting, counselling or procuring a person to contravene this Law; or

(d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Law; or

(e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Law; or

(f) conspiring with others to contravene this Law.

(2) On the application of:

(a) the Registrar; or

(b) a person whose interests have been, are or would be affected by conduct that another person has engaged in, is engaging in or is proposing to engage in,

the Supreme Court, if satisfied that the conduct is conduct to which this section applies, may grant an injunction, on the terms the court considers appropriate, restraining a person from engaging in the conduct and, if the court considers it desirable to do so, requiring the person to do any act or thing.

(3) If the Supreme Court considers it desirable to do so, the court may grant an interim injunction pending decision 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 the conduct; and

(b) whether or not the person has previously engaged in the conduct; and

(c) whether or not there is an imminent danger of substantial damage to a person if the first-mentioned person engages in the conduct.

(6) The power of the Supreme Court to grant an injunction requiring a person to do an act or thing may be exercised:

(a) whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do the act or thing; and

(b) whether or not the person has previously refused or failed to do the 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 the 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 the person to pay damages to another person.

543 Undertakings

(1) The Registrar may accept a written undertaking given by a person in connection with a matter relating to a contravention of this Law or where the Registrar has reasonable grounds to believe there may be a contravention of this Law.

(2) Without limiting subsection (1), the Registrar may accept a written undertaking given by the person that the person will do either or both of the following:

(a) refrain from conduct that constitutes a contravention of this Law;

(b) take action to prevent or remedy a contravention of this Law.

(3) The person may withdraw or vary an undertaking at any time, if the person has first obtained the consent of the Registrar.

(4) The consent of the Registrar is required for the purposes of subsection (3) even if the undertaking purports to authorise a withdrawal or variation of the undertaking without that consent.

(5) If the Registrar accepts an undertaking given by a person, the Registrar must not proceed against the person in respect of the conduct specified in the undertaking, unless it appears to the Registrar that the person has contravened the undertaking.

(6) Subsection (5) does not apply to an application by the Registrar for an order under section 545.

544 Offence for contravention of undertaking

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

Maximum penalty: $6,000.

545 Enforcement order on application with consent of person giving undertaking

(1) The Registrar, with the consent of the person who gave an undertaking, may apply, at any time, to the designated tribunal for an order directing the person to comply with the undertaking.

(2) On an application under subsection (1), the designated tribunal may by order direct the person to comply with the undertaking.

(3) This section does not limit section 546.

546 Enforcement orders after contravention of undertaking

(1) If the designated tribunal is satisfied, on the application of the Registrar, that a person has contravened an undertaking accepted by the Registrar, the tribunal may make any or all of the following orders:

(a) an order prohibiting the person from engaging in specified conduct;

(b) an order directing the person to take specified action to comply with the undertaking;

(c) an order directing the person to pay to the Registrar an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the contravention of the undertaking;

(d) any order that the tribunal considers appropriate directing the person to compensate any other person who has suffered loss, injury or damage as a result of the contravention of the undertaking;

(e) any other order that the tribunal considers appropriate.

(2) The designated tribunal may make an interim order under subsection (1) (a) pending final determination of the application.

(3) The designated tribunal may, on the application of the Registrar or the person in respect of whom the order was made, vary or discharge an order under subsection (1) (a).

(4) An order under subsection (1) (a) may be made subject to such conditions as the designated tribunal thinks appropriate.

(5) The designated tribunal must not make an order under this section (other than an interim order) unless satisfied on the balance of probabilities that proper grounds for the order have been established.

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

547 Copy of undertaking

The Registrar must give a copy of an undertaking under section 543 to the person who gave the undertaking.

548 Registration of undertakings

(1) The Registrar must register each undertaking in the register of co-operatives.

(2) The register of co-operatives must include the following:

(a) the name and address of the person who gave the undertaking;

(b) the date of the undertaking;

(c) a copy of the undertaking.

(3) The Registrar may withhold information relating to an undertaking from inclusion in the register of co-operatives if the Registrar is satisfied that:

(a) the information consists of personal details of an individual not involved in a contravention or possible contravention to which the undertaking relates; or

(b) the information is commercial-in-confidence; or

(c) disclosure of the information would be against the public interest.

Note. Section 9 defines "involved" in a contravention.

(4) If information is withheld under this section from inclusion in the register of co-operatives, the register must include a statement that information has been withheld in relation to the undertaking concerned and of the grounds on which it has been withheld.

(5) For the purposes of this section, information is ***commercial-in-confidence*** if:

(a) its disclosure would place a person at a substantial commercial disadvantage in relation to present or potential contractual negotiations or arrangements; or

(b) it is of a kind prescribed by the National Regulations as being commercial-in-confidence.

549 Double jeopardy

If:

(a) an act or omission constitutes an offence under this Law and under a co-operatives law of a participating jurisdiction; and

(b) the offender has been punished for that offence under the co-operatives law of the participating jurisdiction;

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

550 Strict liability

(1) If a provision of this Law that creates an offence provides that the offence is an offence of strict liability:

(a) there are no fault elements for any of the physical elements of the offence; and

(b) the defence of mistake of fact is available.

(2) If a provision of this Law that creates an offence provides that strict liability applies to a particular physical element of the offence:

(a) there are no fault elements for that physical element; and

(b) the defence of mistake of fact is available in relation to that physical element.

(3) The existence of strict liability does not make any other defence unavailable.

(4) Subsections (1)–(3) do not apply in relation to an offence under the Corporations Act as applying under this Law.

551 Time limit for starting proceedings for offence

Proceedings for an offence under this Law or the National Regulations may be started no later than 5 years after the alleged commission of the offence.

552 Authorisation to start proceedings for offence

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

Part 7.2 Civil consequences of contravening civil penalty provisions

553 Definitions (cf Corporations Act s 1317DA)

In this Law:

civil penalty provision means a provision referred to in section 554.

compensation order means an order under section 557.

pecuniary penalty order means an order under section 556.

554 Declarations of contravention (cf Corporations Act s 1317E)

(1) If the Supreme Court is satisfied that a person has contravened one of the following provisions, it must make a declaration of contravention:

(a) section 192 (1) (Care and diligence);

(b) section 193 (1) (Good faith);

(c) section 193 (2);

(d) section 194 (1) (Use of position);

(e) section 194 (2);

(f) section 195 (1) (Use of information);

(g) section 195 (3);

(h) section 328 (1) (Contravention by directors of provisions of Part 3.3);

(i) without limiting paragraph (h):

(i) section 315 (1) of the Corporations Act (Deadline for reporting to members) as applying under section 285 (2) or 328 (1) of this Law;

(ii) section 318 of the Corporations Act (Additional reporting by debenture issuers) as applying under section 288 or 328 (1) of this Law;

(j) any of the following provisions of the Corporations Act relating to debentures as applying under section 337 of this Law:

(i) section 674 (2) (Continuous disclosure—listed disclosing entity bound by a disclosure requirement in market listing rules);

(ii) section 674 (2A);

(iii) section 675 (2) (Continuous disclosure—other disclosing entities);

(iv) section 675 (2A);

(v) section 1041A (Market manipulation);

(vi) section 1041B (1) (False trading and market rigging—creating a false or misleading appearance of active trading etc);

(vii) section 1041C (1) (False trading and market rigging—artificially maintaining etc. trading price);

(viii) section 1041D (Dissemination of information about illegal transactions);

(ix) section 1043A (1) (Prohibited conduct by person in possession of inside information);

(x) section 1043A (2);

(k) section 588G (2) of the Corporations Act (Director's duty to prevent insolvent trading by company) as applying under section 451 of this Law.

(2) A declaration of contravention must specify the following:

(a) the court that made the declaration;

(b) the civil penalty provision that was contravened;

(c) the person who contravened the provision;

(d) the conduct that constituted the contravention.

555 Declaration of contravention is conclusive evidence
(cf Corporations Act s 1317F)

A declaration of contravention is conclusive evidence of the matters referred to in section 554 (2).

556 Pecuniary penalty orders (cf Corporations Act s 1317G)

(1) The Supreme Court may order a person to pay a pecuniary penalty of up to $200,000 if:

(a) a declaration of contravention by the person has been made under section 554; and

(b) the contravention:

(i) materially prejudices the interests of the co-operative or its members; or

(ii) materially prejudices the co-operative's ability to pay its creditors; or

(iii) is serious.

(2) A pecuniary penalty ordered to be paid in this jurisdiction is to be paid and treated in accordance with the Co-operatives National Law Act of this jurisdiction.

557 Compensation orders (cf Corporations Act s 1317H)

(1) **Compensation for damage suffered**

The Supreme Court may order a person to compensate a co-operative for damage suffered by the co-operative if:

(a) the person has contravened a civil penalty provision in relation to the co-operative; and

(b) the damage resulted from the contravention.

The order must specify the amount of the compensation and may be made under this subsection whether or not a declaration of contravention has been made under section 554.

(2) **Damage includes profits**

In determining the damage suffered by the co-operative for the purposes of making a compensation order, profits made by any person resulting from the contravention or the offence are to be included.

(3) **Recovery of damage**

A compensation order may be enforced as if it were a judgment of the Supreme Court.

558 Who may apply for a declaration or order (cf Corporations Act s 1317J)

(1) The Registrar may apply for a declaration of contravention, a pecuniary penalty order or a compensation order.

(2) The co-operative may apply for a compensation order.

(3) The co-operative may intervene in an application for a declaration of contravention or a pecuniary penalty order in relation to the co-operative. The co-operative is entitled to be heard on all matters other than whether the declaration or order should be made.

(4) No person may apply for a declaration of contravention, a pecuniary penalty order or a compensation order unless permitted by this section.

(5) It is intended that the Co-operatives National Law Act of this jurisdiction may provide that subsection (4) does not exclude the operation of any specified law.

(6) An application for a compensation order may be made whether or not a declaration of contravention has been made under section 554.

559 Time limit for application for a declaration or order (cf Corporations Act s 1317K)

Proceedings for a declaration of contravention, a pecuniary penalty order, or a compensation order, may be started no later than 6 years after the contravention.

560 Civil evidence and procedure rules for declarations of contravention (cf Corporations Act s 1317L)

The Supreme Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for:

(a) a declaration of contravention; or

(b) a pecuniary penalty order.

561 Civil proceedings after criminal proceedings
(cf Corporations Act s 317M)

The Supreme Court must not make a declaration of contravention or a pecuniary penalty order against a person for a contravention if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

562 Criminal proceedings during civil proceedings
(cf Corporations Act s 1317N)

(1) Proceedings for a declaration of contravention or pecuniary penalty order against a person are stayed if:

(a) criminal proceedings are started or have already been started against the person for an offence; and

(b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.

