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Version No. 032

Co-operatives Act 1996

No. 84 of 1996

Version incorporating amendments as at 24 April 2008

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

Division 1—Introductory

1 Purpose

The purpose of this Act is—

(a) to provide a legislative framework for the formation, registration and management of co-operatives which enables flexibility in the operation of co-operatives and promotes the development of co-operatives; and

(b) to repeal the **Co-operation Act 1981**; and

(c) to repeal Part VI of the **Housing Act 1983**.

2 Commencement

(1) Part 1 comes into operation on the day on which this Act receives the Royal Assent.

(2) Subject to subsection (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.

(3) If a provision referred to in subsection (2) does not come into operation before 1 January 1999, it comes into operation on that date.

3 Objects of this Act

The objects of this Act are to—

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

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

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

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

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

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

Division 2—Interpretation

4 Definitions

(1) In this Act—

S. 4(1) def. of *accounting records* repealed by No. 44/2001 s. 3(Sch. item 18.1(b)).

* * * * *

S. 4(1) def. of *accounts* repealed by No. 44/2001 s. 3(Sch. item 18.1(b)).

* * * * *

* * * * *

S. 4(1) def. of *Administrative Appeals Tribunal* repealed by No. 101/1998 s. 3(1)(a).

agreement means an agreement, arrangement or understanding—

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

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

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

alter, in relation to the rules of a co-operative includes add to, substitute and rescind;

associate has the meaning given by Schedule 2;

association means—

(a) an association registered under this Act; or

(b) the Co-operative Federation of Victoria Ltd;

authorised deposit-taking institution has the same meaning as in the Banking Act 1959 of the Commonwealth;

S. 4(1) def. of *authorised deposit-taking institution* inserted by No. 11/2001 s. 3(Sch. item 16.1).

board means the board of directors of a co-operative and includes a committee of management of a co-operative;

S. 4(1) def. of *CCU* inserted by No. 13/2008 s. 3.

CCU means a co-operative capital unit as provided for by Division 1A of Part 10;

component co-operative means a member of an association;

co-operative means a body registered under this Act as a co-operative and includes an association or federation;

Co-operative Federation of Victoria Ltd means the Co-operative Federation of Victoria Ltd established under the **Co-operation Act 1981**;

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

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

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

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

S. 4(1) def. of *deed of arrangement* amended by No. 44/2001 s. 3(Sch. item 18.1(c)).

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

deposit taking co-operative means a co-operative which is permitted under section 259 to accept money on deposit;

S. 4(1) def. of *deposit taking co-operative* amended by No. 35/2000 s. 34(a).

director, in relation to 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 duly authorised to act in the position; and

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

federation means a federation registered under this Act;

financial records includes—

S. 4(1) def. of *financial records* inserted by No. 44/2001 s. 3(Sch. item 18.1(a)).

(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;

S. 4(1) def. of *financial statements* inserted by No. 44/2001 s. 3(Sch. item 18.1(a)).

financial statements means—

(a) a profit and loss statement; and

(b) a balance sheet; and

(c) a statement of cash flows; and

(d) if required by the accounting standards under the Corporations Act applying under this Act—a consolidated profit and loss statement, balance sheet and statement of cash flows;

S. 4(1) def. of *foreign co-operative* amended by Nos 101/1998 s. 3(2), 44/2001 ss 3(Sch. item 18.1(d)), 4.

foreign co-operative means a body corporate that is registered, incorporated or formed under, or subject to, a law in force outside Victoria (including outside Australia), that regulates co-operatives or organisations having attributes the same as or similar to co-operatives but does not include—

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

(b) an authorised deposit-taking institution or a foreign ADI within the meaning of the Banking Act 1959 of the Commonwealth;

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

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

mortgage includes lien, charge or other security over property;

non-trading co-operative means a non-trading co-operative within the meaning of section 15;

officer, in relation to a co-operative, means— S. 4(1) def. of *officer* amended by No. 44/2001 s. 3(Sch. item 18.1(e)).

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

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

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

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

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

(f) an administrator of the co-operative appointed under—

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

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

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

primary activity has the meaning given by section 119;

principal executive officer, in relation to a co-operative or to a subsidiary of a co-operative, means the principal executive officer of the co-operative or subsidiary for the time being, by whatever name called, and

whether or not that officer is a director or the secretary;

S. 4(1) def. of *records* amended by No. 44/2001 s. 3(Sch. item 18.1(f)).

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

Register means the Register of Co-operatives established under Part 16;

Registrar means the person for the time being holding the office of Registrar of Co-operatives under this Act;

related (in the context of related bodies corporate) has the meaning given by Schedule 2;

relevant interest has the meaning given by Schedule 2;

rule means registered rule of a co-operative for the time being in force;

seal in relation to a co-operative, means common seal or official seal;

share means share in the share capital of a co-operative;

subordinated debt has the meaning given by section 262;

S. 4(1) def. of *subsidiary* amended by No. 44/2001 s. 3(Sch. item 18.1(g)).

subsidiary has the same meaning as in the Corporations Act;

surplus, in relation to a co-operative, means the excess of income over expenditure after making proper allowance for taxation

expense, depreciation in value of the property of the co-operative and for future contingencies;

trading co-operative means a trading co-operative within the meaning of section 14;

Tribunal means Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**.

S. 4(1) def. of *Tribunal* inserted by No. 101/1998 s. 3(1)(b).

(2) In this Act—

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

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

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

S. 4(3) inserted by No. 44/2001 s. 3(Sch. item 18.2).

5 Qualified privilege

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

S. 5(1) amended by No. 35/2000 s. 34(b).

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

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

(2) In subsection (1)—

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

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

Division 3—The co-operative principles

6 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 (one member, one vote) and co-operatives at other levels are organised in a democratic manner.

3. Member economic participation

   Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of that 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: developing the co-operative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the co-operative; and 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.

7 Interpretation to promote co-operative principles

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

Pt 1 Div. 4 (Heading and ss 8–12) substituted as Pt 1 Div. 4 (Heading and ss 8–11) by No. 44/2001 s. 3(Sch. item 18.3).

Division 4—Application of Corporations Act to co-operatives

S. 8 substituted by No. 44/2001 s. 3(Sch. item 18.3).

8 Definitions

In this Division—

excluded Corporations legislation provision means any provision of the Corporations legislation that does not apply to co-operatives as a law of the Commonwealth.

S. 9 substituted by No. 44/2001 s. 3(Sch. item 18.3).

9 Excluded matter

(1) A co-operative is declared to be an excluded matter for the purposes of section 5F of the Corporations Act in relation to the whole of the Corporations legislation other than to the extent specified in 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, other than to the extent specified in this section. Section 5F of the Corporations Act provides that if

a State 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 concerned. However, other provisions of this Act apply certain provisions of the Corporations legislation to co-operatives as laws of this State.

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

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

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

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

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

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

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

(g) provisions that relate to securities of a co-operative, other than shares in, debentures of, CCUs issued by or deposits with a co-operative; or

S. 9(2)(g) amended by No. 13/2008 s. 4(1).

S. 9(2)(h) amended by No. 9/2002 s. 3(Sch. item 2.1(a)).

(h) provisions relating to derivatives; or

S. 9(2)(i) substituted by No. 9/2002 s. 3(Sch. item 2.1(b)).

(i) provisions relating to—

(i) financial services licensees (as defined in section 761A of the Corporations Act) whose licence covers dealing in, or providing advice about, securities; or

(ii) regulated principals (as defined in section 1430 of the Corporations Act) when dealing in, or providing advice about, securities as authorised by Subdivision D of Division 1 of Part 10.2 of that Act; or

S. 9(2)(j) amended by No. 9/2002 s. 3(Sch. item 2.1(c)).

(j) provisions relating to the carrying on of a financial services business (as defined in section 761A of the Corporations Act) relating to securities; or

S. 9(2)(k) substituted by No. 9/2002 s. 3(Sch. item 2.1(d)).

(k) provisions relating to financial statements, and audits of financial statements, of—

(i) financial services licensees (as defined in section 761A of the Corporations Act) whose licence covers dealing in, or providing advice about, securities; or

(ii) regulated principals (as defined in section 1430 of the Corporations Act) when dealing in, or providing advice about, securities as authorised by Subdivision D of Division 1 of Part 10.2 of that Act; or

(l) provisions relating to money and scrip of clients of—

S. 9(2)(l) substituted by No. 9/2002 s. 3(Sch. item 2.1(e)).

(i) financial services licensees (as defined in section 761A of the Corporations Act) whose licence covers dealing in, or providing advice about, securities; or

(ii) regulated principals (as defined in section 1430 of the Corporations Act) when dealing in, or providing advice about, securities as authorised by Subdivision D of Division 1 of Part 10.2 of that Act; or

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

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

S. 9(3) amended by No. 13/2008 s. 4(2).

(a) Part 1.2A (Disclosing entities);

(b) Chapter 2L (Debentures);

(c) Chapter 6D (Fundraising);

(d) Part 7.10 (Market misconduct).

S. 9(3)(d) substituted by No. 9/2002 s. 3(Sch. item 2.2).

(4) Subsection (1) does not apply if the co-operative is directed by an order of the Supreme Court under section 93(i) to become registered as a company under the Corporations Act—to the extent necessary for a co-operative to be registered as a company under Chapter 5B of that Act.

S. 10 substituted by No. 44/2001 s. 3(Sch. item 18.3).

10 Applying the Corporations legislation to co-operatives

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

Note

Part 3 of the **Corporations (Ancillary Provisions) Act 2001** provides for the application of provisions of the Corporations Act and Part 3 of the ASIC Act as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions.

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

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

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

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

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

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

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

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

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

11 Modifications to applied provisions

S. 11 substituted by No. 44/2001 s. 3(Sch. item 18.3).

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

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

(b) 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 Act;

(c) a reference in the applied provisions to the Gazette is to be read as a reference to the Government Gazette;

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

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

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

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

S. 12 repealed by No. 44/2001 s. 3(Sch. item 18.3).

* * * * *

PART 2—FORMATION

Division 1—Types of co-operatives

13 Types of co-operatives

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

(2) A co-operative may be either—

(a) a trading co-operative; or

(b) a non-trading co-operative.

14 Trading co-operatives

(1) A trading co-operative must have a share capital.

(2) A trading co-operative is a co-operative that gives returns or distributions on surplus or share capital.

(3) A trading co-operative must have a membership of—

(a) 2 or more co-operatives, in the case of an association; and

(b) 2 or more associations, in the case of a federation; and

(c) 5 or more active members, in the case of any other trading co-operative.

15 Non-trading co-operatives

(1) A non-trading co-operative must not give returns or distributions on surplus or share capital to members other than the nominal value of shares (if any) at winding up.

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

(3) A non-trading co-operative must have a membership of—

(a) 2 or more co-operatives, in the case of an association other than the Co-operative Federation of Victoria Ltd; and

(b) 2 or more associations, in the case of a federation; and

(c) 5 or more active members, in the case of any other non-trading co-operative.

(4) The Co-operative Federation of Victoria Ltd is a non-trading co-operative for the purposes of this Act.

Division 2—Formation meeting

16 Formation meeting

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

(2) At the formation meeting—

(a) in the case of a proposed trading co-operative, a disclosure statement approved under section 17 must be presented to the meeting;

(b) the proposed rules of the co-operative approved under section 18 in respect of the proposed co-operative, and including active membership provisions in accordance with Part 6, must be passed by two-thirds of the proposed members of the proposed co-operative attending the meeting; and

(c) the proposed members of the proposed co-operative must sign the application for membership which must be in a form approved by the Registrar; and

(d) the proposed members must elect the first directors of the proposed co-operative in accordance with 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 any act or thing necessary to have the proposed co-operative registered.

(3) The formation meeting must be held by—

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

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

(c) not less than 5 persons suitably qualified to be members of the proposed co-operative in the case of any other co-operative.

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

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

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

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

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

Division 3—Approval of disclosure statement and rules

17 Approval of disclosure statement

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

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

(a) the estimated costs of formation; and

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

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

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

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

(f) any other information that the Registrar directs.

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

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

S. 17(3)(a) amended by No. 35/2000 s. 34(c).

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

(4) The Registrar may—

(a) approve the draft statement as submitted; or

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

(c) refuse to approve the statement.

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

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

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

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

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

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

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

18 Approval of rules

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

(2) The proposed rules must—

(a) be in accordance with section 107; and

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

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

(3) If the rules do not make provision for any matter included in the model rules, the 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.

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

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

Division 4—Registration of proposed co-operative

19 Application for registration of proposed co-operative

(1) An application for registration of a proposed co-operative (other than an existing body corporate) must—

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

(b) be accompanied by the prescribed fee; and

(c) be signed by—

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

(ii) at least 5 suitably qualified members, including 2 directors elected at the formation meeting, in the case of any other proposed co-operative; 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 proposed trading co-operative, a copy of the disclosure statement presented to the formation meeting signed and certified by the persons who acted as chairperson and secretary at the formation meeting; and

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

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

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

20 Registration of co-operative

(1) When 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 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 18; and

(b) the requirements of this Act and the regulations must have been complied with in respect of the proposed co-operative and compliance must be likely to continue; and

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

(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.

21 Incorporation and certificate of registration

(1) The incorporation of the co-operative takes effect upon the registration of the co-operative.

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

Division 5—Registration of an existing body corporate

22 Existing body corporate can be registered

A body corporate (other than a co-operative deemed to be registered under this Act) may apply to the Registrar to be registered as a co-operative under this Act, if before or after the commencement of this Act, the body corporate was—

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

S. 22(a) amended by No. 44/2001 s. 3(Sch. item 18.4).

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

23 Formation meeting

(1) Before applying for registration as a co-operative the body corporate must pass a special resolution in accordance with its articles of association or rules approving of—

(a) the proposed registration; and

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

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

(a) the proposed rules of the proposed co-operative approved under section 18, and including active membership provisions in accordance with Part 6, must also be passed by special resolution; and

(b) in the case of a proposed trading co-operative, a disclosure statement approved under section 17 must be presented to the meeting.

24 Application for registration

An application for registration must be—

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

(b) accompanied by the prescribed fee; and

(c) accompanied by—

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

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

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

(iv) 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 trading co-operative, a copy of the disclosure statement presented to the meeting held under section 23 and signed and certified by the directors or committee of management of the body corporate; and

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

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

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

25 Requirements for registration

(1) When an application is made for registration of a co-operative under this Division, the Registrar must register the body corporate as a co-operative under this Act and register its rules under this Act 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 18; and

(b) the requirements of this Act and the regulations must have been complied with in respect of the proposed co-operative and compliance must be likely to continue; and

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

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

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

26 Certificate of registration

(1) On the registration of the body corporate as a co-operative the Registrar must—

(a) issue a certificate of registration; and

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

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

27 Effect of registration

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

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

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

Division 6—Conversion of co-operative

28 Conversion of co-operative

(1) A co-operative may, by alteration 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 trading co-operative to a non-trading co-operative or vice versa.

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

Division 7—Reviews

Pt 2 Div. 7 (Heading and ss 29–32) substituted by No. 101/1998 s. 4.

S. 29 substituted by No. 101/1998 s. 4.

29 Review of refusal to approve disclosure statement

The person who submitted a draft disclosure statement to the Registrar under this Act may apply to the Tribunal for review of—

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

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

S. 30 substituted by No. 101/1998 s. 4.

30 Review of refusal to approve draft rules

The person who submitted draft rules to the Registrar under this Act may apply to the Tribunal for review of—

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

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

S. 31 substituted by No. 101/1998 s. 4.

31 Review of refusal to register

The applicants for registration of a proposed co-operative under this Part may apply to the Tribunal for review of—

(a) a decision of the Registrar to refuse to register the co-operative; or

(b) a failure of the Registrar to register the co-operative.

32 Time limit for applying for review

S. 32 substituted by No. 101/1998 s. 4.

An application for review under this Division must be made within 28 days after the later of—

(a) the day on which the decision is made;

(b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the applicant for review requests a statement of reasons for the decision, the day on which the statement of reasons is given to the applicant or they are informed under section 46(5) of that Act that a statement of reasons will not be given.

Division 8—General

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S. 33 repealed by No. 79/2000 s. 285(Sch. 1 item 1.1.

34 Acceptance of money by proposed co-operative

(1) A proposed co-operative or any person on its behalf or otherwise which accepts any 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 the period of 3 months after the acceptance of any 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.

Penalty: 60 penalty units.

35 Issue of duplicate certificate

The Registrar must issue a duplicate certificate of registration—

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

(b) on payment of the prescribed fee.

PART 3—LEGAL CAPACITY AND POWERS

Division 1—General powers

36 Effect of incorporation

As a body corporate, a co-operative—

(a) has perpetual succession; and

(b) has a common seal; and

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

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

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

37 Power to form companies and enter into joint ventures

Without limiting any other provision of this Act, a co-operative has power—

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

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

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

Division 2—Doctrine of ultra vires abolished

38 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.

39 Doctrine of ultra vires abolished

(1) The objects of this Division are—

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

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

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

40 Legal capacity

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

(2) Without limiting subsection (1), a co-operative has, both within and outside the State, power—

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

(b) to issue debentures 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 charge on property of the co-operative; and

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

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

(3) Subsections (1) and (2) have effect in relation to a co-operative—

(a) subject to this Act and the regulations but despite section 41(2); and

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

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

(4) 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.

41 Restrictions on co-operatives in rules

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

(2) A co-operative contravenes this section if—

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

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

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

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

42 Results of contravention of restriction in rules

(1) The exercise of a power or the doing of an act in contravention of section 41 is not invalid merely because of the contravention.

(2) An act of an officer of a co-operative is not invalid merely because, by doing the act, the officer contravenes section 41.

(3) The fact that the exercise of a power or the doing of an act contravenes or would contravene section 41 may be asserted or relied on only in—

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

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

(c) an application for an injunction under section 455 to restrain the co-operative from entering into an agreement; or

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

(e) an application by the Registrar or by a member of the co-operative for the winding up of the co-operative.

(4) If, but for subsection (3), a court would have power under section 455 to grant, on the application of a person, an injunction restraining a co-operative or an officer of a co-operative from engaging in particular conduct constituting a contravention of section 41, the court may, on the application of that person, order the co-operative or the officer to pay damages to that person or any other person.

Division 3—Persons having dealings with co-operatives

43 Assumptions entitled to be made

(1) A person is entitled to make the assumptions in section 44 in relation to—

(a) dealings with a co-operative; and

(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 is entitled to assume a matter, the co-operative or anyone referred to in subsection (1)(b) is not entitled to assert in proceedings in relation to the dealings that the matter is incorrect.

44 Assumptions

(1) **Rules complied with:** A person may assume that the co-operative's rules have been complied with.

(2) **Director or officer:** 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 officer 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 officer of a similar co-operative.

(3) **Officer or agent:** 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 to perform the duties customarily exercised or performed by that kind of officer or agent of a similar co-operative.

(4) **Officer or agent with authority to warrant that document is genuine or true copy:** 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.

(5) **Document duly executed:** A person may assume that a document has been duly executed by the co-operative if it is signed by two people, one of whom is, or may be assumed to be, a director of the co-operative, and the other a director or officer of the co-operative.

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

(7) **Proper performance of duties:** A person may assume that the officers and agents of the co-operative properly perform their duties to the co-operative.

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

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

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

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

46 Lodgment of documents not to constitute constructive knowledge

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

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

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

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

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

47 Effect of fraud

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

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

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

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

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

48 Common seal

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

49 Official seal

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

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

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

50 Authentication need not be under seal

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

51 Co-operative may authorise person to execute deed

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

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

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

52 Execution under seal

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

53 Contractual formalities

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

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

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

54 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.

55 Transitional

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

Division 5—Pre-registration contracts

56 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, 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 that it thinks just in the circumstances, including ordering the co-operative—

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

(b) to transfer property that the co-operative received because of the contract to a party to the contract;

(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.

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

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

(2) The release must be in writing.

(3) The party giving the release is not entitled to recover damages under section 56 from the person.

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

58 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.

Division 6—Government guarantees

59 Government guarantees

(1) The Treasurer may execute a guarantee in favour of any authorised deposit-taking institution or of any other person or body corporate or unincorporate (including any trustee), approved by the Treasurer guaranteeing the repayment of any loan to be made by the authorised deposit-taking institution or approved body or person to a co-operative.

S. 59(1) amended by Nos 11/2001 s. 3(Sch. item 16.2), 106/2003 s. 20(1).

S. 59(1A) inserted by No. 106/2003 s. 20(2).

(1A) The Treasurer must obtain the approval of the Governor in Council to execute a guarantee under subsection (1) if the guarantee would involve the Treasurer in a liability exceeding 5 per cent of the aggregate liability permissible under section 60.

(2) Despite subsection (1) if a co-operative offers debentures for subscription and provision is made in those debentures or in a trust deed relating to those debentures for the appointment of a trustee for the holders of the debentures the Treasurer may with the approval of the Governor in Council execute a guarantee in favour of the trustee guaranteeing the repayment of the debentures.

(3) A guarantee must not be executed guaranteeing the repayment of any loan to be made to a co-operative unless the co-operative has first entered into an agreement with the Treasurer with respect to the conduct of the affairs of the co-operative while the guarantee is in force and containing any provisions and conditions that are prescribed or that the Treasurer thinks fit.

(4) Without limiting subsection (1), the Treasurer may refuse to execute a guarantee under this section if the co-operative has less than 25 active members.

(5) The following provisions apply to and with respect to a guarantee—

(a) the guarantee must be in the form and subject to the terms and conditions that are prescribed or that the Treasurer thinks fit;

S. 59(5)(b) amended by No. 11/2001 s. 3(Sch. item 16.2).

(b) the guarantee may include the interest charges and expenses chargeable by the authorised deposit-taking institution, trustee for the holders of debentures or approved person or body (as the case may be) against the principal debtor in the usual course of its

business and the expenses of enforcing or obtaining or endeavouring to enforce or obtain payment of the debt guaranteed and such interest charges and expenses;

(c) the authorised deposit-taking institution, trustee for the holders of debentures or approved person or body (as the case may be) must obtain take and hold the securities (if any) for the payment of the principal debt that the Treasurer may require;

S. 59(5)(c) amended by No. 11/2001 s. 3(Sch. item 16.2).

(d) the authorised deposit-taking institution, trustee for the holders of debentures or approved person or body (as the case may be) must not without the consent in writing of the Treasurer assign or encumber the benefit of the guarantee.

S. 59(5)(d) amended by No. 11/2001 s. 3(Sch. item 16.2).

60 Aggregate liability under guarantees

(1) The Treasurer must not execute a guarantee if the guarantee would involve the Treasurer in a liability which when added to the total liabilities subsisting in respect of other guarantees executed under this Division or any corresponding previous enactment would in the aggregate exceed the amount of $30 000 000 (or, if a higher amount is prescribed for the purposes of this section, that amount).

S. 60(1) amended by No. 106/2003 s. 20(3).

(2) Any sums that may from time to time become due and payable by the Treasurer under any guarantee authorised by this Division must be paid out of the Consolidated Fund (which is hereby to the necessary extent appropriated accordingly).

61 Execution of guarantees and entering into of agreements

(1) Any guarantee or agreement authorised by this Division to be executed or entered into by the Treasurer may be executed or entered into for and on behalf of the Treasurer by any other person whom the Treasurer may authorise in writing either generally or in any particular case so to do.

(2) The Treasurer must cause to be published in the Government Gazette notice of the authorisation of any person to execute a guarantee or enter into an agreement for and on behalf of the Treasurer.

(3) A guarantee executed or agreement entered into by a person for and on behalf of the Treasurer is deemed to have been executed or entered into by the Treasurer.

(4) All courts must take judicial notice of the signature to a guarantee or agreement of any person who is or has been authorised by the Treasurer to execute the guarantee or enter into the agreement for and on behalf of the Treasurer.

62 Restrictions on shares of co-operative with guarantee

(1) A member of a co-operative in respect of which a guarantee exists under this Division must not hold shares in the co-operative exceeding a fixed nominal value determined by the Registrar and specified in the rules.

(2) Except with the consent of the Registrar, a co-operative must not repay any amount paid up on a member's shares which is not required for the purposes of the co-operative while any part of the loan to which the guarantee under this Division relates is still owing.

(3) Except with the consent of the Registrar under this subsection or at the direction of the Registrar under subsection (4), a co-operative in respect of which a guarantee exists under this Division must not make calls on any amount unpaid on shares while any part of the loan to which the guarantee under this Division relates is still owing.

(4) If directed by the Registrar, a co-operative in respect of which a guarantee exists under this Division must make any calls required by that direction on any amount unpaid on shares.

63 Restriction on transfer of incorporation

A co-operative in respect of which a guarantee exists under this Division must not apply to become registered or incorporated as a body corporate referred to in section 306.

PART 4—MEMBERSHIP

Division 1—General

64 Becoming a member

(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 person under the age of 18 may be admitted as a member of the co-operative unless the rules of the co-operative otherwise provide.

(4) A body corporate is not (merely because it is a body corporate) disqualified from being a member of a co-operative unless the co-operative's rules provide that bodies corporate 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 in accordance with its rules.

65 Members of associations

(1) The members of an association are—

(a) the component co-operatives by which the association is formed; and

(b) any other co-operative, admitted to membership in accordance with the rules of the association; and

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

(2) A body corporate or other body (not being a co-operative) may be admitted to membership of the association as a component co-operative if—

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

(b) in the opinion of the board of the association, 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 association.

66 Members of federations

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

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

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

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

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

67 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 that 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) explain the consequences of failing to be or ceasing to be an active member.

68 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.

69 Members under 18 years of age

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

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

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

(4) This section applies only to natural persons.

70 Representatives of bodies corporate

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

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

Penalty: 10 penalty units.

(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 body corporate.

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

S. 70(4) amended by No. 44/2001 s. 3(Sch. item 18.5).

71 Notification of shareholders and shareholdings

On the request of the board of directors of the co-operative, a body corporate which is a member of the co-operative must make available for inspection by the board of directors of the co-operative—

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

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

Penalty: 20 penalty units.

72 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 Act—

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

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

(c) if—

(i) the member becomes bankrupt; or

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

unless provision is made to the contrary in the rules of the co-operative;

(d) on death;

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

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

(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.

73 Additional circumstances in which membership ceases—co-operatives with share capital

In the case of a co-operative that has a share capital, in addition to those circumstances in section 72, a member ceases to be a member if—

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

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

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

(d) the member's share is purchased by the co-operative in accordance with this Act;

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

74 Carrying on business with too few members

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

(2) Each person who is guilty of an offence under subsection (1) is also liable to satisfy all obligations of the 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) for an association or federation, 2; or

(b) for any other co-operative, 5.

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

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

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

(b) before the period to be extended expires.

Division 2—Rights and liabilities of members

75 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 in respect of membership or acquired any share or interest that is provided in the rules of the co-operative.

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

Penalty: 20 penalty units.

76 Liability of members to co-operative

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

(2) A member of a co-operative with a 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 a 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.

77 Co-operative to provide information to person intending to become a member

(1) The board of a co-operative must provide each person intending to become a member of the co-operative with—

(a) a consolidated copy of the rules of the co-operative; and

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

(c) a copy of the last annual report of the co-operative under section 249.

(2) The board of a non-trading co-operative or, with the consent of the Registrar, the board of a trading co-operative may comply with subsection (1) by—

(a) giving the person intending to become a member notice that the documents referred to in that subsection may be inspected by the

person at the registered office of the co-operative; and

(b) making those documents available for inspection.

78 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 those fees and subscriptions on a person ceasing to be a member.

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

(3) A person who becomes a member of the co-operative is not liable to pay any entry fees or regular subscriptions except—

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

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

79 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 any specified 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 any specified dealings with the co-operative for a fixed period.

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

(a) to sell products through or to the co-operative; or

(b) to obtain supplies or services through or from the co-operative; or

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

(4) Any sum so required to be paid to the co-operative as liquidated damages is for the purposes of section 81 to be considered to be a debt due from the member to the co-operative.

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

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

80 Fines payable by members

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

(2) A fine imposed under subsection (1) must not exceed the maximum fine fixed by the rules in accordance with section 107.

(3) A fine must not be imposed unless—

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

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

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

81 Charge and set-off of co-operative

(1) A co-operative has, in respect of any debt due from a member or former member to the co-operative, a charge on each of the following—

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

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

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

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

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

82 Repayment of shares on expulsion

(1) When a member is expelled from a co-operative in accordance with its rules, the co-operative must repay to the member the amount paid up on the shares held by the member at the date of expulsion, less any amount owed by the member to the co-operative at the date of expulsion under the rules of the co-operative or any contract or otherwise.

(2) If the balance sheet of the co-operative last issued before the expulsion 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.

(3) 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 of the member.

(4) Payment of any amount due to a member under this section must be made at the time determined by the board of the co-operative, but not later than 12 months after the date of expulsion.

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

Division 3—Death of member

83 Meaning of *interest*

For the purposes of this Division, a deceased member's ***interest*** in a co-operative includes—

(a) the member's membership;

(b) any credit balance due to the member;

(c) any loan from or to or deposit with the co-operative;

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

84 Transfer of share or interest on death of member

Subject to section 173, on the death of a member, 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) to the person that the deceased's personal representative specifies in an application made to the co-operative within 3 months after the death of the member.

85 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 such other amount as may be prescribed), the board may, on the basis of such evidence as it considers sufficient, transfer the shares or interest in accordance with whichever of the following paragraphs is appropriate—

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

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

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

(3) In this section, the ***transfer*** of an interest includes the payment of money.

86 Value of shares and interests

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

87 Co-operative protected

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

Division 4—Disputes involving members

88 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 section and section 89 ***member*** includes any person who was a member not more than 6 months before the dispute occurred.

89 Application to Supreme Court

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

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

(b) having regard to the importance of the issue, the nature of the 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[1].

Division 5—Oppressive conduct of affairs

90 Interpretation

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

91 Application of Division

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

92 Who may apply for court order?

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

(a) the Registrar;

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

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

93 Orders that the Supreme Court may make

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

(a) an order that the 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 in accordance with the provisions of this Act for repayment of share capital;

(e) an order for the purchase of the shares of any member by the 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 specified proceedings, or authorising a member or members of the co-operative to institute, prosecute, defend or discontinue specified 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 specified conduct or from doing a specified act or thing;

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

S. 93(i) amended by No. 44/2001 s. 3(Sch. item 18.6).

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

(k) an order as to costs.

94 Basis on which Supreme Court makes orders

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

(a) that the affairs of a co-operative are being conducted in a manner that is—

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

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

(b) that an act or omission, or a proposed act or omission, by or on behalf of a co-operative, or a resolution, or a proposed resolution, of a class of members of a co-operative, was or would be—

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

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

95 Winding up need not be ordered if oppressed members prejudiced

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

96 Application of winding up provisions

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

97 Changes to rules

If an order under this Division makes any alteration to the rules of a co-operative—

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

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

98 Copy of order to be lodged with Registrar

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

Penalty: 10 penalty units.

Division 6—Proceedings on behalf of a co-operative by members and others

99 Bringing, or intervening in, proceedings on behalf of a co-operative

(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 body corporate; 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 100.

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

100 Applying for and granting leave

(1) A person referred to in section 99(1)(a) may apply to the Supreme Court for leave to bring, or to intervene in, proceedings.

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

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

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

(c) it is in the best interests of the 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 of the reasons for applying; or

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

101 Substitution of another person for the person granted leave

(1) Any of the following persons may apply to the Supreme Court for an order that they be substituted for a person to whom leave has been granted under section 100—

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

(b) an officer, or former officer, of the co-operative; or

(c) the Registrar.

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

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

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

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

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

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

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

102 Effect of ratification by members

(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 100 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 100 must be determined in favour of the defendant, or that an application for leave under that section must be refused.

(2) The Supreme Court may take into account a ratification or an approval of the conduct by members of a co-operative in deciding what order or judgment (including as to damages) to make in proceedings brought or intervened in with leave under section 100 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.

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

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

104 General powers of the Supreme Court

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

(a) interim orders; and

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

(c) an order directing the 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 Supreme Court, on—

(i) the financial affairs of the co-operative; or

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

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

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

105 Power of Supreme Court to make costs order

At any time, the Supreme Court may, in relation to proceedings brought or intervened in with leave under section 100 or an application for leave under that section, make any orders it thinks just about the costs of the person who applied for or was granted leave, of the co-operative or of any other party to the proceedings or application, including an order requiring indemnification for costs.

PART 5—RULES

106 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 principal 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 are applicable to that person.

107 Content of rules

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

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

(3) The rules may state the objects of the co-operative.

(4) The rules may incorporate any provision of the model rules approved under section 110.

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

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

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

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

108 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 exceed the prescribed fee 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 prescribed fee.

109 False copies of rules

(1) A person who gives 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 alterations of rules, other than those which have been duly registered, representing that they are binding on the members of the co-operative is guilty of an offence and liable to a penalty not exceeding 10 penalty units.

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

110 Model rules

(1) The Registrar may by notice published in the Government Gazette approve model rules for co-operatives or for any class of co-operatives and alter or repeal the model rules from time to time.

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

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

111 Rules can only be altered in accordance with this Act

The rules of a co-operative cannot be altered except in accordance with this Act.

112 Approval of alteration of rules

(1) A proposed alteration of the rules must be approved by the Registrar before the resolution altering the rules is passed by a co-operative or the board of a co-operative.

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

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

(b) the resolution is passed by the board of the co-operative.

(3) The proposed alteration must—

(a) be in accordance with section 107; and

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

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

(4) The Registrar may—

(a) approve the alteration as submitted; or

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

(c) refuse to approve the alteration.

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

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

113 Alteration by special resolution

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

114 Alteration by resolution of board

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

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

115 Alteration does not take effect until registered

(1) An alteration 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 alteration must—

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

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

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

(3) The Registrar must register the alteration unless—

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

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

(4) A certificate of registration of any alteration 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 in favour of any guarantor of that advance, conclusive evidence that the alteration in the rules was duly made.

116 Review of refusal to approve alteration

S. 116 substituted by No. 101/1998 s. 5.

A co-operative may apply to the Tribunal for review of—

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

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

117 Review of refusal to register

S. 117 substituted by No. 101/1998 s. 5.

A co-operative may apply to the Tribunal for review of—

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

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

118 Time limit for applying for review

S. 118 substituted by No. 101/1998 s. 5.

An application for review under section 116 or 117 must be made within 28 days after the later of—

(a) the day on which the decision is made;

(b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the co-operative requests a statement of reasons for the decision, the day on which the statement of reasons is given to the co-operative or it is informed under section 46(5) of that Act that a statement of reasons will not be given.

PART 6—ACTIVE MEMBERSHIP

Division 1—Definitions

119 Primary activity—meaning

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.

120 What is active membership?

For the purposes of this Act, a member of a co-operative is an active member of the co-operative if the member—

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

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

121 What are active membership provisions and resolutions?

(1) Active membership provisions in the rules of a co-operative are provisions in the rules which specify—

(a) which of the activities of the co-operative are the primary activities of the co-operative; and

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

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

Division 2—Rules to contain active membership provisions

122 Number of primary activities required

A co-operative must have at least 1 primary activity.

123 Rules to contain active membership provisions

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

124 Factors and considerations for determining primary activities etc.

(1) The board of a co-operative must ensure that the relevant factors and considerations are taken into account in determining—

(a) which of the activities of a co-operative are its primary activities;

(b) the manner and extent to which a member is required to utilise or support an activity of, or maintain a relationship or an arrangement with, a co-operative, in connection with the carrying on of a primary activity of the

co-operative, in order 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 constitute the basic purpose for which the co-operative exists and a significant contribution to the business of the co-operative;

(b) the manner 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;

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

(3) The regulations may—

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

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

(4) Factors and considerations may be prescribed so as to apply to co-operatives generally, to a specified class of co-operatives or to a specified individual co-operative.

(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.

125 Active membership provisions—trading co-operatives

The only active membership provisions which may be contained in the rules of a trading co-operative are—

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

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

126 Regular subscription—active membership of non-trading co-operative

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

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

Division 3—Active membership resolutions

127 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 specified—

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

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

(c) contain a copy of section 131.

(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 determination as to the member's eligibility.

(4) The Registrar may determine the matter, on the information available to the Registrar, by direction in writing to the co-operative and the member.

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

128 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 do not contain active membership provisions are those members who would be active members if the resolution had already taken effect.

129 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—

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

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

130 Other entitlements of members not affected

A provision of this Division which 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

131 Cancellation of membership of inactive member

(1) 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 determined as if the active membership provisions concerned had been in force at that time.

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

(5) A person may apply to the Supreme Court for an order under section 137 in respect of 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 provided for in the rules of the co-operative, that shorter period.

132 Share to be forfeited if membership cancelled

(1) If a co-operative has a 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 131.

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

(3) Nothing in this section affects the operation of section 138.

133 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 that failure is guilty of an offence and liable to a penalty not exceeding 20 penalty units.

134 Deferral of forfeiture by board

(1) The board of a co-operative may by resolution defer cancellation of a member's membership for a period of up to 12 months—

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

(b) if—

(i) the board thinks that during that period an active membership resolution may be put to the members of the 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 before the end of the deferral period to determine if a further resolution should be made under subsection (1).