(2) The proceedings for the declaration or order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the declaration or order are dismissed.

563 Criminal proceedings after civil proceedings
(cf Corporations Act s 1317P)

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether:

(a) a declaration of contravention has been made against the person; or

(b) a pecuniary penalty order has been made against the person; or

(c) a compensation order has been made against the person; or

(d) the person has been disqualified from managing a co-operative under Division 2 of Part 3.1.

564 Evidence given in proceedings for penalty not admissible in criminal (cf Corporations Act s 1317Q)

Evidence of information given or evidence of production of documents by an individual is not admissible in criminal proceedings against the individual if:

(a) the individual previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and

(b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.

565 Relief from liability for contravention of civil penalty provision (cf Corporations Act s 1317S)

(1) In this section:

eligible proceedings:

(a) means proceedings for a contravention of a civil penalty provision, including:

(i) proceedings under section 557 of this Law; and

(ii) proceedings under section 588M or 588W of the Corporations Act as applying under this Law (see section 451); and

(b) does not include proceedings for an offence, except so far as the proceedings relate to the question whether the Supreme Court should make an order under:

(i) section 557 of this Law; or

(ii) section 588K of the Corporations Act as applying under this Law (see section 451).

(2) If:

(a) eligible proceedings are brought against a person; and

(b) in the proceedings it appears to the Supreme Court that the person has, or may have, contravened a civil penalty provision but that:

(i) the person has acted honestly; and

(ii) having regard to all the circumstances of the case (including, where applicable, those connected with the person's appointment as an officer, or employment as an employee, of a co-operative), the person ought fairly to be excused for the contravention;

the Supreme Court may relieve the person either wholly or partly from a liability to which the person would otherwise be subject, or that might otherwise be imposed on the person, because of the contravention.

(3) In determining under subsection (2) whether a person ought fairly to be excused for a contravention of section 588G of the Corporations Act as applying under this Law, the matters to which regard is to be had include, but are not limited to:

(a) any action the person took with a view to appointing an administrator of the co-operative; and

(b) when that action was taken; and

(c) the results of that action.

(4) If a person thinks that eligible proceedings will or may be begun against them, they may apply to the Supreme Court for relief.

(5) On an application under subsection (4), the court may grant relief under subsection (2) as if the eligible proceedings had been begun in the court.

(6) For the purposes of subsection (2) as applying for the purposes of a case tried by a judge with a jury:

(a) a reference in that subsection to the Supreme Court is a reference to the judge; and

(b) the relief that may be granted includes withdrawing the case in whole or in part from the jury and directing judgment to be entered for the defendant on such terms as to costs as the judge thinks appropriate.

(7) Nothing in this section limits, or is limited by, section 566.

566 Power to grant relief (cf Corporations Act s 1318)

(1) If, in any civil proceeding against a person to whom this section applies for negligence, default, breach of trust or breach of duty in a capacity as such a person, it appears to the Supreme Court:

(a) that the person is or may be liable in respect of the negligence, default or breach but that the person has acted honestly; and

(b) that, having regard to all the circumstances of the case, including those connected with the person's appointment, the person ought fairly to be excused for the negligence, default or breach;

the Supreme Court may relieve the person either wholly or partly from liability on such terms as the court thinks fit.

(2) Where a person to whom this section applies has reason to apprehend that any claim will or might be made against the person in respect of any negligence, default, breach of trust or breach of duty in a capacity as such a person:

(a) the person may apply to the Supreme Court for relief; and

(b) the Supreme Court has the same power to relieve the person as it would have had under subsection (1) if it had been a court before which proceedings against the person for negligence, default, breach of trust or breach of duty had been brought.

(3) Where a case to which subsection (1) applies is being tried by a judge with a jury, the judge after hearing the evidence may:

(a) if he or she is satisfied that the defendant ought pursuant to that subsection to be relieved either wholly or partly from the liability sought to be enforced against the person, withdraw the case in whole or in part from the jury; and

(b) forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge thinks proper.

(4) This section applies to a person who is:

(a) an officer or employee of a co-operative; or

(b) an auditor of a co-operative, whether or not the person is an officer or employee of the co-operative; or

(c) an expert in relation to a matter:

(i) relating to a co-operative; and

(ii) in relation to which the civil proceeding has been taken or the claim will or might arise; or

(d) a receiver, receiver and manager, liquidator or other person appointed or directed by the Supreme Court to carry out any duty under this Law in relation to a co-operative.

567 Irregularities (cf Corporations Act s 1322)

(1) In this section, unless the contrary intention appears:

(a) a reference to a proceeding under this Law is a reference to any proceeding whether a legal proceeding or not; and

(b) a reference to a procedural irregularity includes a reference to:

(i) the absence of a quorum at a meeting of a co-operative, at a meeting of directors or creditors of a co-operative, or at a joint meeting of creditors and members of a co-operative; and

(ii) a defect, irregularity or deficiency of notice or time.

(2) A proceeding under this Law is not invalidated because of any procedural irregularity unless the Supreme Court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the court and by order declares the proceeding to be invalid.

(3) A meeting held for the purposes of this Law, or a meeting notice of which is required to be given in accordance with the provisions of this Law, or any proceeding at such a meeting, is not invalidated only because of the accidental omission to give notice of the meeting or the non-receipt by any person of notice of the meeting, unless the Supreme Court, on the application of the person concerned, a person entitled to attend the meeting or the Registrar, declares proceedings at the meeting to be void.

(4) A meeting held for the purposes of this Law, or a meeting notice of which is required to be given in accordance with the provisions of this Law, or any proceeding at such a meeting, is not invalidated only because of the inability of a person to access the notice of meeting, unless the Supreme Court, on the application of the person concerned, a person entitled to attend the meeting or the Registrar, declares proceedings at the meeting to be void.

(5) If a member does not have a reasonable opportunity to participate in a meeting of members, or part of a meeting of members, held at 2 or more venues, the meeting will only be invalid on that ground if:

(a) the Supreme Court is of the opinion that:

(i) a substantial injustice has been caused or may be caused; and

(ii) the injustice cannot be remedied by any order of the Supreme Court; and

(b) the Supreme Court declares the meeting or proceeding (or that part of it) invalid.

(6) Subject to the following provisions of this section but without limiting the generality of any other provision of this Law, the Supreme Court may, on application by any interested person, make all or any of the following orders, either unconditionally or subject to such conditions as the court imposes:

(a) an order declaring that any act, matter or thing purporting to have been done, or any proceeding purporting to have been instituted or taken, under this Law or in relation to a co-operative is not invalid by reason of any contravention of a provision of this Law or a provision of the constitution of a co-operative;

(b) an order directing the rectification of any register kept by the Registrar under this Law;

(c) an order relieving a person in whole or in part from any civil liability in respect of a contravention or failure of a kind referred to in paragraph (a);

(d) an order extending the period for doing any act, matter or thing or instituting or taking any proceeding under this Law or in relation to a co-operative (including an order extending a period where the period concerned ended before the application for the order was made) or abridging the period for doing such an act, matter or thing or instituting or taking such a proceeding;

and may make such consequential or ancillary orders as the court thinks fit.

(7) An order may be made under subsection (6) (a) or (c) notwithstanding that the contravention or failure referred to in the paragraph concerned resulted in the commission of an offence.

(8) The Supreme Court must not make an order under this section unless it is satisfied:

(a) in the case of an order referred to in subsection (6) (a):

(i) that the act, matter or thing, or the proceeding, referred to in that paragraph is essentially of a procedural nature; or

(ii) that the person or persons concerned in or party to the contravention or failure acted honestly; or

(iii) that it is just and equitable that the order be made; and

(b) in the case of an order referred to in subsection (6) (c)—that the person subject to the civil liability concerned acted honestly; and

(c) in every case—that no substantial injustice has been or is likely to be caused to any person.

568 Civil proceedings not to be stayed (cf Corporations Act s 1331)

No civil proceedings under this Law are to be stayed merely because the proceeding discloses, or arises out of, the commission of an offence.

569 Standard of proof (cf Corporations Act s 1332)

Where, in proceedings other than proceedings for an offence, it is necessary to establish, or for the court to be satisfied, for any purpose relating to a matter arising under this Law, that:

(a) a person has contravened a provision of this Law; or

(b) default has been made in complying with a provision of this Law; or

(c) an act or omission was unlawful by virtue of a provision of this Law; or

(d) a person has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to a contravention of, or a default in complying with, a provision of this Law;

it is sufficient if the matter referred to in paragraph (a), (b), (c) or (d) is established, or the court is so satisfied, as the case may be, on the balance of probabilities.

Part 7.3 Appeals and review

570 Operation of Part—appeal includes review

A reference in this Part to an appeal against a decision of the Registrar includes a reference to a review of the decision.

571 Appeal against refusal to approve draft rules

(1) The person who submitted draft rules to the Registrar under section 23 may appeal to the designated tribunal against a decision of the Registrar to refuse to approve the rules.

(2) A failure of the Registrar to approve draft rules is taken to be a decision of the Registrar to refuse to approve the rules.

572 Appeal against refusal to approve disclosure statement

(1) The person who submitted a draft disclosure statement to the Registrar may appeal to the designated tribunal against a decision of the Registrar to refuse to approve the statement under this Law.

Note. See sections 25, 248, 338, 343, 397 and 477 concerning approval of disclosure statements.

(2) A failure of the Registrar to approve a draft disclosure statement is taken to be a decision of the Registrar to refuse to approve the statement.

573 Appeal against refusal to register co-operative

(1) The applicants for registration of a proposed co-operative may appeal to the designated tribunal against a decision of the Registrar to refuse to register the co-operative under this Law.

(2) A failure of the Registrar to register a co-operative is taken to be a decision of the Registrar to refuse to register the co-operative.

574 Appeal against refusal to approve amendment of rules

(1) A co-operative may appeal to the designated tribunal against a decision of the Registrar to refuse to approve an amendment of its rules under this Law.

(2) A failure of the Registrar to approve an amendment of rules is taken to be a decision of the Registrar to refuse to approve the amendment.

575 Appeal against refusal to register amendment

(1) A co-operative may appeal to the designated tribunal against a decision of the Registrar to refuse to register an amendment of its rules under this Law.

(2) A failure of the Registrar to register an amendment of rules is taken to be a decision of the Registrar to refuse to register the amendment.