135 Cancellation of membership prohibited in certain circumstances

Unless the 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

S. 135(b) amended by No. 44/2001 s. 3(Sch. item 18.7(a)).

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

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

S. 135(f) amended by No. 44/2001 s. 3(Sch. item 18.7(b)).

(f) if the co-operative has, for the purposes of being registered as a company under the Corporations Act, filed with the Registrar a copy of the entry made in the minute book of the co-operative under section 199; or

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

136 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 respect of the cancelled membership (whether by reason of the cancellation of shares or otherwise) does not exceed $50.

137 Order of Supreme Court against cancellation

(1) If the Supreme Court is satisfied in a particular case that the cancellation of a member's membership under section 131 was or would be unreasonable, the Supreme Court may by order direct that the membership should not have been cancelled or should not be cancelled.

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

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

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

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

138 Repayment of amounts due in respect of cancelled membership

(1) If the membership of a member of a co-operative is cancelled under this Part, the co-operative must, within 12 months after the date of cancellation—

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

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

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

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

(2) The amount due 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 139 as to interest on the deposit);

S. 138(2)(b) amended by No. 13/2008 s. 5.

(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 due as a donation to the co-operative, but only if the former member consents in writing to the donation.

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

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

139 Interest on deposits, debentures and CCUs

S. 139 (Heading) inserted by No. 13/2008 s. 6(1).

(1) This section applies when the amount due to a former member under section 138 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.

S. 139(1) amended by No. 13/2008 s. 6(2).

(2) The deposit, debenture or CCU bears interest during any period—

S. 139(2) amended by No. 13/2008 s. 6(3).

(a) in the case of 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 in respect of that period on the share capital of the co-operative; or

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

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

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

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

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

S. 139(4) substituted by No. 44/2001 s. 3(Sch. item 18.8), amended by No. 13/2008 s. 6(4).

(4) The following provisions of the Corporations Act (as applied by section 263 of this Act) do not apply to an allotment or issue of debentures or CCUs under this section—

(a) Chapter 2L (Debentures);

(b) Chapter 6D (Fundraising).

S. 140 (Heading) inserted by No. 13/2008 s. 7(1).

140 Repayment of deposits, debentures and CCUs

S. 140(1) amended by No. 13/2008 s. 7(2).

(1) A deposit, debenture or CCU to which an amount due to a former member is transferred under this Division 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.

S. 140(2) amended by No. 13/2008 s. 7(3).

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

141 Register of cancelled memberships

A co-operative must keep a register, in a form approved by the Registrar, specifying the prescribed particulars of persons whose membership has been cancelled under this Part.

Division 5—Entitlements of former members of trading co-operatives

142 Application of Division

This Division only applies to trading co-operatives.

143 Former shareholders to be regarded as 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 regarded as the holder of shares in the co-operative (the same in all respects as those that were forfeited) for the following purposes—

(a) the entitlements of a shareholder in respect of the purchase of shares in the co-operative pursuant to an offer described in section 290(1)(a), (b) or (c) or the purchase of all the shares in the co-operative, if the offer or purchase occurs within 5 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 307 is passed within 5 years after the person's shares were forfeited;

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

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

(a) an offer described in section 290(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.

S. 143(3) amended by No. 35/2000 s. 34(d).

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

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

(5) This section does not apply to a forfeited shareholding in a co-operative if section 144 operates to require that forfeited shareholding to be regarded as a forfeited shareholding in another co-operative.

144 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 5 years after that forfeiture—

(a) the original co-operative becomes a subsidiary of another co-operative (***the new co-operative***); or

(b) another co-operative (***the new co-operative***) is created as a result of a merger under Division 1 of Part 12 involving the original co-operative; or

(c) the engagements of the original co-operative are transferred to another co-operative (***the new co-operative***) under Division 1 of Part 12.

(2) A person referred to in subsection (1) is, for the purposes of the operation of section 143 (and the further operation of this section) to be regarded as having 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 determined 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 determination 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 in respect of the person) when the person was first to be regarded as having 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 as a result of any bonus share issue or otherwise).

145 Set-off of amounts repaid etc. on forfeited shares

(1) If a person has an entitlement because of the operation of section 144, the entitlement operates to extinguish any liability of the co-operative—

(a) to repay to the person under section 138 any amount in respect of the forfeited shares concerned; or

S. 145(1)(b) amended by No. 13/2008 s. 8.

(b) in respect of a deposit held by the co-operative, or debentures or CCUs allotted or issued to the person, under section 138 in respect of the forfeited shares concerned (except a liability to pay interest that is due but unpaid).

(2) If an amount has been repaid to a person under section 138 or 140, the amount repaid is to be set-off against any entitlement of the person under section 143 in respect of the forfeited shares concerned.

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

(4) If the circumstances specified in subsection (3) arise, the 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, specifying a period of not less than 28 days after the notice is given during 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.

146 Entitlement to distribution from reserves

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

147 Registrar may exempt co-operatives from provisions

The Registrar may, by order, exempt a specified co-operative or a co-operative that is a member of a specified class of co-operatives from all or specified provisions of this Division.

PART 7—SHARES

Division 1—Nature of share

148 Nature of share in co-operative

(1) A share or other interest in a co-operative—

(a) is personal property;

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

(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 applicable 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 respect of 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

149 Disclosure to members

(1) In addition to any information required under Part 4 to be provided, the board of a trading co-operative must provide a member of the co-operative with a disclosure statement before shares are issued to the member.

(2) The disclosure statement must contain—

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

(b) a copy of the last annual report of the co-operative under section 249; and

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

(d) any other information that the Registrar directs.

Division 3—Issue of shares

150 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 which is to be specified in the rules of the co-operative.

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

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

151 Minimum paid up amount

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

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

(3) This section does not apply to a bonus share issued under section 156 or 273.

152 Shares not to be issued at a discount

A co-operative must not issue shares at a discount.

153 Issue of shares at a premium

(1) A trading 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 trading co-operative issues shares for which it receives a premium, a sum equal to the aggregate amount or value of the premiums on those shares must be transferred to a share premium account.

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

(a) in paying up unissued shares to be issued to members of the 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 those 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;

S. 153(4)(e) amended by No. 13/2008 s. 9.

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

154 Joint ownership of shares

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

155 Members may be required to take up additional shares

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

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

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

(a) be accompanied by a disclosure statement, approved by the 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 amongst members; and

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

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

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

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

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

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

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

(6) Sections 17 (except subsection (2)) and 29 apply to the approval of a disclosure statement under this section with any necessary modifications and in particular as if any reference in section 17 to a formation meeting were a reference to the special resolution.

156 Bonus share issues

(1) In addition to section 273, the rules of a trading co-operative may authorise the issue of 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 re-valued at a greater value than that disclosed prior to 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.

157 Restrictions on bonus shares

Bonus shares under section 156 may be issued in accordance with the rules of the co-operative, 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 in respect of shares of the same class of shares that are fully paid up as at the date of issue of the bonus shares;

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

158 Notice in respect of bonus shares

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

(a) a statement of the value of the assets concerned as disclosed in the books of the 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 furnished in respect of a valuation made not more than 12 months before the date of the notice by a prescribed person or a person having prescribed qualifications; and

(d) particulars of acquisitions of shares in the co-operative made during the 3 years immediately preceding the date of the notice by or on behalf of each of its directors and his or her spouse and the father, mother, children, brothers and sisters of each such director and spouse; 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 that no circumstances are known to them as to why the issue should not take place.

Division 4—Beneficial and non-beneficial interest in shares

159 Notice of non-beneficial ownership at time of transfer

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

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

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

(b) sets out particulars of those shares; and

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

(3) A transferee must ensure that this section is complied with when an instrument of transfer of shares is lodged by or on behalf of the transferee with the co-operative for registration of the transfer.

Penalty: 10 penalty units or imprisonment for 3 months, or both.

(4) An offence under this section does not affect the validity of the registration of a transfer of shares.

160 Notice of non-beneficial ownership not notified at time of transfer

(1) If on the registration of an instrument of transfer of shares the transferee holds non-beneficially any of the shares transferred, notice of that fact must be given to the co-operative.

(2) The notice must—

(a) set out the name and address of the transferee; and

(b) contain a statement to the effect that, as from registration of the transfer, the transferee holds the shares non-beneficially; and

(c) set out particulars of those shares; and

(d) be signed by or on behalf of the transferee.

(3) The notice must be given within 14 days after the registration of the transfer (even if before the end of that 14 days the transferee begins to hold any of the relevant shares beneficially).

(4) The transferee of the shares must ensure that this section is complied with.

Penalty: 10 penalty units or imprisonment for 3 months, or both.

(5) This section does not apply in respect of any shares for which particulars were set out in a non-beneficial ownership notice under section 159 included in the instrument of transfer.

161 Registration as beneficial owner of shares notified as non-beneficially transferred

(1) If an instrument of transfer of shares lodged with a co-operative includes a non-beneficial ownership notice under section 159 in respect of particular shares but on registration of the transfer the transferee holds some or all of those shares beneficially, notice of that fact must be given to the co-operative.

(2) The notice must—

(a) set out the name and address of the transferee; and

(b) contain a statement to the effect that, as from registration of the transfer, the transferee holds the relevant shares beneficially; and

(c) set out particulars of the shares held beneficially; and

(d) be signed by or on behalf of the transferee.

(3) The notice must be given within 14 days after the registration of the transfer (even if before the end of that 14 days the transferee begins to hold any of the relevant shares non-beneficially).

(4) The transferee of the shares must ensure that this section is complied with.

Penalty: 10 penalty units or imprisonment for 3 months, or both.

162 Notification of change in nature of shareholding

(1) A person must notify the co-operative in accordance with this section of the change in the person's shareholding in the co-operative if the person—

(a) commences to hold any shares beneficially that the person currently holds non-beneficially; or

(b) commences to hold any shares non-beneficially that the person currently holds beneficially.

Penalty: 10 penalty units or imprisonment for 3 months, or both.

(2) The notice must—

(a) set out the name and address of the person; and

(b) contain a statement to the effect that, as from the time of the change, the person holds the shares beneficially or non-beneficially (as appropriate); and

(c) specify the time of the change and set out particulars of the shares affected; and

(d) be signed by or on behalf of the person.

(3) The notice must be given within 14 days after the change (even if before the end of that 14 days another such change affecting any of the shares occurs).

163 Presumption of awareness

(1) For the purposes of this Division, a person is, unless the contrary is established, to be presumed to have been aware at a particular time of a circumstance of which an employee or agent of the person was aware at that time.

(2) Subsection (1) only applies if the employee or agent has duties or acts in relation to the transfer to, or ownership by, the person of a share or shares in the co-operative concerned.

164 Presumption that shares held non-beneficially

(1) A person is deemed to hold particular shares non-beneficially if the person—

(a) holds the shares in a capacity other than that of sole beneficial owner; or

(b) without limiting paragraph (a), holds the shares as trustee for, as nominee for, or otherwise on behalf of or on account of, another person.

(2) A person is deemed to hold shares beneficially at a particular time unless the person holds the shares non-beneficially at that time.

165 Noting of beneficial and non-beneficial interests in register of members

(1) The register of members kept by a co-operative must contain a statement of the shares that each member holds beneficially and of the shares that each member holds non-beneficially.

(2) In determining for the purposes of an entry in the register whether a member of a co-operative holds shares beneficially or non-beneficially, regard is to be had only to the following information—

(a) information contained in a non-beneficial ownership notice under section 160 included in an instrument of transfer registered by the co-operative;

(b) information contained in a notice given to the co-operative under any other provision of this Division.

166 Registration as trustee etc. 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 that share as trustee, executor or administrator of that estate.

(2) A trustee, executor or administrator of the estate of a dead person who was entitled in equity to a share in a co-operative may, with the consent of the co-operative and of the registered holder of that share, be registered as the holder of that share as trustee, executor or administrator of that estate.

167 Registration as administrator of estate on incapacity of shareholder

(1) This section applies to a person (***the appointed person***) who is appointed under a law of a State or Territory relating to the administration of the estates of persons who, through mental or physical infirmity, are incapable of managing their affairs, to administer the estate of another person (***the incapable person***).

(2) If the incapable person is the registered holder of a share in a co-operative, the appointed person may be registered as the holder of that share as administrator of the estate of the incapable person.

(3) If the incapable person is entitled in equity to a share in a co-operative, the appointed person may, with the consent of the co-operative and of the registered holder of that share, be registered as the holder of the share as administrator of the estate of the incapable person.

168 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 that share as the Official Trustee in Bankruptcy.

(3) If the bankrupt is entitled in equity to the share, the Official Trustee may, with the consent of the co-operative and of the registered holder of the share, be registered as the holder of that share as the Official Trustee in Bankruptcy.

169 Liabilities of person registered as trustee or administrator

(1) A person registered under section 166, 167 or 168 is, while so registered, subject to the same liabilities in respect of the share as those to which the person would have been subject if the share had remained, or had been, registered in the name of the dead person, the incapable person or the bankrupt.

(2) The person registered is subject to no other liabilities in respect of the share.

170 Notice of trusts in register of members

Shares held by a trustee in respect of a particular trust may, with the consent of the co-operative, be marked in the register of members in such a way as to identify the shares as being held in respect of the trust.

171 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 5—Sale or transfer of shares

172 Sale or transfer of shares

(1) A share in a co-operative cannot be sold or transferred except—

(a) in accordance with Division 3 of Part 4 and section 173, on the death of a member; or

(b) to a person appointed to administer the estate of a shareholder under a law relating to the administration of the estates of persons who, through mental or physical infirmity, are incapable of managing their affairs; or

(c) with the consent of the board, to any person if there are reasonable grounds for believing that the person will be an active member of the co-operative.

(2) A share in a co-operative cannot be sold or transferred except in accordance with the rules of the co-operative.

173 Transfer on death of member

(1) On the death of a member, the member's share in the co-operative cannot be transferred to a person other than an administrator or executor except with the consent of the board of the co-operative.

(2) The board may only give its consent under subsection (1) if there are reasonable grounds for believing that the person will be an active member of the co-operative.

174 Restriction on total shareholding

The board of a co-operative must not consent under section 172 or 173 to the sale or transfer of a share if as a result of the sale or transfer the nominal value of the shares held by the purchaser or transferee would exceed—

(a) 20% of the nominal value of the share capital of the 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.

175 Transfer not effective until registered

A transferor of a share remains the holder of the share until the transfer is registered and the name of the transferee is entered in the register of members in respect of the share.

Division 6—Repurchase of shares

176 Purchase and repayment of shares

(1) The rules of a co-operative may authorise the co-operative to—

(a) purchase any share of a member in the co-operative at the request of the member; and

(b) repay to a member, with the member's consent, the whole or any part of the amount paid up on any share held by the member when the sum repaid is not required for the activities of the 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 exceed the sum of—

(a) 5% of the nominal value of the issued share capital of the co-operative immediately before the commencement of that financial year; and

(b) the amount of any additional share capital of the co-operative subscribed for during that year.

(3) The members of a co-operative may by special resolution exempt a co-operative from the operation of subsection (2) in respect of a particular financial year, either unconditionally or subject to conditions.

(4) The amount paid for a share when it is repurchased may be an amount determined by the board that is less than the nominal value of the share but only—

(a) if the books of the co-operative disclose that the amount paid is the net shareholder's equity per share in the undertaking of the co-operative; or

(b) in accordance with the rules of the co-operative.

(5) This section does not apply if the member has resigned or has been expelled from the co-operative or the member's membership has been otherwise cancelled.

S. 177 (Heading) inserted by No. 13/2008 s. 10(1).

177 Deposits, debentures or CCUs in lieu 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) in the case of a deposit-taking co-operative, apply the amount as an interest bearing deposit by the member with the co-operative; or

S. 177(1)(b) amended by No. 13/2008 s. 10(2).

(b) allot or issue debentures or CCUs of the co-operative to the member in satisfaction of the amount.

(2) Subsection (1) applies only—

(a) if the board is of the opinion that payment of the repurchase price would adversely affect the financial position of the co-operative; or

(b) if the board and the member so agree.

(3) The deposit, debenture or CCU bears interest during any period—

S. 177(3) amended by No. 13/2008 s. 10(3).

(a) in the case of 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 in respect of that period on the share capital of the co-operative; or

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

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

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

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

(4) The deposit, 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.

S. 177(4) amended by No. 13/2008 s. 10(3).

(5) The deposit, debenture or CCU must in any case be repaid within 10 years (or within any shorter period that the rules of the co-operative may require) after the repurchase of the shares concerned.

S. 177(5) amended by No. 13/2008 s. 10(3).

178 Cancellation of shares

A co-operative must cancel any share purchased by or forfeited to the co-operative in accordance with this Act or the rules of the co-operative.

PART 8—VOTING

Division 1—Voting entitlements

179 Application of Part

This Part applies to all voting whether at meetings or in ballots (including postal ballots).

180 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 an association or federation may have the number of votes up to 5 at a general meeting that is specified in the rules.

(4) If the rules so provide, the chairperson has a second vote at a board meeting or general meeting.

(5) In the case of joint membership—

(a) the joint members have only one vote between them; and

(b) that vote may be exercised (subject to the grant of a proxy or power of attorney) only by the joint member determined in accordance with the rules.

(6) If shares are held jointly, each member (other than a joint member) holding the share is entitled to vote at a general meeting.

181 Voting by proxy

(1) If the rules so provide, voting may be by proxy at a general meeting.

(2) The instrument of proxy may specify the manner in which a proxy is to vote in respect of a particular resolution.

(3) The proxy must vote in the manner authorised by an instrument of proxy referred to in subsection (2).

(4) A person must not act as a proxy unless he or she—

(a) is an active member of the co-operative; or

(b) in the case of an association or a federation, is entitled to represent a component co-operative or association of the association or federation on the association or federation.

(5) A person must not act as proxy for more than 10 persons (or any lesser number of persons specified in the rules of the co-operative) on any one occasion.

(6) Subsection (5) does not apply if the proxy acts under an instrument of proxy referred to in subsection (2).

182 Restriction on voting entitlement under power of attorney

A person is not entitled to exercise, under a power of attorney, the power of a member of the co-operative to vote if the person has that power in respect of another member of the co-operative under another power of attorney.

183 Restriction on voting by representatives of bodies corporate

A person is not entitled to exercise, as the representative of a body corporate, the power of a body corporate member of the co-operative to vote if the person has that power as the representative of another body corporate member of the co-operative.

184 Inactive members not entitled to vote

A member is not entitled to vote if the member is not an active member of the co-operative.

185 Control of the right to vote

(1) A person must not directly or indirectly control the exercise of the right to vote of a member.

Penalty: 60 penalty units or imprisonment for 6 months, or both.