576 Appeal against decision of Registrar about remuneration of liquidator

(1) An applicant under section 449 for a review by the Registrar of the amount of the remuneration of a liquidator may appeal to the designated tribunal against the decision of the Registrar on the review.

(2) A failure of the Registrar to undertake or complete a review is taken to be a decision of the Registrar not to vary the amount of the remuneration.

577 Appeal against notice that participating co-operative not authorised to carry on business in this jurisdiction

A participating co-operative may appeal to the designated tribunal against a decision of the Registrar to give written notice to the co-operative under section 461 (5) withdrawing its authorisation to carry on business in this jurisdiction.

578 Provisions relating to appeals

(1) An appeal is to be made in accordance with rules of the designated tribunal.

(2) The designated tribunal may make any order it considers appropriate to dispose of an appeal under this Part.

(3) The Registrar must comply with an order of the designated tribunal on an appeal under this Part.

Part 7.4 Proceedings in relation to co-operatives

579 Bringing, or intervening in, proceedings on behalf of co-operative

(1) **Bringing or intervening in proceedings** (cf Corporations Act s 236 (1))

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

(a) the person is:

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

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

(iii) the Registrar; and

(b) the person is acting with leave granted under section 580.

(2) **Bringing proceedings in co-operative's name** (cf Corporations Act s 236 (2))

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

580 Applying for and granting leave

(1) **Applying for leave** (cf Corporations Act s 237 (1))

A person referred to in section 579 (1) (a) may apply to the Supreme Court for leave to bring, or to intervene in, proceedings.

(2) **Granting leave** (cf Corporations Act s 237 (2))

The Supreme Court may grant the application if it is satisfied that:

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

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

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

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

(e) either:

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

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

581 Substitution of another person for the person granted leave

(1) **Applying for substitution** (cf Corporations Act s 238 (1))

Any of the following persons may apply to the Supreme Court for an order that the person be substituted for a person to whom leave has been granted under section 580:

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

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

(c) the Registrar.

(2) **Application may be made whether or not the applicant has already brought the proceedings or intervened**

The application may be made whether or not the applicant has already brought the proceedings or made the intervention.

(3) **Making the order** (cf Corporations Act s 238 (2))

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) **Effect of order** (cf Corporations Act s 238 (3))

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.

582 Effect of ratification by members (cf Corporations Act s 239)

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

(a) does not prevent a person from bringing or intervening in proceedings with leave under section 580 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 580 must be decided in favour of the defendant, or that an application for leave under that section must be refused.

(2) The Supreme Court may take into account a ratification or an approval of the conduct by members of a co-operative in deciding what order or judgment (including as to damages) to make in proceedings brought or intervened in with leave under section 580 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.

583 Leave to discontinue, compromise or settle proceedings brought, or (cf Corporations Act s 240)

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

584 General powers of Supreme Court

(1) **Orders and directions** (cf Corporations Act s 241 (1))

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

(a) interim orders; and

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

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

(d) an order appointing an independent person to investigate, and report to the court on:

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

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

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

(2) **Appointee entitled to inspect and copy books** (cf Corporations Act s 241 (2))

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

585 Power of Supreme Court to make costs orders (cf Corporations Act s 242)

At any time, the Supreme Court may, in relation to proceedings brought or intervened in with leave under section 580 or an application for leave under that section, make any order it thinks just about the costs of the person who applied for or was granted leave, the co-operative or any other party to the proceedings or

application, including an order requiring indemnification for costs.

586 Power of Registrar to intervene in proceedings

(1) The Registrar may intervene in proceedings relating to a matter arising under this Law.

(2) When the Registrar intervenes in proceedings, the Registrar is taken to be a party to the proceedings and, subject to this Law, has all the rights, duties and liabilities of a party to the proceedings.

(3) The Registrar may appear and be represented in proceedings in which the Registrar wishes to intervene under this section:

(a) by a person or body to whom the Registrar has delegated the Registrar's functions under this Law or the functions relating to a matter to which the proceedings relate; or

(b) by a public sector official who is engaged in the administration of this Law; or

(c) by an Australian legal practitioner.

Part 7.5 Evidentiary matters

587 Certificate of registration

(1) A certificate of registration of a co-operative issued under this Law is evidence that the co-operative is incorporated under this Law and that all the requirements of this Law for registration have been complied with.

(2) This section does not affect a provision of this Law for the winding up or deregistration of the co-operative or the cancellation of its registration.

588 Certificate evidence

(1) If a function under this Law is conferred or imposed on the Registrar as a consequence of something being done or omitted to be done within a specified period, the Registrar may certify that:

(a) the thing had or had not been done within that period; or

(b) the thing had or had not been done by a specified date.

(2) The Registrar may issue a certificate stating that a requirement of this Law 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 the date.

(3) The Registrar may issue a certificate stating that on a date specified in the certificate a body specified in the certificate was not or had ceased to be registered as a co-operative under this Law.

(4) A certificate given by the Registrar under this section is evidence of the matters stated in the certificate.

589 Records kept by co-operatives

(1) A record kept by a co-operative under a requirement of this Law is admissible in evidence in proceedings and is evidence of a matter stated or recorded in the record.

(2) A document purporting to be a record kept by a co-operative is, unless the contrary is proved, taken to be a record kept by the co-operative under a requirement of this Law.

(3) A copy of an entry in a record regularly kept by a co-operative in the course of its business is, if verified by statutory declaration of the secretary of the co-operative 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.

590 Minutes

(1) Every entry in the minutes purporting to be a minute of the business transacted at a meeting of a co-operative or of the board, and purporting to have been signed by the chairperson at a subsequent meeting, is evidence that the business recorded in the minute was transacted at the meeting and that the meeting was properly convened and held.

(2) An entry in the minutes of a meeting of a co-operative to the effect that a resolution was carried or carried unanimously, or was lost, is evidence of the fact without proof of the number or proportion of votes recorded for or against the resolution.

591 Official certificates

(1) A certificate of registration given by the Registrar must be received in evidence as if it were the original certificate.

(2) A certificate of registration or other official document relating to a co-operative signed by or bearing the seal of the Registrar is to be received in evidence without further proof.

(3) A copy of rules certified by the Registrar to be a true copy of the rules of a co-operative is evidence of the registered rules of the co-operative.

592 The Registrar and proceedings

(1) Judicial notice must be taken of the signature or the fax of the signature (by whatever process it is produced) and seal of a person who holds or has held the office of Registrar, if the signature or fax signature or seal purports to be attached to a certificate or other official document.

(2) This section extends to a copy of the rules of a co-operative certified by the Registrar to be a true copy of its registered rules.

(3) In proceedings, no proof is required (until evidence is given to the contrary) of the appointment of the Registrar or a former Registrar.

593 Rules

A printed copy of the rules of a co-operative verified by statutory declaration of the secretary of the co-operative to be a true copy of its registered rules is, in proceedings, evidence of the rules.

594 Co-operative's registers

The register of directors and the register of members of a co-operative are each evidence of the particulars directed or authorised under this Law to be inserted in the register.

Chapter 8 General

Part 8.1 Administrative and other matters

595 Registrar of Co-operatives and other officials

It is intended that the Co-operatives National Law Act of this jurisdiction will provide for the appointment or designation of persons as the Registrar of Co-operatives and other staff and for the protection of officials from liability in the exercise of their functions under this Law in relation to this jurisdiction.

596 Registrar's functions

(1) Subject to this Law, the Registrar is responsible for the general administration of this Law, and has the functions expressed to be conferred or imposed on the Registrar under this Law.

(2) The Registrar may have a seal of office.

(3) The Registrar may enter into a written agreement with an entity to act as the agent of the Registrar in the carrying out of the Registrar's functions.

597 Functions conferred on Registrar under corresponding co-operatives laws

The Registrar or another person or body who has functions under this Law as applying in this jurisdiction may exercise any function conferred on the Registrar or other person or body by or under a corresponding co-operatives law.

598 Delegation by Registrar

(1) The Registrar may delegate to any person or body any of the Registrar's functions under this Law.

(2) A delegate may sub-delegate to another person or body any function delegated under this section if the delegate is authorised by the terms of the delegation to do so.

599 Register of co-operatives

(1) The Registrar is to maintain a register of co-operatives.

(2) The register is to record:

(a) information or documents prescribed by the National Regulations relating to:

(i) co-operatives; and

(ii) undertakings; and

(b) information or documents relating to anything else:

(i) that is required by this Law or the National Regulations to be recorded in the register; or

(ii) that the Registrar considers should be recorded in the register for the purposes of this Law.

600 Keeping of register of co-operatives

(1) The register of co-operatives is to be kept in accordance with arrangements approved by the Registrar.

(2) The Registrar may correct any error or omission in the register of co-operatives by:

(a) inserting an entry; or

(b) amending an entry; or

(c) omitting an entry;

if the Registrar decides that the correction is necessary.

(3) The Registrar must not omit an entry in the register of co-operatives unless satisfied that the whole of the entry was included in error.

601 Inspection of register of co-operatives

(1) A person may:

(a) inspect the register of co-operatives on payment of the prescribed fee (if any); and

(b) inspect documents kept by the Registrar relating to a co-operative and prescribed by the National Regulations on payment of the prescribed fee (if any); and

(c) obtain, on payment of the prescribed fee, an extract from the register of co-operatives inspected under paragraph (a); and

(d) obtain, on payment of the prescribed fee, a certified copy of a document that the person may inspect under paragraph (b); and

(e) obtain, on payment of the prescribed fee, a copy of a document that the person may inspect under paragraph (b).

(2) The local regulations may prescribe the manner in which, or the times and places at which, or both, a person may do any of the things referred to in subsection (1).

(3) A person may pay a fee, in advance or in arrears, under an arrangement approved by the designated authority.

(4) 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 the document.

(5) In this section:

prescribed fee means the fee:

(a) prescribed by the National Regulations, unless paragraph (b) applies; or

(b) prescribed by the local regulations.

602 Retention of records by Registrar

Subject to section 603, a document filed with, given to or registered by the Registrar under this Law must be kept in the office of the Registrar or at another place approved by the Registrar.

603 Disposal of records by Registrar

Subject to any law relating to the retention and disposal of records (including any law specified for the purposes of this section in the Co-operatives National Law Act of this jurisdiction), the Registrar may, if the Registrar considers it is no longer necessary or desirable for them to be retained, destroy or dispose of any of the following:

(a) an annual report or balance sheet filed more than 7 years ago;

(b) a document (other than the rules or a document affecting the rules of a co-operative) filed, given or registered more than 15 years ago;

(c) a document filed, given or registered in relation to a co-operative that was deregistered or ceased to be registered more than 15 years ago;

(d) a document of which a transparency or electronic image has been incorporated with a register kept by the Registrar or is otherwise kept in the office of the Registrar.

604 Filing of documents

A document is not filed under this Law unless:

(a) all information required to be provided in or with the document is provided; and

(b) the fee (if any):

(i) prescribed by the National Regulations, except to the extent subparagraph (ii) applies; or

(ii) prescribed by the local regulations;

has been paid.

605 Way of filing

(1) Subject to section 604, it is sufficient compliance with a requirement under this Law that a document be filed with the Registrar if the Registrar receives a copy of the document by fax or electronic transmission.

(2) If the Registrar receives from a person a copy of a document under subsection (1), the Registrar may require the person to produce and file the original within the time specified by the Registrar.

(3) If the person does not comply with a requirement of the Registrar within the specified time, the person is to be taken not to have filed the document.

606 Power of Registrar to refuse to register or reject documents

(1) The Registrar may refuse to register or may reject a document submitted to the Registrar if the Registrar considers the document:

(a) contains matter contrary to law; or

(b) contains matter that is false or misleading in a material particular in the form or context in which it is included; or

(c) because of an omission or misdescription, has not been properly completed; or

(d) does not comply with the requirements of this Law; or

(e) contains an error, amendment or erasure; or

(f) has been submitted by electronic transmission in a form that is not readily or satisfactorily accessible by the Registrar.

(2) If the Registrar refuses to register or rejects a document under subsection (1), the Registrar may ask that:

(a) the document be appropriately amended; or

(b) a fresh document be submitted in its place; or

(c) if the document has not been properly completed—a supplementary document in the approved form be submitted.

607 Approvals by Registrar

(1) This section applies to any provision of this Law imposing a requirement for the Registrar's approval of an action or thing.

(2) The Registrar may indicate in writing to an applicant for the approval that the approval is taken to have been granted at the end of a specified period unless the Registrar informs the applicant in writing within the period that the approval has not been granted or is still being considered.

(3) An approval is to be given or otherwise dealt with by designated instrument, except so far as provision is made under this Law or the local regulations for it to be given or otherwise dealt with in a different way.

608 Information and evidence

(1) On an application for registration of a co-operative or registration or approval of a rule or document under this Law, the Registrar may require from the applicant reasonable information and evidence to show the application should be granted.

(2) The Registrar may require from a co-operative reasonable information and evidence to show the co-operative is genuinely carrying on business under the provisions of this Law.

(3) The Registrar may require from a co-operative evidence the Registrar considers appropriate of all matters required to be done and of the entries in a document required to be given to the Registrar under this Law.

609 Extension or shortening of time

(1) The Registrar may grant an extension of, or may shorten, a time for doing anything required to be done by a co-operative or participating co-operative by this Law or by a co-operative by the rules of the co-operative on the terms (if any) the Registrar decides.

(2) The Registrar may grant an extension of time even if the time for doing the thing has ended.

Part 8.2 Service of documents

610 Service of documents on co-operative or participating co-operative

(1) A document may be served on a co-operative or participating co-operative:

(a) by posting it to the registered office of the co-operative or participating co-operative; or

(b) by leaving it at the registered office of the co-operative or participating co-operative with a person who appears to be of or above the age of 16 years; or

(c) by delivering a copy of the document personally to a director of the co-operative or participating co-operative who resides in Australia; or

(d) if a liquidator or administrator of the co-operative or participating co-operative has been appointed—by post; or

(e) if a liquidator or administrator of the co-operative or participating co-operative has been appointed by the Registrar:

(i) if the liquidator or administrator (as the case may be) is registered with ASIC—by leaving it at the address of the office of the liquidator or administrator (as the case may be) in the most recent notice of that address lodged with ASIC; or

(ii) if the liquidator or administrator (as the case may be) is not registered with ASIC—by leaving it at the address of the office of the liquidator or administrator (as the case may be) in the most recent notice of that address lodged with the Registrar; or

(f) if a liquidator or administrator of the co-operative or participating co-operative has been appointed by someone else—by leaving it at the address of the office of the liquidator or

administrator (as the case may be) in the most recent notice of that address lodged with ASIC.

(2) For the purpose of serving a document under this section by post, it is properly addressed if it is addressed to the registered office of the co-operative or participating co-operative.

(3) This section does not affect the operation of a provision of a law or of the rules of a court authorising a document to be served on a co-operative or a participating co-operative in another way.

611 Service on member of co-operative

(1) A notice required under this Law to be given to a member of a co-operative must be in writing.

(2) A notice or other document required under this Law to be given to a member of a co-operative may be given:

(a) personally; or

(b) by post; or

(c) by publishing the notice in a newspaper circulating generally in this jurisdiction or in the area served by the co-operative, if:

(i) the co-operative is a non-distributing co-operative; and

(ii) the member's whereabouts are unknown to the co-operative; and

(iii) the Registrar permits notice to be given to members of the co-operative in that way.

(3) This section does not limit any provision of this Law, or of legislation or rules of court of this jurisdiction, that provides for the service of notices.

Part 8.3 Co-operatives National Regulations

612 Power to make Co-operatives National Regulations

(1) For the purposes of this section, the ***designated authority*** is the Governor of the State of New South Wales, or other person for the time being administering the Government of that State, acting with the advice of the Executive Council of that State and on the recommendation of the Ministerial Council.

(2) The designated authority may make regulations for the purposes of this Law, which are to be known as the ***Co-operatives National Regulations*** and are referred to in this Law as the ***National Regulations***.

(3) In particular, the National Regulations may make provision for or with respect to the following:

(a) the making of applications for the exercise of a power by the Registrar;

(b) how to file documents with the Registrar, including electronic filing and filing by fax;

(c) fees to be paid in relation to the administration of this Law, including:

(i) fees for the filing of a document under this Law; and

(ii) additional fees for late filing of a document under this Law;

(d) any other matter that is necessary or convenient to be prescribed for carrying out or giving effect to this Law.

(4) Regulations relating to fees:

(a) may prescribe different fees for different classes of cases; and

(b) may authorise the waiver, reduction or refund of fees in particular cases or classes of cases.

(5) The National Regulations may create offences and impose penalties of not more than $2,000 for an offence.

613 National Regulations for savings or transitional matters

(1) The National Regulations may contain provisions of a savings or transitional nature consequent on the enactment of legislation setting out, applying or amending this Law.

(2) Any such provision may, if the National Regulations so provide, take effect retrospectively.

(3) To the extent to which any such provision takes effect retrospectively, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than an authority of a jurisdiction), the rights of that person existing before the date of its publication; or

(b) to impose liabilities on any person (other than an authority of a jurisdiction) in respect of anything done or omitted to be done before the date of its publication.

614 Publication and commencement of National Regulations

(1) The National Regulations are to be published on the NSW legislation website.

(2) A National Regulation commences on the day or days specified in, or ascertained in accordance with, the regulation for its commencement (being not earlier than the date it is so published), but this subsection does not prevent a regulation taking effect retrospectively where permitted under this Law.

Part 8.4 Miscellaneous

615 Disclosure statements

A disclosure statement under this Law may only include a statement by a person, or a statement said in the disclosure statement to be based on a statement by a person, if:

(a) the person has consented to the statement being included in the disclosure statement in the form and context in which it is included; and

(b) the disclosure statement states that the person has given this consent; and

(c) the person has not withdrawn this consent before the disclosure statement is approved by, or registered with, the Registrar.

616 Supply of information between jurisdictions

(1) The Registrar must, at the request of a participating Registrar, give free of charge to the participating Registrar information, or copies of documents, held by the Registrar relating to a co-operative or a participating co-operative.

(2) The Registrar may request a participating Registrar to give the Registrar information, or copies of documents, held by the participating Registrar relating to a co-operative or a participating co-operative.

(3) Subsections (1) and (2) apply regardless of whether a reciprocal arrangement referred to in section 617 exists and regardless of the terms of such an arrangement.

617 Supply of information under reciprocal arrangements

(1) If a reciprocal arrangement (see subsection (2)) with another jurisdiction or country is in force, the Registrar:

(a) may, at the request of the appropriate official of the other jurisdiction or country, give to the official information, or copies of documents, held by the Registrar relating to a co-operative or a participating co-operative; and

(b) may request the appropriate official of the other jurisdiction or country to give the Registrar information, or copies of documents, held by the official relating to an organisation that, under the arrangement, is an organisation corresponding to a co-operative or a participating co-operative;

in accordance with the terms of the arrangement.

(2) A reciprocal arrangement with another jurisdiction is an arrangement made between the Minister and a representative of the government of the other jurisdiction or country under which it is agreed:

(a) that the Registrar will comply with a request referred to in subsection (1) (a); and

(b) that a request made by the Registrar to an official designated in the arrangement as the appropriate official for the purposes of subsection (1) (b) will be complied with.

618 Translations of documents

A requirement imposed under this Law to give, file or submit a document or make a document available for inspection is, in the case of a document that is not in the English language, taken to include a requirement that a translation of the document be given, filed, submitted or made available for inspection at the same time.

619 Qualified privilege

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

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

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

(2) In subsection (1):

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

(3) Neither this section nor a provision of this Law that provides as referred to in subsection (1) limits or affects any right, privilege or immunity a person has, apart from this section or that type of provision, as a defendant in proceedings for defamation.

620 Stamp duty and registration fees

It is intended that the Co-operatives National Law Act of this jurisdiction may provide for documents or instruments executed or registered for specified purposes in connection with this Law are not liable to stamp duty or to registration fees, or both, under any Act for registration.

621 Procedures regarding giving of exemptions

The local regulations may make provision for or with respect to the procedure for the giving of exemptions that are provided for under this Law.

622 Approval of forms

The designated authority may approve forms for use under this Law.

623 Exclusion of bodies

It is intended that the Co-operatives National Law Act of this jurisdiction may provide that this Law or specified provisions of this Law do not apply to specified bodies or specified classes of bodies.

624 Savings and transitional provisions

Schedule 3 contains savings and transitional provisions.