(2) If a person controls the exercise of the right to vote of a member at a meeting of a co-operative—

(a) the vote of that member; and

(b) the vote of that person, if that person is a member—

are invalid.

(3) Nothing in this section prevents the exercise of a vote by means of a proxy or power of attorney.

186 Effect of relevant share and voting interests on voting rights

(1) A member of a co-operative is not entitled to 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 right to vote of the member.

S. 186(2) amended by No. 35/2000 s. 34(e).

(2) A member who is not entitled to vote because of this section may apply to the Registrar to review the matter.

(3) The Registrar may order that the member is entitled to vote if he or she is satisfied in the circumstances of the case that loss of the right to vote would be unjust or unreasonable, and the order of the Registrar has effect accordingly.

187 Rights of representatives to vote

A person appointed as provided by this Act to represent a member of a co-operative, association or federation—

(a) is entitled to receive notice of all meetings in the same manner as the member represented; and

(b) is entitled to exercise the same rights to vote as the member represented; and

(c) is eligible to be elected to the board of directors if the member represented holds the qualifications required for holding office as a director (other than any relating to age).

188 Other rights and duties of members not affected by ineligibility to vote

A provision of this Act which 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.

189 Vote of disentitled member to be disregarded

Any vote cast by or on behalf of a member of a co-operative when not entitled to vote must be disregarded.

Division 2—Resolutions

190 Decisions to be by ordinary resolution

Except as otherwise provided in this Act or by the rules of the co-operative, every question for decision by a co-operative must be determined by ordinary resolution.

191 Ordinary resolutions

An ordinary resolution is a resolution of a co-operative which is passed by a simple majority at a general meeting of the co-operative or in a postal ballot of members.

192 Special resolutions

(1) A special resolution is a resolution of a co-operative which is passed—

(a) by a two-thirds majority at a general meeting of members; or

(b) by a two-thirds majority in a postal ballot (other than a special postal ballot) of members; or

(c) by a three-quarters majority in a special postal ballot of members.

(2) A special resolution may be passed by a postal ballot only if the rules of the co-operative so permit or this Act requires the special resolution to be passed by postal ballot (including a special postal ballot).

(3) A resolution is not to be considered to have been passed as a special resolution unless not less than 21 days notice has been given to the members of the co-operative specifying—

(a) the intention to propose the special resolution; and

(b) the reasons for the making of the special resolution; and

(c) the effect of the special resolution being passed.

(4) A co-operative must give at least 28 days notice to the Registrar of a proposed special resolution before giving notice to the members of the proposed special resolution.

Penalty: 20 penalty units.

(5) A failure to give notice to the Registrar under subsection (4) does not affect the validity of the resolution.

193 How majority obtained is ascertained

(1) A resolution is passed by a particular majority at a meeting if that majority of the members of the 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.

194 Disallowance by Registrar

The Registrar may disallow a proposed special resolution before it is passed by written notice to the co-operative if the Registrar is of the opinion that the effect of the special resolution if passed would be in contravention of this Act or the regulations or any other law.

195 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 conclusive evidence of the fact.

(2) A declaration by the returning officer for a postal ballot to pass a special resolution that the resolution has been passed as a special resolution is conclusive evidence of that fact.

(3) Subsection (1) does not apply if a poll is taken at the meeting of the co-operative.

196 Effect of special resolution

(1) Subject to subsection (2), a special resolution has effect from the date that it is passed.

(2) A special resolution relating to any of the following has no effect until it is registered—

(a) the removal of an auditor;

(b) the expulsion of a member;

(c) if a government guarantee applies in respect of the borrowings of a co-operative, further borrowing;

(d) any matter for which a special resolution is required to be passed by special postal ballot.

197 Lodgment of special resolution

(1) A co-operative must lodge 2 copies of each special resolution passed by the co-operative with the Registrar in accordance with this section for registration.

(2) The copies must—

(a) be lodged within 28 days after the passing of a special resolution or such further period as the Registrar allows; and

S. 197(2)(b) amended by No. 35/2000 s. 34(f).

(b) be signed by a director and the secretary of the co-operative; and

(c) be accompanied by the prescribed lodgment fee.

(3) A co-operative and any officer of the co-operative that knowingly fails to lodge the required copies in accordance with this section is guilty of an offence and liable to a penalty not exceeding 20 penalty units.

(4) This section and section 198 do not apply to a special resolution altering the rules of a co-operative.

198 Decision of Registrar on application to register special resolution

(1) If the Registrar is satisfied that the co-operative has complied with the provisions of this Act and the regulations, and that the resolution is not contrary to this Act or the regulations, the Registrar must register the resolution.

(2) If the Registrar is of the opinion that the effect of a special resolution lodged for registration would be in contravention of this Act or the regulations or any other law, the Registrar may—

(a) refuse to register the special resolution; and

(b) give written notice to the co-operative that the special resolution—

(i) has no effect, in the case of a special resolution referred to in section 196(2); and

(ii) has no effect as from the date that it was passed, in any other case.

(3) A certificate of registration of a special resolution given by the 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, conclusive evidence that the resolution was duly passed.

Division 3—Postal ballots

199 Postal ballots

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

(2) On the declaration by the returning officer of the result of the ballot, the secretary of the co-operative must make an entry in the minute book 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.

200 Special postal ballots

(1) A special postal ballot is a postal ballot that is conducted as required by this section.

(2) The ballot must not be held less than 21 days after notice of the ballot is given to members so as to enable sufficient time for a meeting to discuss the proposal that is the subject of the ballot to be convened and held (whether by the board or on the requisition of members).

(3) The co-operative must send to each member (along with any other material required to be sent in connection with the postal ballot) a disclosure

statement approved by the Registrar and containing information concerning—

(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) such other matters as the Registrar directs.

(4) If the Registrar so requires, the statement is to be accompanied by a report made by an independent person approved by the Registrar concerning any matters that the Registrar directs.

(5) Sections 17 (except subsection (2)) and 29 apply to the approval of a disclosure statement under this section with any necessary modifications and in particular as if any reference in section 17 to a formation meeting were a reference to the notice of the special postal ballot.

S. 201 amended by No. 35/2000 s. 34(g).

201 When is a special postal ballot required?

In addition to any requirement of this Act, the rules of a co-operative must require a special postal ballot to be conducted for the purpose of passing a special resolution in relation to any of the following matters relating to a co-operative—

(a) conversion of—

(i) a share capital co-operative to a non-share capital co-operative or vice versa; or

(ii) a trading co-operative to a non-trading co-operative or vice versa;

(b) transfer of incorporation;

(c) an acquisition or disposal of assets referred to in section 275;

(d) the maximum permissible level of share interest in the co-operative;

(e) takeover;

(f) merger;

(g) transfer of engagements;

(h) members' voluntary winding-up.

202 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 purpose of the passing of a special resolution on the written requisition of such number of members who together are able to cast at least 20% (or any lesser percentage specified in the rules of the co-operative) of the total number of votes able to be cast at a meeting of the co-operative.

(2) A member is not entitled to be a requisitioning member unless the member is an active member.

(3) The following provisions apply to a requisition for a postal ballot—

(a) it must specify—

(i) the proposed special resolution to be voted on;

(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 lodged 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 due to the co-operative.

203 Expenses involved in postal ballots on requisition

(1) All reasonable expenses incurred by a co-operative in and in connection with preparing for and holding a special postal ballot are to be considered to constitute the "expenses of the postal ballot" for the purposes of section 202.

(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 connection with preparing for and holding the ballot;

(c) the cost of producing, printing and posting the ballot papers and other material associated with the ballot.

Division 4—Meetings

204 Annual general meetings

(1) The first annual general meeting of a co-operative must be held at any time within 19 months after the incorporation of the co-operative.

(2) The second or any subsequent annual general meeting of a co-operative must be held within—

(a) 5 months after the close of the financial year of the co-operative; or

(b) any further time that may be allowed by the Registrar or is prescribed.

205 Special general meetings

A special general meeting of a co-operative may be convened at any time by the board of directors.

206 Notice of meetings

The board must give each member at least 14 days notice of each general meeting.

207 Quorum at meetings

(1) The quorum for a meeting of a co-operative must be specified in the rules.

(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.

208 Decision at meetings

(1) A question for decision at a general meeting must be determined by a majority of members present in person at the meeting and voting, but this is subject to any other provisions of this Act and to the rules of the co-operative.

(2) Unless a poll is demanded by at least 5 members, a question for decision at a general meeting must be determined by a show of hands.

(3) In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded may exercise a second or casting vote if the rules so provide.

209 Convening of general meeting on requisition

(1) The board of a co-operative must convene a general meeting of the co-operative on the written requisition of such number of members who together are able to cast at least 20% (or any lesser percentage specified in the rules of the co-operative) of the total number of votes able to be cast at a meeting of the co-operative.

(2) A member is not entitled to be a requisitioning member unless the member is an active member.

(3) The following provisions apply to a requisition for a general meeting—

(a) it must state the objects of the meeting;

(b) it must be signed by the requisitioning members (and may consist of several documents in like form each signed by one or more of the requisitioning members);

(c) it must be served on the co-operative by being lodged at the registered office of the co-operative.

(4) The meeting must be convened and held as soon as practicable and in any case must be held within 2 months after the requisition is served.

(5) If the board does not convene the meeting within 21 days after the requisition is served, the following provisions apply—

(a) the requisitioning members (or any of them representing at least half their aggregate voting rights) may convene the meeting in the same manner as nearly as possible as meetings are convened by the board;

(b) for that purpose they may request the 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 convened by the requisitioning members must be held not later than 3 months after the requisition is served;

(e) any reasonable expenses incurred by the requisitioning members because of the board's failure to convene the meeting must be paid by the 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 in respect of their services to such of the directors as were in default.

210 Minutes

(1) Minutes of each general meeting, board meeting and sub-committee meeting must be entered in the appropriate records and confirmed at and signed by the chairperson of the next succeeding meeting.

(2) The minutes of each general meeting must be available for inspection by members.

(3) The rules may provide that the minutes of board meetings and sub-committee meetings be available for inspection by members.

(4) Minutes must be kept in the English language.

PART 9—MANAGEMENT AND ADMINISTRATION OF CO-OPERATIVES

Division 1—The Board

211 Board of directors

(1) Subject to this Act and the rules of the co-operative, the business of a co-operative shall be managed by a board of directors.

(2) The board of directors may exercise all the powers of the co-operative that are not, by this Act or the rules of the co-operative, required to be exercised by the co-operative in general meeting.

(3) The acts of a director are valid despite any defect that may afterwards be discovered in his or her appointment or qualification.

212 Election of directors

(1) Except as provided in subsections (2), (3) and (4), the directors of a co-operative are to be elected in the manner specified in the rules of the co-operative.

(2) The first directors of—

(a) a co-operative formed under this Act are to be elected at its formation meeting; and

(b) a co-operative which was a body corporate incorporated under another Act are to be the directors in office at the date of registration under this Act.

(3) If so authorised by the rules of the 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 for election 2 or more persons as directors by a single resolution must not be made at a meeting of a co-operative unless a resolution that it be so made has first been agreed to by the meeting without any vote being given against it.

(5) If a resolution is passed following a motion in contravention of subsection (4)—

(a) the resolution is void;

(b) there is no provision for the automatic re-election of retiring directors in default of another election.

(6) This section does not apply to a resolution altering the rules to prevent the election of 2 or more directors by ballot.

(7) A nomination for election or appointment to the office of a director must provide details of the qualifications and experience of the person nominated.

(8) Except as specified in this Act or in the rules of a co-operative, a director is eligible for re-election at the expiration of his or her term of office.

213 Qualification of directors

(1) A person is not qualified to be a director of a co-operative unless he or she is—

(a) a member of the co-operative or a representative of a body corporate which is a member of the co-operative (***member director***); or

(b) an employee of the co-operative or a person qualified as provided by the rules (***independent director***).

(2) A person may only be elected or appointed as an independent director if there are at least 3 member directors appointed for each independent director.

214 Disqualified persons

(1) A person must not act as a director or directly or indirectly take part in or be concerned with the management of a co-operative if the person—

(a) is the auditor of the co-operative or a partner, employee or employer of the auditor;

(b) has been convicted, whether before or after the commencement of this section, within or outside Victoria—

(i) on indictment of an offence in connection with the promotion, formation or management of a body corporate; or

(ii) of an offence involving fraud or dishonesty punishable on conviction by imprisonment for a period of not less than 3 months; or

(iii) of any offence under section 184, 344, 590, 592, 670A or 728 of the Corporations Act; or

S. 214(1)(b)(iii) substituted by No. 44/2001 s. 3(Sch. item 18.9).

(iv) of any offence under any provision of a previous law of Victoria or of another State or Territory, with which any of the provisions referred to in subparagraph (iii) corresponds—

within a period of 5 years after the conviction or, if sentenced to imprisonment, after his or her release from prison, except with the leave of the Supreme Court.

Penalty: 240 penalty units or imprisonment for 2 years, or both.

(2) A person must not act as a director or directly or indirectly take part in or be concerned with the management of a co-operative if the person—

(a) has been convicted of any offence under this Act, within a period of 5 years after the conviction, except with leave of the Supreme Court; or

S. 214(2)(b) substituted by No. 44/2001 s. 3(Sch. item 18.10).

(b) is disqualified from managing corporations under Part 2D.6 (Disqualification from managing corporations) of the Corporations Act; or

S. 214(2)(c) substituted by No. 44/2001 s. 3(Sch. item 18.10).

(c) is an insolvent under administration (as defined in the Corporations Act).

S. 214(2)(d) repealed by No. 44/2001 s. 3(Sch. item 18.10).

* * * * *

Penalty: 240 penalty units or imprisonment for 2 years, or both.

(3) In any proceeding for an offence against subsection (1), a certificate by a prescribed authority stating that a person was released from prison on a specified date, is in the absence of evidence to the contrary, proof that that person was released from prison on that date.

(4) A person who intends to apply for leave of the Supreme Court must give the Registrar at least 21 days notice of his or her intention.

(5) The Supreme Court may grant leave subject to any condition or limitation it considers appropriate.

(6) A person must comply with any condition or limitation subject to which leave is granted.

Penalty: 240 penalty units or imprisonment for 2 years, or both.

(7) On the application of the Registrar the Supreme Court may revoke its leave.

S. 214(8) substituted by No. 44/2001 s. 3(Sch. item 18.11).

(8) Subject to this section, a co-operative is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the **Corporations (Ancillary Provisions) Act 2001** in relation to the provisions of Part 2D.6 (Disqualification from managing corporations) of the Corporations Act subject to the following modifications—

(a) a reference in those provisions to corporations is to be read as a reference to co-operatives;

(b) any other modifications (within the meaning of Part 3 of the **Corporations (Ancillary Provisions) Act 2001**) that are prescribed by the regulations.

Note

See note under section 10(1).

215 Meeting of the board of directors

(1) Meetings of the board of directors must be held at least once every 3 months and may be held as often as may be necessary.

(2) A meeting of the board of directors may be called by a director giving notice individually to every other director.

(3) A meeting of the board of directors may be called or held using any technology consented to by the board. The consent may be a standing one.

(4) A quorum of a meeting of the board of directors is 50 per cent of the number of directors or such greater number of the directors as is specified in the rules.

(5) 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.

216 Transaction of business outside meetings

(1) The board of a co-operative may, if it thinks fit, transact any of its business by the circulation of papers among all of the directors of the board.

(2) A resolution in writing approved in writing by a majority of the directors of the board is to be taken to be a decision of the board.

(3) Separate copies of a resolution may be distributed for signing by the directors if the wording of the resolution and approval is identical in each copy.

(4) For the purpose of the approval of a resolution under this section, the chairperson of the board and each director of the board have the same voting rights as they have at an ordinary meeting of the board.

(5) The resolution is approved when the last director required for the majority signs.

(6) A resolution approved under this section must be recorded in the minutes of the meetings of the board.

(7) Papers may be circulated among directors of the board for the purposes of this section by facsimile or other transmission of the information in the papers concerned.

217 Deputy directors

(1) In the absence of a director from a meeting of the board, a person appointed by the board in accordance with the rules of the co-operative concerned to act as a deputy for that director may act in the place of that 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 a deputy.

218 Delegation by board

(1) If the rules of a co-operative so provide, the board may, by resolution, delegate the exercise of such of the board's functions (other than this power of delegation) as are specified in the resolution—

(a) to a director; or

(b) to a committee of 2 or more directors; or

(c) to a committee of members of the co-operative; or

(d) to a committee of members of the co-operative and other persons if members comprise the majority of persons on the committee.

(2) The co-operative or the board may, by resolution, revoke wholly or in part a delegation under this section.

(3) A function, the exercise of which has been delegated under this section, may be exercised from time to time in accordance with the terms of the delegation while the delegation remains unrevoked.

(4) A delegation under this section may be made subject to conditions or limitations as to the exercise of any of the functions delegated, or as to time or circumstance.

(5) Despite any delegation under this section, the board may continue to exercise all or any of the functions delegated.

219 Removal from and vacation of office

(1) The directors hold office and must retire, and may be removed from office, as provided by the rules of the 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 disqualified from being a director as provided by section 214;

(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 director is removed from office by special resolution of the co-operative;

(e) if the person ceases to hold the qualification by reason of which the person was qualified to be a director;

(f) if an administrator of the co-operative's affairs is appointed under Division 5 of Part 12.

Division 2—Duties and liabilities of directors, officers and employees

220 Meaning of *officer*

In this Division—

officer, in relation to a co-operative, means—

S. 220 def. of *officer* amended by No. 44/2001 s. 3(Sch. item 18.12).

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

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

(c) a receiver, or receiver and manager, of property of the co-operative, or any other authorised person who enters into possession or assumes control of property of the co-operative for the purpose of enforcing any charge; or

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

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

(f) an administrator of the co-operative appointed under Part 5.3A of the Corporations Act as applying under this Act; or

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

221 Officers must act honestly

(1) An officer of a co-operative must at all times act honestly in the exercise of his or her powers and the discharge of the duties of his or her office, both in the State and elsewhere.

(2) The penalty applicable to a contravention of this section is—

(a) if the contravention was committed with intent to deceive or defraud the co-operative, members or creditors of the co-operative or creditors of any other person or for any other fraudulent purpose, a penalty not exceeding 240 penalty units or imprisonment for 2 years, or both; or

(b) in any other case, a penalty not exceeding 60 penalty units.

222 Standard of care and diligence required

(1) In the exercise of his or her powers and the discharge of his or her duties, an officer of a co-operative must exercise the degree of care and diligence that a reasonable person in a like position in a co-operative would exercise in the co-operative's circumstances.

Penalty: 20 penalty units.

(2) An officer is not liable to be convicted for a contravention of this section if the co-operative has resolved by ordinary resolution to forgive the contravention.