Schedule 1 Matters for which rules of co-operative must make provision

(Section 56 of this Law)

1 Requirements for all co-operatives

The rules of a co-operative must set out or make provision for each of the following:

(a) the name of the co-operative;

(b) active membership provisions;

(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) the charges or subscriptions payable by a member to the co-operative;

(h) the circumstances in which fines and forfeitures may be imposed on members of the co-operative, and the amount of the fines, being not more than the maximum amount prescribed by the National Regulations;

(i) the grievance procedures for settling disputes between the co-operative and any of its members as defined in section 129, or between a member and another member;

(j) the restrictions (if any) on the powers of the co-operative and the board;

(k) the number of directors, the qualification of directors, the way of electing, remunerating and removing directors and filling a vacancy, the period for which directors are to hold office, whether directors are to retire by rotation or otherwise, and the holding of annual elections;

(l) the quorum for and the procedure at meetings of the board;

(m) the device, custody and use of the seal of the co-operative;

(n) how the funds of the co-operative are to be managed, and in particular the mode of drawing and signing cheques, drafts, bills of exchange, promissory notes, and other negotiable instruments for the co-operative;

(o) the custody of securities belonging to the co-operative;

(p) how debentures may be transferred;

(q) the date on which the financial year of the co-operative ends;

(r) the preparation of financial reports of the co-operative, the provision of those reports to members of the co-operative, and whether and how those reports are to be audited or reviewed;

(s) how a loss that may result from the transactions of the co-operative is to be provided for;

(t) the procedure for calling general and special meetings, the requisite notices of meetings, and the quorum for meetings, of the co-operative;

(u) the procedure at meetings of the co-operative, including the following:

(i) the rights of members in voting at meetings;

(ii) the way of voting;

(iii) the majority necessary for carrying resolutions, and any special majority in addition to that required under this Law necessary for carrying specified resolutions;

(v) the method of conducting postal ballots (including special postal ballots), including the following:

(i) the sending and filing of information and votes by fax or electronic means;

(ii) the way of voting;

(iii) the majority necessary for carrying resolutions, and any special majority in addition to that required under this Law necessary for carrying specified resolutions;

(w) the way of amending the rules;

(x) how the co-operative may be wound up;

(y) a matter prescribed by the National Regulations for the purposes of this clause;

(z) other matters that appear necessary or desirable to the co-operative.

2 Additional matters—co-operatives with share capital

In addition to the matters specified in clause 1, the rules of a co-operative with share capital must set out or make provision for each of the following:

(a) the nominal value of each share in the co-operative;

(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) for a distributing co-operative—how any surplus may be distributed;

(f) the allocation of a deficiency on the winding up of a co-operative;

(g) the forfeiture of shares on expulsion or on failure to pay any subscription or call, the extent to which members whose shares have been forfeited are to remain liable for any amount still unpaid for them, and the sale or cancellation of forfeited shares;

(h) how shares may be transferred;

(i) a matter prescribed by the National Regulations for the purposes of this clause.

3 Additional matters—non-distributing co-operatives

In addition to the matters specified in clauses 1 and 2, the rules of a non-distributing co-operative must provide:

(a) that there must be no return or distribution of surplus or share capital to members other than the nominal value of shares (if any) at winding up; and

(b) for the way of distribution of the surplus property at winding up.

Schedule 2 Relevant interests, associates, and related corporations

(Section 4 of this Law)

Part 1 Relevant interests

1 Terminology used in this Part

(1) This clause applies for the purposes of this Part.

(2) Power to vote in relation to a right to vote is power to exercise, or to control the exercise of, the right to vote.

(3) A reference to power to dispose of a share includes a reference to power to exercise control over the disposal of the share.

(4) A reference to power or control includes a reference to power or control that is direct or indirect or is, or can be, exercised because of, by means of, in breach of, or by revocation of, trusts, agreements and practices, or any of them, whether or not they are enforceable.

(5) Power to vote in relation to a right to vote, or power to dispose of a share, that is exercisable by 2 or more persons jointly is taken to be exercisable by either or any of those persons.

(6) A reference to a controlling interest includes a reference to an interest that gives control.

2 Basic rules—relevant interests

(1) In this Law (unless otherwise provided), ***relevant interest*** has a meaning determined under this Part.

(2) A person who has power to vote in relation to a right to vote has a relevant interest in the right to vote.

(3) A person who has power to dispose of a share has a relevant interest in the share.

3 Control of corporation having power in relation to a share

If a corporation has, or is by this Part taken to have:

(a) power to vote in relation to 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 corporation has, or is taken to have, if:

(c) the corporation is, or its directors are, accustomed or under an obligation, whether formal or informal, to act under the directions, instructions or wishes of the person in relation to the exercise of the power referred to in paragraph (a) or (b); or

(d) the person has a controlling interest in the corporation.

4 Control of 20% of voting power in corporation having power in relation to a share

If a corporation or an associate of a corporation has, or is by this Part (other than this clause) taken to have:

(a) power to vote in relation to 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 corporation or associate has, or is taken to have, if:

(c) the person has; or

(d) an associate of the person has; or

(e) associates of the person together have; or

(f) the person and an associate or associates of the person together have;

power to vote in relation to the right to vote attached to not less than 20% of the voting shares in the corporation.

5 Deemed relevant interest in advance of performance of agreement that will give rise to a relevant interest

If:

(a) a person:

(i) 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

(ii) 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 it is enforceable on the fulfilment of a condition; or

(iii) 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

(b) the first-mentioned person would have a relevant interest in the share or right to vote on performance of the agreement, enforcement of the right, or exercise of the option;

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 corporation having a relevant interest by virtue of clause 5

If a corporation is taken under clause 5 to have a relevant interest in a share in or right to vote at meetings of a co-operative, a person is taken for the purposes of this Part to have a relevant interest in the share or right to vote if:

(a) the corporation is, or its directors are, accustomed or under an obligation, whether formal or informal, to act under the directions, instructions or wishes of the person in relation

to the exercise of power to vote in relation to the right to vote or power to dispose of the shares; or

(b) the person has a controlling interest in the corporation; or

(c) the person has power to vote in relation to the right to vote attached to not less than 20% of the voting shares in the corporation.

7 Matters not affecting application of Part

(1) It is immaterial for the purposes of this Part whether or not power to vote in relation to a right to vote, or power to dispose of a share:

(a) is express or implied or formal or informal; or

(b) is exercisable by a person alone or jointly with another 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 Corporation may have a relevant interest in its own shares

A corporation may, by virtue of this Part, be considered to have a relevant interest in a share in or right to vote arising from membership of the corporation itself.

9 Exclusions—money-lenders

A relevant interest of a person in a share or right to vote is to be disregarded if:

(a) the person's ordinary business includes lending money; and

(b) the person has authority to exercise powers as the holder of the relevant interest only because of a security given for 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 taken under clause 5 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 the business.

12 Exclusions—honorary proxies

A relevant interest of a person in a share or right to vote is to be disregarded if the person has it only because of having been appointed, otherwise than for valuable consideration given by the person or an associate of the person, to vote as a proxy or

representative at a meeting of members, or of a class of members, of a corporation.

13 Exclusions—holders of prescribed offices

A relevant interest of a person in a share or right to vote is to be disregarded if the person has it because of holding an office prescribed by the National Regulations.

14 Prescribed exclusions

The National Regulations may provide that a relevant interest in a share is, in specified circumstances and subject to specified conditions (if any), to be disregarded for the purposes of a provision of this Law.

15 Effect of Schedule

(1) Nothing in this Schedule limits the generality of anything else in it.

(2) A person does not have a relevant interest in a share of a co-operative or a right to vote in relation to a co-operative except as provided in this Schedule.

16 Relevant interest—corporation other than co-operative

A reference in this Law (including this Schedule) to a relevant interest in a share of a corporation other than a co-operative or a right to vote in relation to a corporation other than a co-operative is to be construed under the Corporations Act.

Part 2 Associates

17 Effect of Part

(1) In this Law (unless otherwise provided), associate has a meaning determined under this Part.

(2) A person is not an associate of another person except as provided by this Part.

18 Associates of a corporation

The associates of a corporation include the following:

(a) a director or secretary of the corporation;

(b) a related corporation;

(c) a director or secretary of a related corporation.

19 Matters relating to voting rights

(1) If a reference to an associate of a person relates to:

(a) the extent of power to exercise, or to control the exercise of, the voting power attached to voting shares in or arising from membership of a corporation; or

(b) the person's entitlement to shares in a corporation; or

(c) an offer to purchase shares to which Division 2 of Part 3.5 applies;

the reference includes a reference to another person with whom the person has entered into, 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 corporation; or

(b) for the purpose of controlling or influencing:

(i) the composition of the corporation's board; or

(ii) the conduct of affairs of the corporation; or

(c) under which one of the persons:

(i) will or may acquire; or

(ii) may be required by the other to acquire;

shares in the corporation in which the other has a relevant interest; or

(d) under which one of the persons may be required to dispose of shares in the corporation in accordance with the other's directions.

(3) Subclause (1) applies despite any other effect the agreement may have.

(4) In relation to a matter relating to shares in a corporation, a person may be an associate of the corporation and the corporation may be an associate of a person.

20 General

(1) A reference to an associate of a person includes a reference to:

(a) another person in concert with whom the person is acting or proposes to act; and

(b) another person who, under the National Regulations, is, for the purposes of the provision in which the reference occurs, an associate of the person; and

(c) another person with whom the person is or proposes to become associated, whether formally or informally, in any other way;

in relation to the matter to which the reference relates.

(2) If a person has entered, or proposes to enter, into a transaction, or has done, or proposes to do, an act or thing, in order to become associated with another person as referred to in an applicable provision of this Part, a reference to an associate of the person includes a reference to the 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 3.5 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 corporation.

Part 3 Related corporations

22 Related corporations

For the purposes of this Law, a corporation is taken to be related to:

(a) another corporation that is its subsidiary; and

(b) another corporation of which it is a subsidiary; and

(c) another corporation if both it and that other corporation are subsidiaries of the same corporation.

Schedule 3 Savings and transitional provisions

(Section 624 of this Law)

1 Entitlements of former members of trading or distributing co-operatives

It is intended that the Co-operatives National Law Act of this jurisdiction may provide that a reference in Division 5 of Part 2.6 of this Law to the period of 2 years is taken to be a reference to another period in a case where the cancellation of membership concerned occurred before the commencement of that Division in this jurisdiction.

2 Application of Chapter 5 to existing registered foreign co-operatives not incorporated under corresponding law

(1) This clause applies to a body that was a foreign co-operative registered under the repealed legislation of this jurisdiction immediately before the commencement of this clause in this jurisdiction but that is not registered and incorporated under a corresponding co-operatives law.

(2) The co-operative is taken to be a participating co-operative authorised to carry on business in this jurisdiction under Chapter 5, and that Chapter applies accordingly.

3 Maximum permissible level of share interest

(1) This clause applies where, immediately before the commencement of this clause in this jurisdiction:

(a) a person lawfully had a relevant interest in shares of a co-operative; and

(b) the nominal value of the person's shares was a percentage (the ***relevant percentage***) of the issued share capital of the co-operative that is more than 20% of the nominal value of the issued share capital.

(2) The maximum of 20% stated by section 363 (1) is taken to be increased for the person by force of this clause to a maximum equal to the relevant percentage.

4 Receivers of property

Nothing in section 418 of the Corporations Act as applying under section 393 prevents a person from acting as receiver of property of a co-operative under an appointment validly made before the commencement of this clause in this jurisdiction.

Schedule 4 Miscellaneous provisions relating to interpretation

(Section 5 of this Law)

Part 1 Preliminary

1 Displacement of Schedule by contrary intention

The application of this Schedule may be displaced, wholly or partly, by a contrary intention appearing in this Law.

Part 2 General

2 Law to be construed not to exceed legislative power of Legislature

(1) This Law is to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the Legislature of this jurisdiction.

(2) If a provision of this Law, or the application of a provision of this Law to a person, subject matter or circumstance, would, but for this clause, be construed as being in excess of the legislative power of the Legislature of this jurisdiction:

(a) it is a valid provision to the extent to which it is not in excess of the power; and

(b) the remainder of this Law, and the application of the provision to other persons, subject matters or circumstances, is not affected.

(3) This clause applies to this Law in addition to, and without limiting the effect of, any provision of this Law.

3 Every section to be a substantive enactment

Every section of this Law has effect as a substantive enactment without introductory words.

4 Material that is, and is not, part of this Law

(1) The heading to a Chapter, Part, Division or Subdivision into which this Law is divided is part of this Law.

(2) A Schedule to this Law is part of this Law.

(3) Punctuation in this Law is part of this Law.

(4) A heading to a section or subsection of this Law does not form part of this Law.

(5) Notes included in this Law (including footnotes and endnotes) are part of this Law.

5 References to particular Acts and to enactments

In this Law:

(a) an Act of this jurisdiction may be cited:

(i) by its short title; or

(ii) by reference to the year in which it was passed and its number; and

(b) a Commonwealth Act may be cited:

(i) by its short title; or

(ii) in another way sufficient in a Commonwealth Act for the citation of such an Act;

together with a reference to the Commonwealth; and

(c) an Act of another jurisdiction may be cited:

(i) by its short title; or

(ii) in another way sufficient in an Act of the jurisdiction for the citation of such an Act;

together with a reference to the jurisdiction.

6 References taken to be included in Law or Act citation etc

(1) A reference in this Law to this Law or an Act includes a reference to:

(a) this Law or the Act as originally enacted, and as amended from time to time since its original enactment; and

(b) if this Law or the Act has been repealed and re-enacted (with or without modification) since the enactment of the reference—the Act as re-enacted, and as amended from time to time since its re-enactment.

(2) A reference in this Law to a provision of this Law or of an Act includes a reference to:

(a) the provision as originally enacted, and as amended from time to time since its original enactment; and

(b) if the provision has been omitted and re-enacted (with or without modification) since the enactment of the reference—the provision as re-enacted, and as amended from time to time since its re-enactment.

(3) Subclauses (1) and (2) apply to a reference in this Law to a law of the Commonwealth or another jurisdiction in the same way as they apply to a reference in this Law to an Act and to a provision of an Act.

7 Interpretation best achieving Law's purpose or object

(1) In the interpretation of a provision of this Law, the interpretation that will best achieve the purpose or object of this Law is to be preferred to any other interpretation.

(2) Subclause (1) applies whether or not the purpose or object is expressly stated in this Law.

8 Use of extrinsic material in interpretation

(1) In this clause:

extrinsic material means relevant material not forming part of this Law, including, for example:

(a) material that is set out in the document containing the text of this Law as printed by the Government Printer; and

(b) a relevant report of a Royal Commission, Law Reform Commission, commission or committee of inquiry, or a similar body, that was laid before the Legislature or a House of the Legislature of this jurisdiction before the provision concerned was enacted; and

(c) a relevant report of a committee of the Legislature or a House of the Legislature of this jurisdiction that was made before the provision concerned was enacted; and

(d) a treaty or other international agreement that is referred to in this Law; and

(e) an explanatory note or memorandum relating to the Bill that contained the provision concerned, or any relevant document, that was laid before, or given to the members of, the Legislature or a House of the Legislature of this jurisdiction by the member introducing or bringing in the Bill before the provision was enacted; and

(f) the speech made to the Legislature or a House of the Legislature of this jurisdiction by the member in moving a motion that the Bill be read a second time; and

(g) material in the votes and proceedings or other official records of the Legislature or a House of the Legislature of this jurisdiction of the proceedings of or debates in the Legislature or House; and

(h) a document that is declared by this Law to be a relevant document for the purposes of this clause.

ordinary meaning means the ordinary meaning conveyed by a provision having regard to its context in this Law and to the purpose of this Law.

(2) Subject to subclause (3), in the interpretation of a provision of this Law consideration may be given to extrinsic material capable of assisting in the interpretation:

(a) if the provision is ambiguous or obscure—to provide an interpretation of it; or

(b) if the ordinary meaning of the provision leads to a result that is manifestly absurd or is unreasonable—to provide an interpretation that avoids such a result; or

(c) in any other case—to confirm the interpretation conveyed by the ordinary meaning of the provision.

(3) In determining whether consideration should be given to extrinsic material, and in determining the weight to be given to extrinsic material, regard is to be had to:

(a) the desirability of a provision being interpreted as having its ordinary meaning; and

(b) the undesirability of prolonging proceedings without compensating advantage; and

(c) other relevant matters.

9 Effect of change of drafting practice

If:

(a) a provision of this Law expresses an idea in particular words; and

(b) a provision enacted later appears to express the same idea in different words for the purpose of implementing a different legislative drafting practice, including, for example:

(i) the use of a clearer or simpler style; or

(ii) the use of gender-neutral language;

the ideas must not be taken to be different merely because different words are used.

10 Use of examples

If this Law includes an example of the operation of a provision:

(a) the example is not exhaustive; and

(b) the example does not limit, but may extend, the meaning of the provision; and

(c) the example and the provision are to be read in the context of each other and the other provisions of this Law, but, if the example and the provision so read are inconsistent, the provision prevails.

11 Compliance with forms

(1) If a form is prescribed or approved by or for the purpose of this Law, strict compliance with the form is not necessary and substantial compliance is sufficient.

(2) If a form prescribed or approved by or for the purpose of this Law requires:

(a) the form to be completed in a specified way; or

(b) specified information or documents to be included in, attached to or given with the form; or

(c) the form, or information or documents included in, attached to or given with the form, to be verified in a specified way;

the form is not properly completed unless the requirement is complied with.

Part 3 Terms and references

12 Definitions

(1) In this Law:

Act means an Act of the Legislature of this jurisdiction.

adult means an individual who is of or above the age of 18 years.

affidavit, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration and promise.

amend includes:

(a) omit or substitute; or

(b) alter or vary; or

(c) amend by implication.

appoint includes reappoint.

Australia means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory.

business day means a day that is not:

(a) a Saturday or Sunday; or

(b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done.

calendar month means a period starting at the beginning of any day of 1 of the 12 named months and ending:

(a) immediately before the beginning of the corresponding day of the next named month; or

(b) if there is no such corresponding day—at the end of the next named month.

calendar year means a period of 12 months beginning on 1 January.

commencement, in relation to this Law or an Act or a provision of this Law or an Act, means the time at which this Law, the Act or provision comes into operation.

Commonwealth means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory.

confer, in relation to a duty, includes impose.

contravene includes fail to comply with.

country includes:

(a) a federation; or

(b) a state, province or other part of a federation.

date of assent, in relation to an Act, means the day on which the Act receives the Royal Assent.

definition means a provision of this Law (however expressed) that:

(a) gives a meaning to a word or expression; or

(b) limits or extends the meaning of a word or expression.

document means any record of information, and includes:

(a) any paper or other material on which there is writing; or

(b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them; or

(c) any computer, disc, tape or other article or any material from which sounds, images, writings or messages are capable of being reproduced (with or without the aid of another article or device); or

(d) a map, plan, drawing or photograph.

electronic communication means:

(a) a communication of information in the form of data, text or images by means of guided or unguided electromagnetic energy, or both; or

(b) a communication of information in the form of sound by means of guided or unguided electromagnetic energy, or both, where the sound is processed at its destination by an automated voice recognition system.

estate includes easement, security interest, right, title, claim, demand or encumbrance, whether at law or in equity.

exercise a function includes perform a function.

expire includes lapse or otherwise cease to have effect.

external Territory means a Territory, other than an internal Territory, for the government of which as a Territory provision is made by a Commonwealth Act.

fail includes refuse.

financial year means a period of 12 months beginning on 1 July.

foreign country means a country (whether or not an independent sovereign State) outside Australia and the external Territories.

function includes a power, authority or duty.

Gazette means the Government Gazette of this jurisdiction.

Gazette notice means a notice published in the Gazette.

gazetted means published in the Gazette.

Government Printer means the Government Printer of a jurisdiction, and includes any other person authorised by the Government of a jurisdiction to print an Act or instrument.

House of a Legislature includes, in the case of a Territory, the Legislative Assembly of that Territory.

individual means a natural person.

information system means a system for generating, sending, receiving, storing or otherwise processing electronic communications.

insert, in relation to a provision of this Law, includes substitute.

instrument includes a statutory instrument.

interest, in relation to land or other property, means:

(a) a legal or equitable estate in the land or other property; or

(b) a right, power or privilege over, or in relation to, the land or other property.

internal Territory means the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory.

Jervis Bay Territory means the Territory referred to in the *Jervis Bay Territory Acceptance Act 1915* of the Commonwealth.

make includes issue or grant.

minor means an individual who is under the age of 18 years.

modification includes addition, omission or substitution.

month means a calendar month.

named month means 1 of the 12 months of the year.