223 Improper use of information or position

(1) An officer or employee or former officer or employee of a co-operative or a member of a committee referred to in section 218(1) must not make improper use of information acquired by reason of his or her position as such an officer or employee or member to gain, directly or

indirectly, an advantage for himself or herself or for any other person or to cause detriment to the co-operative.

(2) An officer or employee of a co-operative or a member of a committee referred to in section 218(1) must not make improper use of his or her position as an officer or employee or member, to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the co-operative.

(3) The penalty applicable to a contravention of this section is—

(a) if the contravention was committed with intent to deceive or defraud the co-operative, members or creditors of the co-operative or creditors of any other person or for any other fraudulent purpose, a penalty not exceeding 240 penalty units or imprisonment for 2 years, or both; or

(b) in any other case, a penalty not exceeding 60 penalty units.

224 Court may order payment of compensation

(1) If the court that convicts a person for a contravention of a provision of this Division is satisfied that a co-operative has suffered loss or damage as a result of the act or omission that constituted the offence, the court may (in addition to imposing a penalty) order the convicted person to pay a specified amount of compensation to the co-operative.

(2) An order under subsection (1) may be enforced as if it were a judgment of that court.

225 Recovery of damages by co-operative

(1) If a person contravenes a provision of this Division in relation to a co-operative, the co-operative may, whether or not the person has been convicted of an offence in respect of that contravention, recover an amount from the person as a debt due to the co-operative.

(2) The amount that the co-operative is entitled to recover from the person is—

(a) if the person or any other person made a profit as a result of the contravention, an amount equal to that profit; and

(b) if the co-operative has suffered loss or damage as a result of the contravention, an amount equal to that loss or damage.

226 Other duties and liabilities not affected

This Division has effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person by reason of the person's office or employment in relation to a co-operative and does not prevent the institution of any civil proceedings in respect of a breach of such a duty or in respect of such a liability.

227 Indemnification of officers and auditors

(1) Any provision, whether contained in the rules or in a contract with a co-operative or elsewhere, for exempting any officer or auditor of the co-operative from, or indemnifying the officer or auditor against, any liability that by law would otherwise attach to the officer or auditor in respect of any negligence, default, breach of duty or breach of trust of which the officer or auditor may be guilty in relation to the co-operative is void.

(2) Subsection (1) does not apply in relation to a contract of insurance.

(3) Despite subsection (1), a co-operative may, pursuant to its rules or otherwise, indemnify an officer or auditor against any liability incurred by the officer or auditor in defending any proceedings, whether civil or criminal, in which judgment is given in the officer's or auditor's favour or in which the officer or auditor is acquitted or in connection with any application in relation to any such proceedings in which relief is under this section granted to the officer or auditor by the court.

(4) If in proceedings for negligence, default or breach of duty against an officer or auditor of a co-operative it appears to the court that the person is or may be liable in respect of the negligence, default or breach of duty but acted honestly and reasonably and that, having regard to all the circumstances of the case (including those connected with the person's appointment), the person ought fairly to be excused for the negligence, default or breach of duty, the court may relieve the person, either wholly or partly, from the person's liability on such terms as the court thinks fit.

(5) If an officer or auditor of a co-operative has reason to believe that any claim will or might be made against him or her in respect of any negligence, default or breach of duty in relation to the co-operative, the person may apply to the Supreme Court for relief, and the Supreme Court then has the same power to relieve the person as it would have under this section if it had been a court before which proceedings against the officer or auditor for negligence, default or breach of duty had been brought.

(6) If any case to which subsection (4) applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if satisfied that the defendant should in pursuance of that subsection be relieved either wholly or partly from the liability sought to be enforced against him or her, withdraw the case in whole or in part from the jury and direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge thinks proper.

(7) In this section, ***officer*** includes an employee of a co-operative and any other person empowered under the rules of the co-operative to give directions in regard to the business of the co-operative.

S. 228 substituted by No. 44/2001 s. 3(Sch. item 18.13).

228 Application of Corporations Act provisions concerning officers of co-operatives

A co-operative is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the **Corporations (Ancillary Provisions) Act 2001** in relation to sections 589 to 598 and 1307 of the Corporations Act, subject to the following modifications—

(a) a reference in those sections to a company is to be read as a reference to a co-operative;

(b) a reference in those sections to ASIC is to be read as a reference to the Registrar;

(c) section 592(1)(a) of the Corporations Act applies as if "before 23 June 1993" were omitted;

(d) any other modifications (within the meaning of Part 3 of the **Corporations (Ancillary Provisions) Act 2001**) that are prescribed by the regulations.

Note

See note under section 10(1).

Division 3—Restrictions on directors and officers

229 Directors' remuneration

A director of a co-operative must not be paid any remuneration for services as a director other than fees, concessions and other benefits that are approved at a general meeting of the co-operative.

230 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.

Penalty: 240 penalty units 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 body corporate is trustee if the officer is a director or other officer of the body corporate.

(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.

Penalty: 500 penalty units.

231 Financial accommodation to directors and associates

(1) In this section—

associate of a director means—

(a) the director's spouse; or

(b) a person when acting in the capacity of trustee of a trust under which—

(i) the director or director's spouse has a beneficial interest; or

(ii) a body corporate mentioned in paragraph (c) has a beneficial interest; or

(c) a body corporate if—

(i) the director or director's spouse has a material interest in shares in the body corporate; and

(ii) the nominal value of the shares is not less than 10% of the nominal value of the issued share capital of the body corporate.

(2) For the purposes of this section, a person has a ***material interest*** in a share in a body corporate if—

(a) the person has power to withdraw the share capital subscribed for the share or to exercise control over the withdrawal of that share capital; or

(b) the person has power to dispose of or to exercise control over the disposal of the share; or

(c) the person has power to exercise or to control the exercise of any right to vote conferred on the holder of the share.

(3) A 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 (4); or

(ii) given under a scheme approved under subsection (4); or

(iii) provided on terms no more favourable to the director or associate than the terms on which it is reasonable to expect the 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.

Penalty: 500 penalty units.

(4) For the purposes of subsection (3)(a)(i) and (ii), financial accommodation or a scheme is approved if—

(a) it is approved by a resolution passed at a general meeting; and

(b) the full details of the accommodation or scheme were made available to members at least 21 days before the meeting.

(5) A director or an associate of a director who obtains financial accommodation given in contravention of subsection (3) is guilty of an offence and liable to a penalty not exceeding 240 penalty units or 2 years imprisonment, or both.

(6) 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.

(7) 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.

(8) In this section, a reference to—

(a) the provision of financial accommodation to a director or an associate of a director; or

(b) the obtaining of financial accommodation by a director or an associate of a director; or

(c) a debt owed to a director or an associate of a director—

includes a reference to a provision of financial accommodation to, or an obtaining of financial accommodation by, the director or associate, or a debt owed to the director or associate, jointly with another person.

232 Restriction on directors of certain 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 in order 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 pursuant to and in accordance with a special resolution of the co-operative.

233 Management contracts

(1) In this section ***management contract*** means a contract or other arrangement under which—

(a) a person who is not an officer of the 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 specified restrictions or conditions.

(2) A co-operative must not enter into a management contract unless that contract has first been approved by special resolution.

(3) A management contract entered into in contravention of subsection (2) is void.

Division 4—Declaration of interests

234 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.

Penalty: 240 penalty units 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 specified entity; and

(b) is to be regarded as interested in any contract which may, after the giving of the notice, be made with the entity—

is a sufficient declaration.

(5) A director of a 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.

Penalty: 240 penalty units 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—

(i) the person becomes a director; or

(ii) the relevant facts as to holding the office or having the interest come to the person's knowledge—

whichever is the later; or

(b) if the person starts to hold the office or acquires the interest after the person becomes a director, at the first meeting of the board held after the relevant facts as to holding the office or having the interest come to the person's knowledge.

(7) If a director has made a declaration under this section, then unless the board otherwise determines, the director must not—

(a) be present during any deliberation of the board in relation to the matter; or

(b) take part in any decision of the board in relation to the matter.

(8) For the purposes of the making of a determination of the board under subsection (7) in relation to a director who has made a declaration under this section, the director must not—

(a) be present during any deliberation of the board for the purpose of making the determination; or

(b) take part in the making by the board of the determination.

235 Declarations to be recorded in minutes

Every declaration under this Division is to be recorded in the minutes of the meeting at which it was made.

236 Division does not affect other laws or rules

Except as provided in section 237, this Division is in addition to, and not in derogation of, the operation of any rule of law or any provision in the rules of the co-operative restricting a director from having any 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.

237 Certain interests need not be declared

The interest in a contract or proposed contract that a director is required by this Division to declare does not include an interest in—

(a) a contract or proposed contract for a purchase of goods and services by the director from the 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 live stock by the director to the co-operative; or

(d) a contract or proposed contract that, pursuant to 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 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 such terms as are usual and proper in similar dealings between the co-operative and its members.

Division 5—Financial statements, reports and audit

Pt 9 Div. 5 (Heading) amended by No. 44/2001 s. 3(Sch. item 18.14).

238 Requirements for financial records, statements and reports

S. 238 substituted by No. 44/2001 s. 3(Sch. item 18.15).

(1) A co-operative is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the **Corporations (Ancillary Provisions) Act 2001** in relation to Part 2F.3, sections 249K and 249V and Chapter 2M of the

Corporations Act, subject to the following modifications—

(a) a reference in those provisions to a company or to a public company is to be read as a reference to a co-operative;

(b) a reference in those provisions to the Court is to be read as a reference to the Supreme Court;

(c) a reference in those provisions to "prescribed" is to be read as a reference to "approved by the Registrar";

S. 238(1)(d) amended by No. 13/2008 s. 11(1).

(d) a reference in those provisions to securities is to be read as a reference to debentures or CCUs;

(e) any offence created in respect of those provisions is the offence set out in subsection (2);

(f) any penalty for the offence referred to in paragraph (e) is the penalty set out in subsection (2);

S. 238(1)(g) amended by No. 13/2008 s. 11(2).

(g) those provisions apply as if sections 293, 294, 300(8), 300(9) and 301(2) of the Corporations Act were omitted;

(h) any other modifications (within the meaning of Part 3 of the **Corporations (Ancillary Provisions) Act 2001**) that are prescribed by the regulations.

Note

See note under section 10(1).

(2) A co-operative must—

(a) keep financial records and prepare financial statements and financial reports as required by this Act and the regulations; and

(b) ensure that those financial statements and financial reports are audited in accordance with this Act and the regulations.

Penalty: 20 penalty units.

(3) Without limiting the matters for which regulations under this section may make provisions, the regulations may make provisions for or with respect to the following—

(a) requiring the submission of financial statements and financial reports to the Australian Accounting Standards Board;

(b) requiring the adoption by a co-operative of the same financial year for each entity that the co-operative controls.

239 Power of Registrar to grant exemptions

(1) The Registrar may, by order in writing, exempt a co-operative or any class of co-operatives or a director or auditor of a co-operative from compliance with all or specified provisions of the regulations made for the purposes of this Part.

(2) An exemption—

(a) may be given subject to conditions; and

(b) may be limited as to time; and

(c) may be varied, suspended or revoked by the Registrar by a further order in writing.

(3) An order under this section takes effect—

(a) if it applies to a particular co-operative, when the order is served on the co-operative; or

(b) if it applies to a class of co-operatives, when the order is published in the Government Gazette.

S. 240 amended by No. 44/2001 s. 3(Sch. item 18.16).

240 Meaning of *entity* and *control*

In this Division, ***entity*** and ***control*** have the same meanings in relation to a co-operative as they have under the Corporations Act in relation to a corporation.

241 Disclosure by directors

The directors of a co-operative must make the disclosures in relation to the affairs of the co-operative and of any entity that the co-operative controls that are required by the regulations.

Penalty: 20 penalty units.

242 Protection of auditors etc.

(1) An auditor of a co-operative has qualified privilege in respect of—

(a) any statement that the auditor makes, orally or in writing, in the course of his or her duties as auditor; or

S. 242(1)(b) amended by No. 44/2001 s. 3(Sch. item 18.17).

(b) the giving of any notice, or the sending of any copy of financial statements, financial reports or a report, to the Registrar under this Act.

(2) A person has qualified privilege—

(a) in respect of the publishing of any document prepared by an auditor in the course of the auditor's duties and required by or under this Act to be lodged with the Registrar, whether or not the document has been so lodged; or

(b) in respect of the publishing of any statement made by an auditor as mentioned in subsection (1).

(3) This section does not limit or affect any right, privilege or immunity that an auditor or other person has, apart from this section, as defendant in proceedings for defamation.

243 Financial year

(1) The financial year of a co-operative is to end on the day in each calendar 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 later than 18 months from the date of its registration.

(3) On an alteration of the rules of a co-operative altering its financial year, the alteration may provide either that the financial year current at the date of alteration is to be extended for a period not exceeding 6 months or that the financial year next following the financial year that is so current is to be a period exceeding 12 months but not exceeding 18 months.

Division 6—Registers, records and returns

244 Registers to be kept by co-operatives

(1) A co-operative must keep the following registers in accordance with this section—

(a) a register of members, directors and shares (if any);

(b) a register of any loans to, securities given by, debentures issued by and deposits received by the co-operative;

(c) a register of names of persons who have given loans or deposits to or hold securities or debentures given or issued by the co-operative;

(d) a register of any loans made by or guaranteed by the co-operative, and of any securities taken by the co-operative;

(e) a register of memberships cancelled under Part 6;

(f) a register of notifiable interests in accordance with section 285;

S. 244(1)(fa) inserted by No. 13/2008 s. 12.

(fa) a register of CCUs issued by the co-operative;

(g) such other registers as the regulations may require.

Penalty: 20 penalty units.

(2) The registers must be kept in the manner and contain the particulars that are prescribed by this Act or the regulations.

245 Location of registers

(1) A register kept under this Division 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 Victoria.

(3) The co-operative must lodge 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.

246 Inspection of registers etc.

(1) A co-operative must have at the office where the registers are kept and available during all reasonable hours for inspection by any member free of charge the following—

(a) a copy of this Act and the regulations;

(b) a copy of the rules of the co-operative;

(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 under section 249;

(e) the register of directors, members and shares;

(f) the register of names of persons who have given loans or deposits to or hold securities or debentures given or issued by the co-operative;

(g) such other registers as the regulations provide are to be open for inspection under this section.

(2) If a register is not kept on a computer, the person inspects the register itself.

(3) If the register is kept on a computer, the person inspects a hard copy of the information on the register unless the person and the co-operative agree that the person can access the information by computer.

(4) A member is entitled to make a copy of entries in a register specified in subsection (1) and to do so free of charge unless the rules of the co-operative require a fee to be paid, in which case on payment of the required fee.

(5) The fee required by the rules must not exceed the fee prescribed for a copy of any entry in the Register.

(6) A co-operative must—

(a) permit a member to inspect a document or make a copy of a document that the member is entitled to inspect or make under this section; and

(b) give the member all reasonable assistance to inspect the document or make the copy.

Penalty: 20 penalty units.

(7) A co-operative must have at the place where the registers are kept and available during all reasonable hours for inspection by any person such documents in relation to the co-operative as are prescribed.

Penalty: 20 penalty units.

247 Use of information on registers

(1) A person must not—

(a) use information about a person obtained from a register kept under this Division to contact or send material to the person; or

(b) disclose information of that kind knowing that the information is likely to be used to contact or send material to the person—

unless that use or disclosure of the information is—

(c) relevant to the holding of the directorship, membership, shares, loans, securities, debentures or deposits concerned or the exercise of the rights attaching to them; or

(d) approved by the board; or

(e) necessary to comply with a requirement of this Act.

(2) A person who contravenes subsection (1) is liable to compensate 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. The amount of the debt is the amount of the profit.

248 Notice of appointment etc. of directors and officers

(1) A co-operative must give notice to the Registrar in accordance with this section of the appointment of a person as a director, principal executive officer or secretary of the co-operative or any subsidiary of the co-operative, and of the cessation of any such appointment.

(2) The notice must—

(a) be in the form approved by the Registrar; and

(b) be given within 28 days after the appointment or cessation of appointment; and

(c) specify the prescribed particulars of the appointment or cessation of appointment.

Penalty: 20 penalty units.

249 Annual report

(1) A co-operative must send to the Registrar within the required period in each year an annual report containing each of the following—

(a) a list in the form approved by the Registrar specifying the directors and the principal executive officers of the co-operative and of each subsidiary of the co-operative, as at the date that the annual report is sent to the Registrar;

S. 249(1)(b) amended by No. 44/2001 s. 3(Sch. item 18.18).

(b) a copy of the financial statements of the co-operative in respect of its financial year then last past;

S. 249(1)(c) amended by No. 44/2001 s. 3(Sch. item 18.18).

(c) a copy of the financial statements of each subsidiary of the co-operative in respect of the financial year of the subsidiary then last past;

S. 249(1)(d) amended by No. 44/2001 s. 3(Sch. item 18.18).

(d) a copy of any report by the auditors or directors of the co-operative or subsidiary on the financial statements referred to in paragraphs (b) and (c);

(e) such other particulars as may be prescribed.

Penalty: 20 penalty units.

(2) For the purposes of subsection (1) the required period is—

(a) 28 days after the annual general meeting of the co-operative; or

(b) if the annual general meeting of the co-operative is not held within the period specified in section 204(2)(a), 28 days after the end of that period.

250 List of members to be furnished at request of Registrar

A co-operative must, at the request in writing of the Registrar, send to the Registrar, within the time and in the manner that the Registrar specifies, a full list of the members of the co-operative and of each subsidiary of the co-operative, together with the particulars with regard to those members that the Registrar specifies in the request.

Penalty: 20 penalty units.

251 Special return to be furnished at request of Registrar

(1) The Registrar may by direction in writing require a co-operative to furnish to the Registrar a special return in the form, within the time, and relating to the subject-matter, specified by the Registrar.

(2) The co-operative must comply with a direction under subsection (1).

Penalty: 20 penalty units.

Division 7—Name and registered office

252 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".

(3) The word "Limited" or the abbreviation "Ltd" must be the last word of the name.

(4) A body corporate which is formed or incorporated under any Act other than this Act must not register under that other Act by any name which includes the word "Co-operative" or the abbreviation "Co-op".

Penalty: 20 penalty units.

(5) Subsection (4) does not apply to—

(a) a co-operative housing society within the meaning of the **Co-operative Housing Societies Act 1958**; or

(b) a credit union or foreign society within the meaning of the **Financial Institutions (Victoria) Code**; or

(c) a company or society formed or incorporated under any other Act before the commencement of the **Co-operation Act 1953**.