Northern Territory means the Northern Territory of Australia.

number means:

(a) a number expressed in figures or words; or

(b) a letter; or

(c) a combination of a number so expressed and a letter.

oath, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration or promise.

office includes position.

omit, in relation to a provision of this Law or an Act, includes repeal.

party includes an individual or a body politic or corporate.

penalty includes forfeiture or punishment.

person includes an individual or a body politic or corporate.

power includes authority.

prescribed means prescribed by, or by regulations made or in force for the purposes of or under, this Law.

printed includes typewritten, lithographed or reproduced by any mechanical means.

proceedings means legal or other action or proceedings.

property means any legal or equitable estate or interest (whether present or future, vested or contingent, or tangible or intangible) in real or personal property of any description (including money), and includes things in action.

provision, in relation to this Law or an Act, means words or other matter that form or forms part of this Law or the Act, and includes:

(a) a Chapter, Part, Division, Subdivision, section, subsection, paragraph, subparagraph, sub-subparagraph or Schedule of or to this Law or the Act; or

(b) a clause, subclause, section, subsection, item, column, table or form of or in a Schedule to this Law or the Act; or

(c) the long title and any preamble to the Act.

record includes information stored or recorded by means of a computer.

repeal includes:

(a) revoke or rescind; or

(b) repeal by implication; or

(c) abrogate or limit the effect of this Law or the instrument concerned; or

(d) exclude from, or include in, the application of this Law or the instrument concerned any person, subject matter or circumstance.

sign includes the affixing of a seal or the making of a mark.

statutory declaration means a declaration made under an Act, or under a Commonwealth Act or an Act of another jurisdiction, that authorises a declaration to be made otherwise than in the course of judicial proceedings.

statutory instrument means an instrument (including a regulation) made or in force under or for the purposes of this Law, and includes an instrument made or in force under any such instrument.

swear, in relation to a person allowed by law to affirm, declare or promise, includes affirm, declare or promise.

word includes any symbol, figure or drawing.

writing includes any mode of representing or reproducing words in a visible form.

year, without specifying the type of year, means calendar year.

(2) In a statutory instrument:

the Law means this Law.

13 Provisions relating to defined terms and gender and number

(1) If this Law defines a word or expression, other parts of speech and grammatical forms of the word or expression have corresponding meanings.

(2) Definitions in or applicable to this Law apply except so far as the context or subject matter otherwise indicates or requires.

(3) In this Law, words indicating a gender include each other gender.

(4) In this Law:

(a) words in the singular include the plural; and

(b) words in the plural include the singular.

14 Meaning of may and must etc

(1) In this Law, the word "may", or a similar word or expression, used in relation to a power indicates that the power may be exercised or not exercised, at discretion.

(2) In this Law, the word "must", or a similar word or expression, used in relation to a power indicates that the power is required to be exercised.

(3) This clause has effect despite any rule of construction to the contrary.

15 Words and expressions used in statutory instruments

(1) Words and expressions used in a statutory instrument have the same meanings as they have, from time to time, in this Law or relevant provisions of this Law, under or for the purposes of which the instrument is made or in force.

(2) This clause has effect in relation to an instrument except so far as the contrary intention appears in the instrument.

16 Effect of express references to bodies corporate and individuals

In this Law, a reference to a person generally (whether the expression "person", "party", "someone", "anyone", "no-one", "one", "another" or "whoever" or another expression is used):

(a) does not exclude a reference to a body corporate or an individual merely because elsewhere in this Law there is particular reference to a body corporate (however expressed); and

(b) does not exclude a reference to an individual or a body corporate merely because elsewhere in this Law there is particular reference to an individual (however expressed).

17 Production of records kept in computers etc

If a person who keeps a record of information by means of a mechanical, electronic or other device is required by or under this Law:

(a) to produce the information or a document containing the information to a court, tribunal or person; or

(b) to make a document containing the information available for inspection by a court, tribunal or person;

then, unless the court, tribunal or person otherwise directs:

(c) the requirement obliges the person to produce or make available for inspection, as the case may be, a document that reproduces the information in a form capable of being understood by the court, tribunal or person; and

(d) the production to the court, tribunal or person of the document in that form complies with the requirement.

18 References to this jurisdiction to be implied

In this Law:

(a) a reference to an officer, office or statutory body is a reference to such an officer, office or statutory body in and for this jurisdiction; and

(b) a reference to a locality or other matter or thing is a reference to such a locality or other matter or thing in and of this jurisdiction.

19 References to officers and holders of offices

In this Law, a reference to a particular officer, or to the holder of a particular office, includes a reference to the person for the time being occupying or acting in the office concerned.

20 Reference to certain provisions of Law

(1) If a provision of this Law refers:

(a) to a Chapter, Part, section or Schedule by a number and without reference to this Law—the reference is a reference to the Chapter, Part, section or Schedule, designated by the number, of or to this Law; or

(b) to a Schedule without reference to it by a number and without reference to this Law—the reference, if there is only one Schedule to this Law, is a reference to the Schedule; or

(c) to a Division, Subdivision, subsection, paragraph, subparagraph, sub-subparagraph, clause, subclause, item, column, table or form by a number and without reference to this Law—the reference is a reference to:

(i) the Division, designated by the number, of the Part in which the reference occurs; and

(ii) the Subdivision, designated by the number, of the Division in which the reference occurs; and

(iii) the subsection, designated by the number, of the section in which the reference occurs; and

(iv) the paragraph, designated by the number, of the section, subsection, Schedule or other provision in which the reference occurs; and

(v) the paragraph, designated by the number, of the clause, subclause, item, column, table or form of or in the Schedule in which the reference occurs; and

(vi) the subparagraph, designated by the number, of the paragraph in which the reference occurs; and

(vii) the sub-subparagraph, designated by the number, of the subparagraph in which the reference occurs; and

(viii) the clause, subclause, item, column, table or form, designated by the number, of or in the Schedule in which the reference occurs;

as the case requires.

(2) If a provision of a Schedule to this Law refers to a section by a number and without reference to this Law and the Schedule is divided into sections—the reference is (despite subclause (1) (a)) a reference to the section designated by that number of the Schedule.

21 Reference to provisions of this Law or an Act is inclusive

In this Law, a reference to a portion of this Law or an Act includes:

(a) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other provision of this Law or the Act referred to that forms the beginning of the portion; and

(b) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other provision of this Law or the Act referred to that forms the end of the portion.

Note. For example, a reference to "sections 5 to 9" includes both section 5 and section 9. It is not necessary to refer to "sections 5 to 9 (both inclusive)" to ensure that the reference is given an inclusive interpretation.

Part 4 Functions

22 Exercise of statutory functions

(1) If this Law confers a function on a person or body, the function may be exercised from time to time as occasion requires.

(2) If this Law confers a function on a particular officer or the holder of a particular office, the function may be exercised by the person for the time being occupying or acting in the office concerned.

(3) If this Law confers a function on a body (whether or not incorporated), the exercise of the function is not affected merely because of vacancies in the membership of the body.

23 Power to make instrument or decision includes power to amend or repeal

If this Law authorises or requires the making of an instrument or decision:

(a) the power includes power to amend or repeal the instrument or decision; and

(b) the power to amend or repeal the instrument or decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or decision.

24 Matters for which statutory instruments may make provision

(1) If this Law authorises or requires the making of a statutory instrument in relation to a matter, a statutory instrument made under this Law may make provision for the matter by applying, adopting or incorporating (with or without modification) the provisions of:

(a) an Act or statutory instrument; or

(b) another document (whether of the same or a different kind);

as in force at a particular time or as in force from time to time.

(2) If a statutory instrument applies, adopts or incorporates the provisions of a document, the statutory instrument applies, adopts or incorporates the provisions as in force from time to time, unless the statutory instrument otherwise expressly provides.

(3) A statutory instrument may:

(a) apply generally throughout this jurisdiction or be limited in its application to a particular part of this jurisdiction; or

(b) apply generally to all persons, matters or things or be limited in its application to:

(i) particular persons, matters or things; or

(ii) particular classes of persons, matters or things; or

(c) otherwise apply generally or be limited in its application by reference to specified exceptions or factors.

(4) A statutory instrument may:

(a) apply differently according to different specified factors; or

(b) otherwise make different provision in relation to:

(i) different persons, matters or things; or

(ii) different classes of persons, matters or things.

(5) A statutory instrument may authorise a matter or thing to be from time to time determined, applied or regulated by a specified person or body.

(6) If this Law authorises or requires a matter to be regulated by statutory instrument, the power may be exercised by prohibiting by statutory instrument the matter or any aspect of the matter.

(7) If this Law authorises or requires provision to be made with respect to a matter by statutory instrument, a statutory instrument made under this Law may make provision with respect to a particular aspect of the matter despite the fact that provision is made by this Law in relation to another aspect of the matter or in relation to another matter.

(8) A statutory instrument may provide for the review of, or a right of appeal against, a decision made under the statutory instrument, or this Law, and may, for that purpose, confer jurisdiction on any court, tribunal, person or body.

(9) A statutory instrument may require a form prescribed by or under the statutory instrument, or information or documents included in, attached to or given with the form, to be verified by statutory declaration.

25 Presumption of validity and power to make statutory instrument

(1) All conditions and preliminary steps required for the making of a statutory instrument are presumed to have been satisfied and performed in the absence of evidence to the contrary.

(2) A statutory instrument is taken to be made under all powers under which it may be made, even though it purports to be made under this Law or a particular provision of this Law.

26 Appointments may be made by name or office

(1) If this Law authorises or requires a person or body:

(a) to appoint a person to an office; or

(b) to appoint a person or body to exercise a power; or

(c) to appoint a person or body to do another thing;

the person or body may make the appointment by:

(d) appointing a person or body by name; or

(e) appointing a particular officer, or the holder of a particular office, by reference to the title of the office concerned.

(2) An appointment of a particular officer, or the holder of a particular office, is taken to be the appointment of the person for the time being occupying or acting in the office concerned.

27 Acting appointments

(1) If this Law authorises a person or body to appoint a person to act in an office, the person or body may, in accordance with this Law, appoint:

(a) a person by name; or

(b) a particular officer, or the holder of a particular office, by reference to the title of the office concerned;

to act in the office.

(2) The appointment may be expressed to have effect only in the circumstances specified in the instrument of appointment.

(3) The appointer may:

(a) determine the terms and conditions of the appointment, including remuneration and allowances; and

(b) terminate the appointment at any time.

(4) The appointment, or the termination of the appointment, must be in, or evidenced by, writing signed by the appointer.

(5) The appointee must not act for more than one year during a vacancy in the office.

(6) If the appointee is acting in the office otherwise than because of a vacancy in the office and the office becomes vacant, then, subject to subclause (2), the appointee may continue to act until:

(a) the appointer otherwise directs; or

(b) the vacancy is filled; or

(c) the end of a year from the day of the vacancy;

whichever happens first.

(7) The appointment ceases to have effect if the appointee resigns by writing signed and delivered to the appointer.