253 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" instead of the word "Co-operative" or "Cooperative" in the co-operative's name;

(b) the use of the abbreviation "Ltd" instead of the word "Limited" in the co-operative's name;

(c) the use of the symbol "&" instead of the word "and" in the co-operative's name;

(d) the use of any of those 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.

254 Name to appear on business documents etc.

(1) The name of a co-operative must appear in legible characters—

(a) on its seal; and

(b) in all notices, advertisements and other official publications of the co-operative; and

(c) in all its business documents.

(2) If subsection (1) is contravened, the co-operative is guilty of an offence and liable to a penalty not exceeding 20 penalty units.

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

(a) use any seal of the co-operative; or

(b) issue or authorise the issue of any 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 does not appear in legible characters.

Penalty: 20 penalty units.

(4) A director of a co-operative who knowingly authorises or permits a contravention of this section is guilty of an offence and liable to a penalty not exceeding 20 penalty units.

(5) In this section—

business document in relation to 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 as a class of business documents.

255 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.

(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 any rights, or the enforcement of any obligations, by or against the co-operative or any person; or

(c) the continuation of any legal proceedings by or against the co-operative.

(5) Any legal proceedings that might have been continued or commenced by or against the co-operative in its former name may be continued or commenced 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 undesirable.

(7) The Registrar may direct a co-operative to change its name if the Registrar is of the opinion that the name is such as is likely to be confused with the name of a body corporate or a registered business name.

256 Registered office of co-operative

(1) A co-operative must have a registered office.

Penalty: 20 penalty units.

(2) 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.

Penalty: 20 penalty units.

(3) Not later than 28 days after changing the address of its registered office, a co-operative must give the Registrar written notice of the new address.

Penalty: 20 penalty units.

PART 10—FUNDS AND PROPERTY

Division 1—Power to raise money

257 Meaning of obtaining financial accommodation

A reference in this Division to the obtaining of financial accommodation includes a reference to the obtaining of credit and the borrowing or raising of money by any means.

258 Fund raising to be in accordance with Act and regulations

The regulations may impose requirements and restrictions on the obtaining of financial accommodation and the giving of security in connection with the obtaining of financial accommodation by a co-operative.

259 Limits on deposit taking

A co-operative must not accept money on deposit unless—

(a) the co-operative was authorised by its rules immediately before the commencement of this Act to accept money on deposit; or

(b) the co-operative was a deposit-taking body corporate immediately before it became a co-operative and it is authorised by its rules to accept money on deposit; or

(c) in the case of 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.

260 Members etc. 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 any provision of this Act or the regulations or the rules of the co-operative.

261 Registrar's directions re fundraising

(1) The Registrar may by written notice served on a co-operative give a direction to the co-operative as to the manner in which it is to exercise its functions in connection with the activities of the co-operative in obtaining financial accommodation.

(2) A direction under subsection (1) may make provision for any one or more of the following matters—

(a) requiring the co-operative to cease obtaining financial accommodation or to cease obtaining financial accommodation in a particular way;

(b) requiring the co-operative to repay in accordance with the direction all or part of financial accommodation obtained;

(c) requiring the co-operative to re-finance in a specified manner financial accommodation repaid in accordance with the Registrar's direction;

(d) the manner in which the co-operative is permitted to invest or use the proceeds of financial accommodation it obtains.

262 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, any claim of the creditor against the co-operative in respect of the debt is to rank in priority—

(a) equally with the claim of any other creditor who is a party to a similar agreement; and

(b) except as provided by paragraph (a), after the claims of any other creditor of the co-operative and before the claims of members to repayment of any share capital in the co-operative.

S. 262(3) amended by No. 44/2001 s. 3(Sch. item 18.19).

(3) An agreement referred to in subsection (1) has effect despite the provisions of Division 6 of Part 5.6 of the Corporations Act (as applied under Division 3 of Part 12 of this Act).

S. 263 amended by No. 35/2000 s. 34(h)(i), substituted by No. 44/2001 s. 3(Sch. item 18.20).

263 Application of Corporations Act to issues of debentures

S. 263(1) amended by No. 9/2002 s. 3(Sch. item 2.3).

(1) Subject to subsection (2), the debentures of a co-operative are declared to be applied Corporations legislation matters for the purposes of Part 3 of the **Corporations (Ancillary Provisions) Act 2001** in relation to the provisions of Parts 1.2A (Disclosing entities), Chapter 2L (Debentures), Chapter 6D (Fundraising) and Part 7.10 (Market misconduct) of the Corporations Act, subject to the following modifications—

(a) those provisions apply as if a co-operative were a company; and

(b) a reference in those provisions to a corporation includes a reference to a co-operative; and

(c) a reference in those provisions to ASIC is a reference to the Registrar.

Note

See note under section 10(1).

(2) The provisions of the Corporations Act made applicable to the debentures of a co-operative by this section do not apply to the following—

(a) a loan to which section 267 applies;

(b) an issue of debentures of a co-operative that is made—

(i) solely to members; 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) Expressions used in this section which are not defined in this Act have the same meaning as in the Corporations Act.

(4) The Registrar may exempt a co-operative from any of the requirements of the Corporations Act applied by this section or by section 10.

264 Disclosure statement

(1) This section applies to the issue of debentures of a co-operative where the issue is made—

(a) solely to members; or

(b) solely to members and employees of the co-operative.

(2) Before issuing to the person debentures to which this section applies, a co-operative must provide a person with a disclosure statement, approved by the Registrar, and containing such information as 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;

(b) the rights and liabilities attaching to the debentures;

(c) the financial position of the co-operative;

(d) the interests of the directors of the co-operative in the issue of the debentures;

(e) any compensation or consideration to be paid to officers or members of the co-operative in connection with the issue of debentures; and

(f) such other matters as the Registrar directs.

(3) Sections 17 (except subsection (2)) and 29 apply to the approval of a disclosure statement under this section with any necessary modifications and in particular as if any reference in section 17 to a formation meeting were a reference to the issue of debentures.

265 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 in accordance with the rules of the co-operative.

266 Application of Corporations Act—re-issue of redeemed debentures

S. 266 substituted by No. 44/2001 s. 3(Sch. item 18.21).

Debentures issued by a co-operative to any of its members are declared to be applied Corporations legislation matters for the purposes of Part 3 of the **Corporations (Ancillary Provisions) Act 2001** in relation to section 124(1)(b) or 563AAA of the Corporations Act as if a co-operative were a company.

Note

See note under section 10(1).

267 Compulsory loan by member to co-operative

(1) If the rules of the co-operative so provide, the co-operative may 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.

(2) The proposal must not require a loan to be for a term exceeding 7 years or such other term as is prescribed.

(3) The proposal must—

(a) be accompanied by a disclosure statement, approved by the Registrar, that explains the purpose for which the money raised by the co-operative pursuant to the proposal is to be used and includes any other information that 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 specified in the statement (being a date before the passing of the special resolution) that the member resigns on the passing of the special resolution.

(4) If the proposal so allows, the board of the co-operative may, in accordance with the terms of the proposal, deduct the money required to be lent by a member to the co-operative from money due from the co-operative to the member in respect of 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 manner of making the deductions.

(6) When approved 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 in accordance with subsection (3)(c); and

(b) all persons who become members of the co-operative after that date and before the total amount of the loan to be raised pursuant to the proposal has been raised.

(7) Sections 17 (except subsection (2)) and 29 apply to the approval of a disclosure statement under this section with any necessary modifications and in particular as if any reference in section 17 to a formation meeting were a reference to the special resolution.

268 Interest payable on compulsory loan

(1) The rate of interest payable by a co-operative in respect of a loan under section 267 during any period is—

(a) in the case of a co-operative with share capital—

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

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

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

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

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

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

Division 1A—Co-operative capital units

Pt 10 Div. 1A (Heading and ss 268A–268J) inserted by No. 13/2008 s. 13.

S. 268A inserted by No. 13/2008 s. 13.

268A General nature of CCUs

(1) A co-operative capital unit (***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 Act 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 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 CCU holders 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.

268B Priority of CCUs on winding up

S. 268B inserted by No. 13/2008 s. 13.

(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. It 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.

268C Financial accommodation provisions apply to issue of CCUs

S. 268C inserted by No. 13/2008 s. 13.

(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 Division 1, a CCU is to be considered to be a debenture.

268D CCUs can be issued to non-members

S. 268D inserted by No. 13/2008 s. 13.

CCUs may be issued to persons whether or not they are members of the co-operative.

268E Minimum requirements for rules concerning CCUs

S. 268E inserted by No. 13/2008 s. 13.

The rules of a co-operative that permit the co-operative to issue CCUs must contain provisions to the effect of the following provisions and must not contain provisions that are inconsistent with the following provisions—

(a) at a meeting of the holders of CCUs the holders of CCUs are entitled to voting rights in proportion to their holding;

(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 such 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.

S. 268F inserted by No. 13/2008 s. 13.

268F 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 issue.

(2) The terms of issue must specify the following matters, without otherwise limiting 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 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 Act.

268G Directors' duties concerning CCUs

S. 268G inserted by No. 13/2008 s. 13.

In discharging their duties, it is proper for the directors of a co-operative to take into account that the holders of CCUs have none of the rights and entitlements of, and are not entitled to be regarded as, members of the co-operative.

268H Redemption of CCUs

S. 268H inserted by No. 13/2008 s. 13.

(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 manner that is provided by the terms of their issue and only if they are fully paid up.

(3) CCUs may not be redeemed except out of profits that would otherwise be available for dividends or out of the proceeds of a fresh issue of shares, or an approved issue of CCUs, made for the purpose of the redemption.

(4) For the purposes of subsection (3), an issue of CCUs is an approved issue 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.

S. 268I inserted by No. 13/2008 s. 13.

268I Capital redemption reserve

(1) This section applies if CCUs are redeemed out of profits that would otherwise be available for dividends.

(2) Out of profits that would otherwise have been available for dividends 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) The provisions of this Act 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) 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.

268J Issue of shares in substitution for redemption

S. 268J inserted by No. 13/2008 s. 13.

(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 2—Charges

269 Registration of charges

Schedule 3 has effect but does not apply to—

(a) a mortgage, charge or encumbrance that is over specific land and is registered under the **Transfer of Land Act 1958** or a memorandum of which has been registered under the **Property Law Act 1958**; or

(b) a mortgage, charge or encumbrance over a specific licence under the laws relating to mining.

Division 3—Receivers and other controllers of property of co-operatives

270 Receivers and other controllers of property of co-operatives

Schedule 4 has effect.

Division 4—Disposal of surplus from activities

271 Retention of surplus for benefit of co-operative

The board of a co-operative may resolve to retain all or any part of the surplus arising in any year from the business of the co-operative to be applied for the benefit of the co-operative.

272 Application for charitable purposes or members' purposes

(1) The rules of a co-operative may authorise the co-operative to apply a part of the surplus arising in any year from the business of the co-operative for any charitable purpose.

(2) The rules of a trading co-operative may authorise the co-operative to apply a part of the surplus arising in any year from the business of the co-operative for supporting any activity approved by the co-operative.

(3) The rules must limit the amount that may be applied under subsection (1) or (2) to a specified proportion of the surplus.

(4) A co-operative may apply part of the surplus for a purpose and to the extent authorised by rules under subsection (1) or (2).

273 Distribution of surplus or reserves to members

(1) The rules of a trading co-operative may authorise the co-operative to apply a part of the surplus arising in any 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 on the basis of business done with the co-operative; or

(b) the issue of bonus shares to members; or

(c) the issue to members of a limited dividend.

(2) The amount of any rebate or dividend payable to a member under subsection (1) may, with the consent of the member, be applied—

(a) in payment for the issue to the member of bonus shares; or

(b) as a loan to the co-operative.

(3) In this section ***limited dividend*** means a dividend that does not exceed the prescribed amount.

274 Application of surplus to other persons

(1) If authorised by its rules, any part of the surplus arising in any year from the business of a trading co-operative may be credited to any person who is not a member, but is qualified to be a member, by way of rebate in proportion to the business done by him or her with the co-operative, if—

(a) the person was a member at the time the business was done and the membership has lapsed; or

(b) the person has applied for membership after the business was done.

(2) Nothing in this section precludes the payment of a bonus to an employee in accordance with the terms of his or her employment.

Division 5—Acquisition and disposal of assets

275 Acquisition and disposal of assets

(1) A co-operative must not do any of the following things except as approved by special resolution by means of a special postal ballot—

(a) sell or lease as a going concern, the undertaking of the co-operative or a part of the undertaking that relates to its primary activities the value of which represents 5% or more of the total value of the undertaking;

S. 275(1)(b) amended by No. 44/2001 s. 3(Sch. item 18.22).

(b) acquire from or dispose to a director or employee of the co-operative, or a relative (within the meaning of the Corporations Act) of such a director or employee or of the spouse of such a director or employee, of any property the value of which represents 5% or more of the total value of all the assets of the co-operative that relate to its primary activities;

(c) acquire an asset the value of which exceeds 5% or more of the assets 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;

(d) dispose of an asset if the disposal would result in the co-operative ceasing to carry on any primary activity of the co-operative, or in the ability of the co-operative to carry on any primary activity of the co-operative being substantially impaired either generally or in a particular geographical region.

(2) The Registrar may by order in writing exempt a co-operative from compliance with all or specified provisions of this section and section 200 in relation to any matter to which this section applies and may grant that exemption unconditionally or subject to conditions.

(3) If a co-operative contravenes this section, each person who is a member of the board of the co-operative is guilty of an offence and liable to a penalty not exceeding 60 penalty units unless the person satisfies the court that he or she used all due diligence to prevent the contravention by the co-operative.

———————

PART 11—RESTRICTIONS ON THE ACQUISITION OF INTERESTS IN CO-OPERATIVES

Division 1—Restrictions on share and voting interests

276 Application of Part

This Part applies to trading co-operatives.

277 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 that the person has a relevant interest in the right to vote of a member of the co-operative.

Penalty: 20 penalty units.

(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 that fact.

Penalty: 20 penalty units.

(3) Section 186 provides for the effect of a person having a relevant interest in the right to vote of a member of a co-operative.

278 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 that the person has a substantial share interest in the co-operative.

Penalty: 20 penalty units.

(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 that a substantial change has occurred in that share interest.

Penalty: 20 penalty units

(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 that the person has ceased to have that interest.

Penalty: 20 penalty units.

(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.

279 Requirements for notices

A notice required under this Division must—

(a) be in the form approved by the Registrar; and

(b) specify the prescribed particulars of the interest or change being notified.

280 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 exceeds 20% of the nominal value of the issued share capital of the co-operative.

(2) The Registrar, by order published in the Government Gazette, may specify a maximum greater than 20% as the maximum for the purposes of subsection (1) in respect of a particular person, a particular co-operative, a particular class of co-operatives or co-operatives generally.

(3) On the making of an order under subsection (2) the percentage is varied accordingly.

(4) The maximum of 20% specified by subsection (1) may be increased in respect of a particular person by special resolution of the co-operative concerned passed by means of a special postal ballot.

(5) A resolution under subsection (4) does not have effect unless—

(a) it is approved by the Registrar; or

(b) the person concerned is another co-operative.

281 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, the board of the co-operative must declare to be forfeited sufficient of the shares in which the person has a relevant interest to remedy the contravention.

(2) The shares to be forfeited are—

(a) the shares nominated by the person for the purpose; or

(b) in the absence of such a nomination, the shares in which the person has had a relevant interest for the shortest time.

(3) A declaration of the board that shares are forfeited operates to forfeit the shares concerned.

(4) Sections 138 to 140 apply to and in respect of shares forfeited under this section as if the shares had been forfeited under Part 6.

282 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 277 in respect of the co-operative, the board may do either or both of the following—

(a) refuse to register any share transfer involving the person;

(b) suspend any specified rights or entitlements that a person has as a member of the co-operative or attaching to any shares of the co-operative in which the person has a relevant interest.

(2) The board may request a person who it suspects has a relevant interest in any shares of the co-operative to furnish specified information to the board concerning that interest.

(3) A failure by a person to comply with a request under subsection (2) constitutes reasonable grounds for being satisfied that the person has contravened section 277.

283 Powers of Supreme Court with respect to contravention

(1) If a person has contravened section 277 in respect of a co-operative, the Supreme Court may, on the application of the co-operative or the Registrar, make any order or orders that it thinks just.

(2) Without limiting subsection (1), the orders may include—

(a) a remedial order; and

(b) for the purpose of securing compliance with any other order made under this section, an order directing the co-operative or any other person to do or refrain from doing a specified act.

(3) An order may be made whether or not the contravention continues.

(4) Proof to the satisfaction of the Supreme Court at the hearing of an application that—

(a) a person has a relevant interest in a share of a co-operative because an associate of the person has a relevant interest in a share; and

(b) the associate became entitled to that relevant interest within 6 months before the application was filed with the Supreme Court—

is evidence that the associate was an associate of the person from the time the person first had the relevant interest until the date of the hearing.

284 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 exceeds 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 such a person holds a relevant interest.

(2) The notification must give details of the relevant interest concerned or of the change concerned.

285 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 in alphabetical order the names of persons from whom the co-operative has received a notification under this Division together with the information contained in the notification.

(3) The register must be open for inspection—

(a) by any member of the co-operative free of charge; and

(b) by any other person on payment of the fee (if any) that the co-operative may require, not exceeding the prescribed maximum fee.

286 Unlisted companies to provide list of shareholders etc.

(1) This section applies to a company (within the meaning of the Corporations Act) that is not a listed corporation (within the meaning of that Act).

S. 286(1) amended by No. 44/2001 s. 3(Sch. item 18.23(a)(b)).

(2) A company to which this section applies that is a member of a co-operative must furnish to the co-operative a list showing—

(a) the name of each member of the company as at the end of the financial year of the company and the number of shares in the company held by each member; and

S. 286(2)(b) amended by No. 44/2001 s. 3(Sch. item 18.24).

(b) the name of each person who has a relevant interest (within the meaning of the Corporations Act) in any share of the company together with details of that interest; and

S. 286(2)(c) amended by No. 44/2001 s. 3(Sch. item 18.24).

(c) the name of each person who is an associate (within the meaning of the Corporations Act) of the company.

(3) A list under subsection (2) must be furnished within 28 days after the end of each financial year of the company and within 28 days after a request for the list is made in writing to the company by the Registrar.

(4) The details to be shown on the list are those details as at the end of the financial year concerned or, if the list is provided at the request of the Registrar, as at the date specified in the request.

(5) The Registrar may make a request under subsection (3) at any time but only if the Registrar is of the opinion that the company is or may be involved in a suspected contravention of a provision of this Division.

287 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 any interest payable), the member is liable to make to the co-operative the payments which the member would be liable to make if all the shares concerned were lawfully held by the member.

(3) Any security for the repayment of the loan is not affected by a contravention of this Division.

288 Extent of operation of Division

This Division—

(a) applies to all natural persons, whether resident in Victoria or in Australia or not and whether Australian citizens or not, and to all bodies corporate or unincorporated, whether incorporated or carrying on business in the State or in Australia or not; and

(b) extends to acts done or omitted to be done outside the State, whether in Australia or not.

289 Registrar may grant exemption from Division

(1) The Registrar may grant exemptions from the operation of this Division in a particular case or class of cases.

(2) An exemption must be in writing and may be unconditional or subject to conditions.

Division 2—Restrictions on certain share offers

290 Share offers to which 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 undertaking or any part of the undertaking, 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;

S. 290(1)(b) amended by No. 44/2001 s. 3(Sch. item 18.25).

(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 280 were the offeror to be registered (immediately after the offer is made) as the holder of the shares that are the subject of the offer;

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

(2) In subsection (1)(e), ***substantial share interest*** and ***substantial change*** have the same meanings as they have in section 278.

291 Requirements to be satisfied before offer can be made

(1) A person must not make an offer to which this Division applies unless the making of the offer has been approved—

(a) by special resolution by means of a special postal ballot; and

(b) by the Registrar.

(2) Despite subsection (1), an offer referred to in section 290(1)(e) can be made even if it has not been approved as referred to in that subsection if it is made in circumstances specified in and in accordance with the requirements of the regulations.

292 Some offers totally prohibited if they discriminate

An offer referred to in section 290(1)(a) to (d) must not be made at all if it operates or would operate to discriminate between members who are active members and members who are not active members.

293 Offers to be submitted to board first

(1) Any proposal to make an offer to which this Division applies must in the first instance be submitted to the board of the 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 in advance under subsection (2).

(4) A requisition for a special postal ballot for the purposes of this Division cannot be served unless and until the board has had a reasonable opportunity to consider the proposed offer concerned.

(5) A period of 28 days is to be considered to constitute a reasonable opportunity for considering a proposed offer but the Registrar may extend that period in a particular case by written notice to the co-operative.

294 Announcements of proposed takeovers concerning 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.

S. 294(1) amended by No. 44/2001 s. 3(Sch. item 18.26).

(2) A person must not make a public announcement to the effect that the person proposes, or that the person and another person or other persons together propose, to make takeover offers, or to cause a takeover announcement to be made, in relation to the proposed company if—

(a) the person knows that the announcement is false or is recklessly indifferent as to whether it is true or false; or

S. 294(2)(b) amended by No. 44/2001 s. 3(Sch. item 18.26).

(b) the person has no reasonable grounds for believing that the person, or the person and the other person or persons, will be able to perform obligations arising under the scheme or announcement or under the Corporations Act in connection with the scheme or announcement if a substantial proportion of the offers or the offers made under the announcement are accepted.

Penalty: 200 penalty units or imprisonment for 5 years, or both.

(3) If a person makes a public announcement to the effect that the person proposes, or that the person and another person or other persons together propose, to make a takeover bid in relation to the proposed company, the person must proceed to make a takeover bid in relation to shares in the company in accordance with the public announcement within 2 months after the day on which the company is incorporated.

Penalty: 100 penalty units or imprisonment for 2 years, or both.

(4) A person is not liable to be convicted of more than one offence under subsection (3) in respect of any one public announcement.

(5) A person who contravenes this section (whether or not the person is convicted of an offence for the contravention) is liable to pay compensation to any other person who suffered loss as a result of entering into a transaction with respect to shares in reliance on the public announcement concerned.

(6) The amount of that compensation is the difference between the price of the shares at which the transaction was entered into and the price of the shares at which the transaction would have been likely to have been entered into if the person had not made the public announcement.

(7) A person is not guilty of an offence for a contravention of subsection (3) and is not liable to pay compensation in respect of the contravention if it is proved that the person could not reasonably have been expected to make the takeover bid concerned—

(a) as a result of circumstances that existed at the time of the making of the public announcement but of which the person had no knowledge and could not reasonably have been expected to have knowledge; or

(b) as a result of a change in circumstances after the making of the announcement, other than a change in circumstances caused directly or indirectly by the person.

(8) Expressions used in this section have the same meanings as in section 746 of the Corporations Law as applying on 12 March 2000.

S. 294(8) amended by No. 44/2001 s. 3(Sch. item 18.27).

S. 295 amended by No. 44/2001 s. 3(Sch. item 18.28).

295 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 purposes of the special postal ballot must contain the following additional information—

(a) full particulars of any proposal whereby any of the directors will acquire a relevant interest in any share of the company to be formed;

(b) any other information that is material to the making of a decision by a member whether or not to agree to the making of the offer, being information that is within the knowledge of the directors and has not previously been disclosed to the members;

(c) any other information that the Registrar directs.

296 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 is not entitled to be registered as the holder of the shares concerned; and

(b) if the transfer of the shares is registered, the person is not entitled to vote at any meeting of the co-operative.

(2) Any vote cast by or on behalf of a member when the member is not entitled to vote because of the operation of this section is to be disregarded.

297 Registrar may grant exemptions

The Registrar may, by order in writing, exempt a co-operative from compliance with all or specified provisions of this Division and section 200 in relation to any matter to which this Division applies and may grant such an exemption unconditionally or subject to conditions.

PART 12—MERGER, TRANSFER OF ENGAGEMENTS, WINDING UP

Division 1—Mergers and transfers of engagements

298 Application of Division

This Division does not apply to a merger or transfer of engagements to which Part 14 applies.

299 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.

300 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 means of 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 that procedure applying in the particular case.

301 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 specifying—

S. 301(2)(a) amended by No. 35/2000 s. 34(j).

(a) the financial position of each co-operative concerned in the proposed merger or transfer of engagements as shown in financial statements that have been prepared as at a date that is not more than 6 months before the date of the statement; and

(b) any interest that any officer of each co-operative has in the proposed merger or transfer of engagements; and

(c) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to any officer or member of each 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 or engagements; and

(e) in the case of a transfer of engagements, whether it is a total or partial transfer of engagements; and

(f) any other information that the Registrar directs.

(3) The disclosure statement must be sent to the members of each co-operative so that it will be in the ordinary course of post reach each member who is entitled to vote on the special resolution not later 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 exempt a co-operative from complying with this section.

(5) The Registrar may grant an exemption, or approve a disclosure statement, subject to any conditions he or she considers appropriate.

302 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 manner and form required by the Registrar.

(2) An application for approval of a merger must be accompanied by 2 copies of the proposed rules of the merged co-operative and any other particulars required by the Registrar.

303 Approval of merger

(1) The Registrar must approve a merger pursuant to an application under this Division if satisfied that—

(a) this Division has been complied with in relation to the application; and

(b) the proposed rules of the merged co-operative are consistent with this Act and the regulations and are such that 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 Act.

(3) A merger takes effect on the issue of the certificate of registration for the merged co-operative.

304 Approval of transfer of engagements

(1) The Registrar must approve a transfer of engagements pursuant to an application under this Division if satisfied that—

(a) this Division has been complied with in relation to the application; and

(b) the rules or proposed rules of the transferee co-operative are adequate; and

(c) in the case of 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 specified in the approval of the Registrar.

305 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 specified by the Registrar when giving the direction or within such further period as the Registrar may allow, to enter into an agreement approved by the

Registrar to give effect to the transfer of engagements directed.

(2) The Registrar must not give such a direction to a co-operative unless the necessary grounds exist for the giving of the direction, as referred to in section 336.

(3) The transfer of engagements must make provision in a manner approved by the Registrar for those 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 the winding up of the co-operative on a certificate of the Registrar; or

(b) for the appointing of 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 pursuant to the direction to transfer its engagements.

(7) A transfer of engagements directed under this section takes effect on a day notified by the Registrar in the Government Gazette.

(8) An officer of a co-operative who—

(a) fails 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 is the cause of a failure by the co-operative to comply with such a direction—

is guilty of an offence and liable to a penalty not exceeding 20 penalty units.

Division 2—Transfer of incorporation

306 Application for transfer

A co-operative, if approved under this Division, may apply to become registered or incorporated as one of the following bodies corporate—

(a) a company under the Corporations Act;

S. 306(a) amended by No. 44/2001 s. 3(Sch. item 18.28).

(b) an incorporated association under the **Associations Incorporation Act 1981**;

* * * * *

S. 306(c)–(e) repealed by No. 37/1999 s. 58(Sch. 3 item 2.1).

* * * * *

S. 306(f) repealed by No. 37/1999 s. 58(Sch. 3 item 2.2).

(g) any body corporate that is incorporated, registered or otherwise established under a law that is a law of a place outside the State and that is prescribed for the purposes of this section.

307 Requirements before application can be made

(1) Before an application is made under section 306, the co-operative must by special resolution passed by means of a special postal ballot—

(a) approve the proposed application; and

(b) determine under what name the co-operative is to apply to be incorporated or registered; and

(c) adopt any memorandum or articles of association or rules that may be necessary or considered desirable.

(2) The name applied for need not be the same as that of the co-operative and must not include the word "co-operative" or any other word importing a similar meaning.

(3) The Registrar may, by order, exempt a co-operative from compliance with all or specified provisions of this section and section 200 in relation to any matter to which this section applies.

(4) An exemption under subsection (3) may be granted unconditionally or subject to conditions.

308 Meaning of *new body* and *transfer*

The registration or incorporation of a co-operative as a body corporate as a result of an application under this Division is referred to in this Division as its ***transfer*** and the body corporate concerned is referred to in this Division as ***the new body***.

309 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 Act.

310 Transfer not to impose greater liability etc.

(1) Any memorandum or articles of association or rules adopted for the purposes of the transfer must not be such as to—

(a) impose on the members of the new body who were members of the 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 any member of the new body of any preferential rights with respect to dividend or capital to which the member was entitled as a member of the 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 that has a share capital to a new body that has a 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.

311 Effect of new certificate of registration

A certificate of registration or incorporation as the new body issued by the appropriate officer under the law applicable to the new body is conclusive evidence that all the requirements of this Division in respect of that registration or incorporation have been complied with.

312 New body is a continuation of the co-operative

(1) When a co-operative transfers to a new body, the body corporate constituted by the new body is to be considered to be the same entity as the body corporate constituted by the co-operative.

(2) Without limiting subsection (1), Division 6 applies to a transfer under this Division.

313 Stamp duty

S. 313(1) amended by No. 44/2001 s. 3(Sch. item 18.28).

(1) This section applies when a co-operative that transfers under this Division was before its registration as a co-operative under this Act a company under the Corporations Act or any corresponding previous law of the State and 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).

(2) 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.

Division 3—Winding up

314 Methods of winding up

(1) A co-operative may be wound up voluntarily or by the Supreme Court or on a certificate of the Registrar.

S. 314(2) amended by No. 44/2001 s. 3(Sch. item 18.28).

(2) In the case of a winding up voluntarily or by the Supreme Court, the co-operative may be wound up in the same manner and in the same circumstances as a company under the Corporations Act may be so wound up.

315 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 the taking of that action exist, as referred to in section 336.

(2) A winding up on a certificate of the Registrar commences 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 liquidator need not be a registered liquidator under the Corporations Act.

S. 315(4) amended by No. 44/2001 s. 3(Sch. item 18.28).

(5) The liquidator must within 10 days after appointment give notice of his or her appointment in the Government Gazette.

(6) The liquidator must give such security as may be prescribed and is entitled to receive such fees as are fixed by the Registrar.

(7) Any vacancy occurring in the office of liquidator is to be filled by a person appointed by the Registrar.

316 Application of Corporations Act to winding up

S. 316 substituted by No. 44/2001 s. 3(Sch. item 18.29), amended by No. 9/2002 s. 3(Sch. item 2.4).

The winding up or dissolution of a co-operative is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the **Corporations (Ancillary Provisions) Act 2001** in relation to the provisions of Parts 5.4 to 5.7 and Part 5A.1 of the Corporations Act, subject to the following modifications—

(a) a reference in those provisions to a special resolution or an extraordinary resolution is to be read as a reference to a special resolution within the meaning of this Act;

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

(c) section 461(1)(h) is to be considered to be amended by substituting for "ASIC has stated in a report prepared under Division 1 of Part 3 of the ASIC Act that, in its opinion:", "the Registrar has, as a result of an inquiry conducted under Division 2 or

Division 4 of Part 15 of the **Co-operatives Act 1996**, stated that—";

(d) section 464(1) is to be considered to be amended by substituting for "Where ASIC is investigating, or has investigated, under Division 1 of Part 3 of the ASIC Act:", "Where the Registrar is holding or has held an inquiry under Division 2 or Division 4 of Part 15 of the **Co-operatives Act 1996** in relation to—";

(e) section 513B (Voluntary winding up) is to be considered to be amended by inserting after paragraph (d)—

"(da) if the winding up is on the certificate of the Registrar—on the date that the certificate is given; or";

(f) section 516 is to be considered to be amended by inserting after the words "past member" the words "together with any charges payable by him or her to the co-operative in accordance with the rules";

(g) section 542(3) is to be considered to be amended by inserting after paragraph (c)—

"and

(d) in the case of a winding up on a certificate of the Registrar under section 314 of the **Co-operatives Act 1996**—with the consent of the Registrar.".

(h) a reference in those 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;

(i) a reference in those provisions to Part 2F.1 (Oppressive conduct of affairs) of the Corporations Act is to be read as a reference to Division 5 (Oppressive conduct of affairs) of Part 4 of this Act;

(j) for the purposes of the application of those provisions to a winding up on the certificate of the Registrar, the winding up is to be considered to be a voluntary winding up (but section 490 (When company cannot be wound up voluntarily) of the Corporations Act does not apply);

(k) those provisions are to be read subject to sections 76 (Liability of members to co-operative) and 322 (Liability of member to contribute in a winding up where shares forfeited etc.) of this Act for the purposes of determining the liability of members and former members to contribute on a winding up of a co-operative;

(l) any other modifications (within the meaning of Part 3 of the **Corporations (Ancillary Provisions) Act 2001**) that are prescribed by the regulations.

Note

See note under section 10(1).

317 Restrictions on voluntary winding up

(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 means of a special postal ballot in favour of voluntary winding up.

(2) The Registrar may by order exempt a co-operative from compliance with all or specified provisions of this section or section 200.

(3) An exemption under subsection (2) may be granted either unconditionally or subject to conditions.

(4) When a special postal ballot is held, the members may, by means of the same ballot, by simple majority—

(a) appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the co-operative; and

(b) fix the remuneration to be paid to the liquidator.

318 Commencement of members' voluntary winding up

A members' voluntary winding up of a co-operative commences when the result of the special postal ballot is noted in the minute book by the secretary of the co-operative.

319 Distribution of surplus—non-trading co-operatives

(1) On a winding up of a non-trading 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-trading co-operative must make provision for the manner in which the surplus property of the co-operative is to be distributed in a winding up.

(3) In this section—

surplus property means that property of the co-operative that remains after satisfaction of the debts and liabilities of the co-operative and the costs, charges and expenses of the winding up.

320 Liquidator—vacancy may be filled by Registrar

S. 320 amended by No. 44/2001 s. 3(Sch. item 18.30).

If a co-operative is being wound up voluntarily and a vacancy occurs in the office of liquidator which in the opinion of the Registrar is unlikely to be filled in the manner provided by the Corporations Act (as applied by this Division), the Registrar may appoint a person to be liquidator.

321 Review of liquidator's remuneration

Any 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 the Supreme Court to review the amount of the remuneration of the liquidator.

322 Liability of member to contribute in a winding up where shares forfeited etc.

(1) If a person's membership of a co-operative is cancelled under Part 6 within 2 years before the commencement 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 any shares forfeited in connection with that cancellation (being their nominal value immediately before cancellation).

(2) If under section 176 a co-operative—

(a) purchases any share of a member in the co-operative; or

(b) repays to a member the whole or any part of the amount paid up on any share held by a member—

within 2 years before the commencement of the winding up of the co-operative, the member or former member is liable on the winding up to contribute to the property of the co-operative the amount which was paid by the co-operative to the member or former member in respect of the purchase or repayment together with any amount unpaid on those shares immediately before the purchase or repayment.

(3) If a person contributes to the property of a co-operative pursuant to a liability under this section, the amount contributed is, for the purposes of the winding up concerned, to be treated as having been paid up by the person on shares of the 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.

Pt 12 Div. 4 (Heading and s. 323) substituted by No. 44/2001 s. 3(Sch. item 18.31).

Division 4—Administration of co-operative—application of Corporations Act

S. 323 (Heading) amended by No. 9/2002 s. 3(Sch. item 2.5).

S. 323 substituted by No. 44/2001 s. 3(Sch. item 18.31).

323 Application of Corporations Act to administration

A co-operative is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the **Corporations (Ancillary Provisions) Act 2001** in relation to the provisions of Part 5.3A (Administration of a company's affairs with a view to executing a deed of company arrangement) and Division 3 of Part 5.9

(Provisions applying to various kinds of external administration) of the Corporations Act, subject to the following modifications—

(a) those provisions are to be read as if a co-operative were a company;

* * * * *

S. 323(b) repealed by No. 9/2002 s. 3(Sch. item 2.6).

(c) a reference in those provisions to sections 128 and 129 of the Corporations Act is to be read as a reference to sections 43 to 45 and 47 of this Act;

* * * * *

S. 323(d) repealed by No. 9/2002 s. 3(Sch. item 2.6).

(e) a reference in those provisions to ASIC is to be read as a reference to the Registrar;

(f) any other modifications (within the meaning of Part 3 of the **Corporations (Ancillary Provisions) Act 2001**) that are prescribed by the regulations.

Note

See note under section 10(1).

Division 5—Appointment of administrator

324 Appointment of administrator

(1) The Registrar may, by written notice, appoint an administrator to conduct the affairs of a co-operative.

(2) A notice of appointment must specify—

(a) the date of appointment; and

(b) the appointee's name; and

(c) the appointee's business address.

(3) If the appointee's name or business address changes, the appointee must immediately give written notice of the change to the Registrar.

(4) The Registrar must not appoint an administrator unless the necessary grounds for the taking of that action exist, as referred to in section 336.

325 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 of employment with the co-operative are terminated; and

(c) all contracts for the provision of secretarial or administrative services for the co-operative are terminated; and

(d) the administrator may terminate 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.

326 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 any administrator of the co-operative is automatically revoked.

(4) Immediately on the revocation of an administrator's appointment, the administrator must prepare and submit a report to the Registrar showing how the administration was carried out, and for that purpose an administrator has access to the co-operative's records and documents.

(5) On providing the report and accounting fully in relation to the administration of the co-operative to the satisfaction of the Registrar, the administrator is released from any further duty to account in relation to the administration of the co-operative other than on account of fraud, dishonesty, negligence or wilful failure to comply with this Act or the regulations.