(8) While the appointee is acting in the office:

(a) the appointee has all the powers and other functions of the holder of the office; and

(b) this Law and other laws apply to the appointee as if the appointee were the holder of the office.

(9) Anything done by or in relation to a person purporting to act in the office is not invalid merely because:

(a) the occasion for the appointment had not arisen; or

(b) the appointment had ceased to have effect; or

(c) the occasion for the person to act had not arisen or had ceased.

(10) If this Law authorises the appointer to appoint a person to act during a vacancy in the office, an appointment to act in the office may be made by the appointer whether or not an appointment has previously been made to the office.

28 Powers of appointment imply certain incidental powers

(1) If this Law authorises or requires a person or body to appoint a person to an office:

(a) the power may be exercised from time to time as occasion requires; and

(b) the power includes:

(i) power to remove or suspend, at any time, a person appointed to the office; and

(ii) power to appoint another person to act in the office if a person appointed to the office is removed or suspended; and

(iii) power to reinstate or reappoint a person removed or suspended; and

(iv) power to appoint a person to act in the office if it is vacant (whether or not the office has ever been filled); and

(v) power to appoint a person to act in the office if the person appointed to the office is absent or is unable to discharge the functions of the office (whether because of illness or otherwise).

(2) The power to remove or suspend a person under subclause (1) (b) may be exercised even if this Law provides that the holder of the office to which the person was appointed is to hold office for a specified period.

(3) The power to make an appointment under subclause (1) (b) may be exercised from time to time as occasion requires.

(4) An appointment under subclause (1) (b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.

29 Delegations

(1) If this Law authorises a person or body to delegate a function, the person or body may, in accordance with this Law and any other applicable law, delegate the function to:

(a) a person or body by name; or

(b) a specified officer, or the holder of a specified office, by reference to the title of the office concerned.

(2) The delegation may be:

(a) general or limited; and

(b) made from time to time; and

(c) revoked, wholly or partly, by the delegator.

(3) The delegation, or a revocation of the delegation, must be in, or evidenced by, writing signed by the delegator or, if the delegator is a body, by a person authorised by the body for the purpose.

(4) A delegated function may be exercised only in accordance with any conditions to which the delegation is subject.

(5) The delegate may, in the exercise of a delegated function, do anything that is incidental to the delegated function.

(6) A delegated function that purports to have been exercised by the delegate is taken to have been properly exercised by the delegate unless the contrary is proved.

(7) A delegated function that is properly exercised by the delegate is taken to have been exercised by the delegator.

(8) If, when exercised by the delegator, a function is dependent on the delegator's opinion, belief or state of mind, then, when exercised by the delegate, the function is dependent on the delegate's opinion, belief or state of mind.

(9) If:

(a) the delegator is a specified officer or the holder of a specified office; and

(b) the person who was the specified officer or holder of the specified office when the delegation was made ceases to be the holder of the office;

then:

(c) the delegation continues in force; and

(d) the person for the time being occupying or acting in the office concerned is taken to be the delegator for the purposes of this clause.

(10) If:

(a) the delegator is a body; and

(b) there is a change in the membership of the body;

then:

(c) the delegation continues in force; and

(d) the body as constituted for the time being is taken to be the delegator for the purposes of this clause.

(11) If a function is delegated to a specified officer or the holder of a specified office:

(a) the delegation does not cease to have effect merely because the person who was the specified officer or the holder of the specified office when the function was delegated ceases to be the officer or the holder of the office; and

(b) the function may be exercised by the person for the time being occupying or acting in the office concerned.

(12) A function that has been delegated may, despite the delegation, be exercised by the delegator.

(13) The delegation of a function does not relieve the delegator of the delegator's obligation to ensure that the function is properly exercised.

(14) Subject to subclause (15), this clause applies to a subdelegation of a function in the same way as it applies to a delegation of a function.

(15) If this Law authorises the delegation of a function, the function may be subdelegated only if the Law expressly authorises the function to be subdelegated.

30 Exercise of powers between enactment and commencement

(1) If a provision of this Law (the ***empowering provision***) that does not commence on its enactment would, had it commenced, confer a power:

(a) to make an appointment; or

(b) to make a statutory instrument of a legislative or administrative character; or

(c) to do another thing;

then:

(d) the power may be exercised; and

(e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect;

before the empowering provision commences.

(2) If a provision of a New South Wales Act (the ***empowering provision***) that does not commence on its enactment would, had it commenced, amend a provision of this Law so that it would confer a power:

(a) to make an appointment; or

(b) to make a statutory instrument of a legislative or administrative character; or

(c) to do another thing;

then:

(d) the power may be exercised; and

(e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect;

before the empowering provision commences.

(3) If:

(a) this Law has commenced and confers a power to make a statutory instrument (the ***basic instrument-making power***); and

(b) a provision of a New South Wales Act that does not commence on its enactment would, had it commenced, amend this Law so as to confer additional power to make a statutory instrument (the ***additional instrument-making power***);

then:

(c) the basic instrument-making power and the additional instrument-making power may be exercised by making a single instrument; and

(d) any provision of the instrument that required an exercise of the additional instrument-making power is to be treated as made under subclause (2).

(4) If an instrument, or a provision of an instrument, is made under subclause (1) or (2) that is necessary for the purpose of:

(a) enabling the exercise of a power referred to in the subclause; or

(b) bringing an appointment, instrument or other thing made or done under such a power into effect;

the instrument or provision takes effect:

(c) on the making of the instrument; or

(d) on such later day (if any) on which, or at such later time (if any) at which, the instrument or provision is expressed to take effect.

(5) If:

(a) an appointment is made under subclause (1) or (2); or

(b) an instrument, or a provision of an instrument, made under subclause (1) or (2) is not necessary for a purpose referred to in subclause (4);

the appointment, instrument or provision takes effect:

(c) on the commencement of the relevant empowering provision; or

(d) on such later day (if any) on which, or at such later time (if any) at which, the appointment, instrument or provision is expressed to take effect.

(6) Anything done under subclause (1) or (2) does not confer a right, or impose a liability, on a person before the relevant empowering provision commences.

(7) After the enactment of a provision referred to in subclause (2) but before the provision's commencement, this clause applies as if the references in subclauses (2) and (5) to the commencement of the empowering provision were references to the commencement of the provision referred to in subclause (2) as amended by the empowering provision.

(8) In the application of this clause to a statutory instrument, a reference to the enactment of the instrument is a reference to the making of the instrument.

Part 5 Distance, time and age

31 Matters relating to distance, time and age

(1) In the measurement of distance for the purposes of this Law, the distance is to be measured along the shortest road ordinarily used for travelling.

(2) If a period beginning on a given day, act or event is provided or allowed for a purpose by this Law, the period is to be calculated by excluding the day, or the day of the act or event, and:

(a) if the period is expressed to be a specified number of clear days or at least a specified number of days—by excluding the day on which the purpose is to be fulfilled; and

(b) in any other case—by including the day on which the purpose is to be fulfilled.

(3) If the last day of a period provided or allowed by this Law for doing anything is not a business day in the place in which the thing is to be or may be done, the thing may be done on the next business day in the place.

(4) If the last day of a period provided or allowed by this Law for the filing or registration of a document is a day on which the office is closed where the filing or registration is to be or may be done, the document may be filed or registered at the office on the next day that the office is open.

(5) If no time is provided or allowed for doing anything, the thing is to be done as soon as possible, and as often as the prescribed occasion happens.

(6) If, in this Law, there is a reference to time, the reference is, in relation to the doing of anything in a jurisdiction, a reference to the legal time in the jurisdiction.

(7) For the purposes of this Law, a person attains an age in years at the beginning of the person's birthday for the age.

Part 6 Effect of repeal, amendment or expiration

32 Time of Law ceasing to have effect

If a provision of this Law is expressed:

(a) to expire on a specified day; or

(b) to remain or continue in force, or otherwise have effect, until a specified day;

the provision has effect until the last moment of the specified day.

33 Repealed Law provisions not revived

If a provision of this Law is repealed or amended by a New South Wales Act, or a provision of a New South Wales Act, the provision is not revived merely because the Act or the provision of the Act:

(a) is later repealed or amended; or

(b) later expires.

34 Saving of operation of repealed Law provisions

(1) The repeal, amendment or expiry of a provision of this Law does not:

(a) revive anything not in force or existing at the time the repeal, amendment or expiry takes effect; or

(b) affect the previous operation of the provision or anything suffered, done or begun under the provision; or

(c) affect a right, privilege or liability acquired, accrued or incurred under the provision; or

(d) affect a penalty incurred in relation to an offence arising under the provision; or

(e) affect an investigation, proceedings or remedy in relation to such a right, privilege, liability or penalty.

(2) Any such penalty may be imposed and enforced, and any such investigation, proceedings or remedy may be begun, continued or enforced, as if the provision had not been repealed or amended or had not expired.

35 Continuance of repealed provisions

If a New South Wales Act repeals some provisions of this Law and enacts new provisions in substitution for the repealed provisions, the repealed provisions continue in force until the new provisions commence.

36 Law and amending Acts to be read as one

This Law and all New South Wales Acts amending this Law are to be read as one.

Part 7 Instruments under this Law

37 Schedule applies to statutory instruments

(1) This Schedule applies to a statutory instrument, and to things that may be done or are required to be done under a statutory instrument, in the same way as it applies to this Law, and things that may be done or are required to be done under this Law, except so far as the context or subject matter otherwise indicates or requires.

(2) The fact that a provision of this Schedule refers to this Law and not also to a statutory instrument does not, by itself, indicate that the provision is intended to apply only to this Law.

Part 8 Application to coastal sea

38 Application

This Law has effect in and in relation to the coastal sea of this jurisdiction as if that coastal sea were part of this jurisdiction.

Part 9 Offences under this Law

39 Penalty at foot of provision

In this Law, a penalty specified at the foot of:

(a) a section (whether or not the section is divided into subsections); or

(b) a subsection (but not at the end of a section); or

(c) a section or subsection and expressed in such a way as to indicate that it applies only to part of the section or subsection;

indicates that an offence referred to in the section, subsection or part is punishable on conviction or, if no offence is mentioned, a contravention of the section, subsection or part constitutes an offence against the provision that is punishable, on conviction, by a penalty not more than the specified penalty.

40 Penalty other than at foot of provision

In this Law, a penalty specified for an offence, or a contravention of a provision, indicates that the offence is punishable on conviction, or that the contravention constitutes an offence against the provision that is punishable, on conviction, by a penalty not more than the specified penalty.