(6) Before revoking the appointment of an administrator of a co-operative, the Registrar must—

(a) appoint another administrator; or

(b) appoint a liquidator; or

(c) ensure that directors of the co-operative have been elected in accordance with the rules of the co-operative at a meeting convened by the administrator in accordance with those rules; 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 that appointment.

327 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—

S. 327(2)(a) amended by No. 46/1998 s. 7(Sch. 1).

(a) if the administrator is not an employee of the public service, remuneration of the administrator at a rate approved by the Registrar; or

S. 327(2)(b) amended by No. 46/1998 s. 7(Sch. 1).

(b) if the administrator is an employee of the public service, the amount that the Registrar certifies should be paid to it as repayment of the administrator's remuneration.

(3) An amount certified under subsection (2)(b) may be recovered in a court of competent jurisdiction as a debt due to the Crown.

(4) An administrator has, in relation to the expenses specified in subsection (1), the same priority on the winding-up of a co-operative as the liquidator of the co-operative has.

328 Liabilities arising from administration

(1) If a co-operative incurs any loss because of any fraud, dishonesty, negligence or wilful failure to comply with this Act or the regulations or the rules of the co-operative by an administrator, the administrator is liable for the loss.

(2) An administrator is not liable for any loss that is not a loss to which subsection (1) applies but must account for the loss in a report given under section 326.

329 Additional powers of Registrar

(1) If the Registrar appoints directors of a co-operative under section 326, the Registrar may, by written notice given to the co-operative, specify—

(a) a time during which this section is to apply in relation to the co-operative; and

(b) the terms and conditions on which all or any of the directors hold office; and

(c) the rules that are to be the co-operative's rules.

(2) While this section applies to a co-operative, the Registrar may—

(a) from time to time remove and appoint directors; and

(b) from time to time, vary, revoke or specify new terms and conditions in place of all or any of the terms and conditions specified under subsection (1); and

(c) amend all or any of the rules specified under subsection (1).

(3) The Registrar may, by written notice given to the co-operative, extend the time for which this section is to apply in relation to a co-operative.

(4) A rule specified by the Registrar under this section as a rule of a co-operative—

(a) is not to be altered except in the way set out in this section; and

(b) if it is inconsistent with any other rule of the co-operative, prevails over the other rule, and the other rule is to the extent of the inconsistency invalid; and

(c) has the same evidentiary value as is by this Act accorded to the co-operative's rules and to copies of them.

330 Stay of proceedings

(1) If the Registrar appoints an administrator to conduct a co-operative's affairs, a person must not begin or continue any proceeding in a court against the co-operative until the administrator's appointment is revoked except with the leave of the Supreme Court and, if the Supreme Court grants leave, in accordance with any terms and conditions that the Supreme Court imposes.

(2) A person intending to apply for leave of the Supreme Court under subsection (1) must give the Registrar not less than 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 granting of the application.

331 Administrator to report to Registrar

On the 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.

Division 6—Effect of merger etc. on property, liabilities etc.

332 How this Division applies to a merger

(1) This Division applies to a merger of co-operatives under this Part.

(2) In the application of this Division to a merger—

new body means the co-operative that results 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 Act.

333 How this Division applies to a transfer of engagements

(1) This Division applies to a transfer of the engagements of a co-operative to another co-operative under Division 1.

(2) In the application of this Division to a 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.

334 How this Division applies to a transfer of incorporation

(1) This Division applies to a transfer of incorporation under Division 2.

(2) In the application of this Division to such a transfer—

new body means the body corporate that results from the transfer;

original body means the co-operative that transfers its incorporation;

relevant day means the day on which the transfer takes effect.

335 Effect of merger etc on property, liabilities etc.

(1) In this section—

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents;

instrument means an instrument (other than this Act) which creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order and process of a court;

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

(2) On and from the relevant day for an event to which this Division applies—

(a) the assets of the original body vest in the new body without the need for any conveyance, transfer, assignment or assurance; and

(b) the rights and liabilities of the original body become the rights and liabilities of the new body; and

(c) all proceedings by or against the original body that are pending immediately before the relevant day are taken to be proceedings pending by or against the new body; and

(d) any act, matter or thing done or omitted to be done by, to or in respect of the original body before the relevant day is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the new body; and

(e) a reference in an instrument or in any document of any kind to the original body is to be read as, or as including, a reference to the new body.

(3) The operation of this section is not to be regarded—

(a) as a breach of contract or confidence or otherwise as a civil wrong; or

(b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or

(c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.

(4) A document or an instrument executed or registered for or with respect to a transfer of any property to give effect to this section is not liable to any fee chargeable under any Act for registration.

S. 335(4) amended by No. 79/2000 s. 285(Sch. 1 item 1.2).

Division 7—Miscellaneous

336 Grounds for winding up, transfer of engagements, appointment of administrator

(1) This section applies to the following actions—

(a) a direction by the Registrar to a co-operative to transfer its engagements under section 305;

(b) the appointment of an administrator of a co-operative under Division 5;

(c) the winding up of a co-operative on a certificate of the Registrar under section 315.

(2) The necessary grounds for the taking of action to which this section applies exist if the Registrar certifies—

(a) that the number of members is reduced to less than the minimum number of persons allowed, as referred to in section 74; or

(b) that the co-operative has not commenced business within 1 year of registration or has suspended business for a period of more than 6 months; or

(c) that the registration of the co-operative has been obtained by mistake or fraud; or

(d) that the co-operative exists for an illegal purpose; or

(e) that the co-operative has wilfully and after notice from the Registrar violated the provisions of this Act or of the regulations or of the rules of the co-operative; or

(f) that the board of the co-operative has, after notice from the Registrar, failed to ensure that the rules of the co-operative contain active membership provisions in accordance with Part 6; or

(g) that there are, and have been for a period of one month immediately before the date of the Registrar's certificate, insufficient directors of the co-operative to constitute a quorum as provided by the rules of the co-operative; or

(h) following an inquiry pursuant to the provisions of this Act into the affairs of a co-operative or the working and financial condition of a co-operative, that 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 the winding up of a co-operative on a certificate of the Registrar exist if the Registrar certifies—

(a) that the period, if any, fixed for the duration of the co-operative by its rules has expired; or

(b) that an event (to be specified in the certificate) has occurred on the occurrence of which the regulations or the rules provide that the co-operative is to be wound up.

(4) The Registrar must not certify under this section as to any matter unless the matter has been proved to the Registrar's satisfaction.

337 Adoption of Corporations Law concerning reciprocity with other jurisdictions

S. 337(1) amended by No. 35/2000 s. 34(k).

(1) The provisions of Part 5.7A of the Corporations Law[2] are adopted by this section and apply to and in respect of a co-operative in the same way as they apply to and in respect of a company.

(2) Those provisions apply—

(a) with any modifications that are prescribed; and

(b) as if—

(i) a reference in those provisions to a recognised company were a reference to a foreign co-operative; and

(ii) a reference to a provision of the Corporations Law of another jurisdiction[3] were a reference to that provision as applying to a foreign co-operative under a law of another jurisdiction under which that foreign co-operative is incorporated.

S. 338 substituted by No. 44/2001 s. 3(Sch. item 18.32).

338 Application of Corporations Act concerning insolvent co-operatives

A co-operative is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the **Corporations (Ancillary Provisions) Act 2001** in relation to the provisions of Part 5.7B (Recovering property or compensation for the benefit of creditors of insolvent company) of the Corporations Act (other than section 588G (Director's duty to prevent insolvent trading by company)), subject to the following modifications—

(a) those provisions are to be read as if a co-operative were a company;

(b) a reference in those provisions to any provision of sections 286 to 290 of the Corporations Act is to be read as a reference to the equivalent provisions of the regulations under section 238 of this Act;

(c) any other modifications (within the meaning of Part 3 of the **Corporations (Ancillary Provisions) Act 2001**) that are prescribed by the regulations.

Note

See note under section 10(1).

PART 13—ARRANGEMENTS AND RECONSTRUCTIONS

Division 1—General requirements

339 Requirements for binding compromise or arrangement

(1) A compromise or arrangement is binding if and 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 those 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 means of a special postal ballot.

(2) The court ordered meeting referred to in subsection (1)(a) is a meeting convened in accordance with an order of the Supreme Court under this Part.

(3) The Supreme Court may grant its approval to a compromise or arrangement subject to such alterations or conditions as it thinks just.

(4) An order of the Supreme Court approving a compromise or arrangement does not have any effect until an office copy of the order is lodged with the Registrar.

(5) On the copy being lodged, the order takes effect from the date of lodgment or such earlier date as the Supreme Court specifies in the order.

340 Supreme 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) any member of the co-operative; or

(c) any of the creditors concerned; or

(d) in the case of a co-operative being wound up, the liquidator.

(3) The meeting must be convened in the manner and be held in the place or places (in the State or elsewhere) that the Supreme Court directs.

(4) In considering whether to make an order for a meeting to be held in another jurisdiction, the Supreme Court may have regard to where creditors concerned reside.

341 Registrar to be given notice and opportunity to make submissions

(1) The Supreme Court may make an order under this Division, if the Supreme Court is satisfied that—

(a) at least 14 days notice of the hearing of the application for the order, or such shorter period of notice as the Supreme Court or the 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 Supreme Court in relation to the proposed compromise or arrangement concerned and a draft explanatory statement relating to it.

(2) The ***draft explanatory statement*** referred to in subsection (1) is a statement—

(a) explaining the effect of the proposed compromise or arrangement and, in particular, stating—

(i) any material interests of the directors of the co-operative, whether as directors, as members or creditors of the co-operative or otherwise; and

(ii) the effect on those interests of the proposed compromise or arrangement in so far as that effect is different from the effect on the like interests of other persons; and

(b) setting out—

(i) any information that is prescribed; and

(ii) any other information that is material to the making of a decision by a creditor or member of the co-operative whether or not to agree to the proposed compromise or arrangement, being information that is within the knowledge of the directors of the co-operative and has not previously been disclosed to the creditors or members of the co-operative.

342 Results of 2 or more meetings

If the Supreme Court orders 2 or more meetings of creditors to be held in relation to a proposed compromise or arrangement—

(a) the meetings are to be considered to constitute a single meeting; and

(b) the votes in favour of the proposed compromise or arrangement cast at each of the meetings are to be aggregated; and

(c) the votes against the proposed compromise or arrangement cast at each of the meetings are to be aggregated.

343 Persons disqualified from administering compromise etc.

(1) Except with the leave of the Supreme Court, a person must not be appointed to administer, and must not administer, a compromise or arrangement approved under this Act between a co-operative and any of its creditors or members, whether by the terms of that compromise or arrangement or pursuant to a power given by the terms of a compromise or arrangement, if the person—

(a) is a mortgagee of any property of the co-operative; or

(b) is an auditor or an officer of the co-operative; or

(c) is an officer of a body corporate that is a mortgagee of property of the co-operative; or

(d) is not a registered liquidator unless the person is a body corporate authorised by or under a law of the State to administer the compromise or arrangement concerned; or

(e) is an officer of a body corporate related to the co-operative; or

(f) unless the Registrar directs in writing that this paragraph does not apply in relation to the person in relation to the co-operative, has at any time within the last 12 months been an officer or promoter of the co-operative or of a related body corporate.

(2) This section does not disqualify a person from administering a compromise or arrangement under an appointment validly made before the commencement of this section.

S. 344 (Heading) inserted by No. 44/2001 s. 3(Sch. item 18.33).

344 Application of Corporations Act to person appointed

(1) Clauses 16, 18(2) and (4), 19, 23 and 25 of Schedule 4 apply to a person appointed to administer a compromise or arrangement as if the appointment were an appointment of the person as a receiver and manager of property of the co-operative and as if a reference to a receiver were a reference to that person.

S. 344(2) substituted by No. 44/2001 s. 3(Sch. item 18.34).

(2) A person appointed to administer a compromise or arrangement is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the **Corporations (Ancillary Provisions) Act 2001** in relation to section 536 (Supervision of liquidators) of the Corporations Act as if—

(a) the appointment were an appointment as a liquidator of the co-operative;

(b) a reference in that section to a liquidator were a reference to that person;

(c) a reference in that section to ASIC were a reference to the Registrar.

Note

See note under section 10(1).

345 Copy of order to be attached to rules

(1) A co-operative must ensure that a copy of an order of the Supreme Court approving a compromise or arrangement is annexed to each copy of the rules of the co-operative issued after the order is made.

Penalty: 20 penalty units.

(2) The Supreme Court may, by order, exempt a co-operative from compliance with this section or determine the period during which the co-operative must comply.

346 Directors to arrange for reports

(1) When a compromise or arrangement (whether or not for the purposes of or in connection with a scheme for the reconstruction of a co-operative or the merger of any 2 or more co-operatives) has been proposed, the directors of the co-operative must—

S. 346(1)(a) amended by No. 18/2005 s. 18(Sch. 1 item 19.1).

(a) if a meeting of the members of the co-operative by resolution so directs, instruct the accountants or legal practitioners or both named in the resolution to report on the proposals and send their report or reports to the directors as soon as practicable; and

(b) make any report or reports so obtained available at the registered office of the 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 concerned is guilty of an offence and liable to a penalty not exceeding 20 penalty units.

347 Power of Supreme Court to restrain further proceedings

(1) If a proposed compromise or arrangement is 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 any action or other civil proceeding against the co-operative except by leave of the Supreme Court and subject to such terms as the Supreme Court imposes.

(2) The Supreme Court's power under this section is in addition to any of its other powers and must not be exercised except on application by the co-operative or of any creditor or member of the co-operative.

348 Supreme Court need not approve compromise or arrangement takeovers

(1) The Supreme Court need not approve a compromise or arrangement unless—

(a) it is satisfied that the compromise or arrangement has not been proposed for the purpose of enabling any person to avoid the operation of any of the provisions of Division 2 of Part 11; and

(b) there is produced to the Supreme Court a statement in writing by the Registrar stating that 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 that the Registrar has no objection to the compromise or arrangement has been produced to the Supreme Court.

Division 2—Explanatory statements

349 Explanatory statement required to accompany notice of meeting etc.

(1) An explanatory statement must accompany every notice—

(a) that is sent to a creditor of a co-operative convening the court ordered meeting to obtain agreement to the compromise or arrangement; or

(b) that is sent to a member of a co-operative for the purpose of the conduct of the special postal ballot to obtain agreement to the compromise or arrangement.

(2) In every notice of a meeting referred to in subsection (1) that is given by advertisement there must be included either a copy of the explanatory statement or notification of the place at which and the manner in which creditors entitled to attend the meeting may obtain copies of the explanatory statement.

(3) The explanatory statement must—

(a) explain the effect of the compromise or arrangement and, in particular, state—

(i) any material interests of the directors, whether as directors, as members or creditors of the co-operative or otherwise; and

(ii) the effect on those interests of the compromise or arrangement in so far as that effect is different from the effect on the like interests of other persons; and

(b) set out—

(i) any information that is prescribed; and

(ii) any other information that is material to the making of a decision by a creditor or member whether or not to agree to the compromise or arrangement, being information that is within the knowledge of the directors and has not previously been disclosed to the creditors or members.

(4) Subsection (1)(a) does not apply in the case of a creditor whose debt does not exceed $200 unless the Supreme Court otherwise orders.

(5) The notice convening the meeting that is sent to a creditor referred to, in subsection (4) must specify a place at which a copy of the explanatory statement can be obtained on request.

(6) The co-operative must comply with a request under subsection (5) as soon as practicable.

350 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 specify—

(a) any material interests of the trustees for the debenture holders, whether as such trustees, as members or creditors of the co-operative or otherwise; and

(b) the effect on those interests of the compromise or arrangement to the extent that that effect is different from the effect on the like interests of other persons.

(3) If a notice given by advertisement includes a notification that copies of the explanatory statement can be obtained in a particular manner, the co-operative must furnish a copy of the statement free of charge to each creditor or member entitled to attend the meeting or vote in the ballot who applies for it in the appropriate manner.

(4) Each person who is a director or trustee for debenture holders must give notice to the co-operative of such matters relating to the person as are required to be included in the explanatory statement.

351 Contravention of 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 is guilty of an offence and liable to a penalty not exceeding 20 penalty units.

(2) It is a defence to a prosecution for an offence under subsection (1) if it is proved that the contravention was due to the failure of a person (other than the defendant), being a director of the co-operative or a trustee for debenture holders of the co-operative, to supply for the purposes of the explanatory statement particulars of the person's interests.

352 Provisions for facilitating reconstructions and mergers

(1) In this section—

co-operative includes foreign co-operative registered, formed or incorporated under a law of another State or Territory.

(2) This section applies when an application is made to the Supreme Court under this Part for the approval of a compromise or arrangement and it is shown to the Court that—

(a) the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of a co-operative or the merger of a co-operative with another co-operative or with another body corporate; and

S. 352(2)(b) amended by No. 44/2001 s. 3(Sch. item 18.35).

(b) under the scheme the whole or any part of the undertaking or of the property of a co-operative concerned in the scheme (***the transferor***) is to be transferred to another body corporate (***the transferee***) except a company within the meaning of the Corporations Act.

(3) When this section applies, the Supreme Court may, either by the order approving the compromise or arrangement or by a later order provide for any one or more of the following—

(a) the transfer to the transferee of the whole or a part of the undertaking and of the property or liabilities of the transferor;

(b) the allotting or appropriation by the transferee of shares, debentures, policies or other interests in the transferee that, under the compromise or arrangement, are to be allotted or appropriated by the transferee to or for any person;

(c) the continuation by or against the transferee of any legal proceedings pending by or against the transferor;

(d) the dissolution, without winding up, of the transferor;

(e) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement;

(f) the transfer or allotment of any interest in property to any person concerned in the compromise or arrangement;

(g) such incidental, consequential and supplemental matters as are necessary to ensure that the reconstruction or merger is fully and effectively carried out.

(4) If an order made under this section provides for the transfer of property or liabilities, then, by virtue of the order—

(a) the property is transferred to and vests in the transferee, free, in the case of any particular property if the order so directs, from any charge that is by virtue of the compromise or arrangement to cease to have effect; and

(b) the liabilities are transferred to and become the liabilities of the transferee.

(5) If an order is made under this section, each body to which the order relates must, within 14 days after the making of the order, lodge with the Registrar an office copy of the order.

(6) In this section—

liabilities includes duties of any description, including duties that are of a personal character or are incapable under the general

law of being assigned or performed vicariously;

property includes rights and powers of any description, including rights and powers that are of a personal character and are incapable under the general law of being assigned or performed vicariously.

Division 3—Acquisition of shares of dissenting shareholders

353 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 his, her or its shares in accordance with the scheme or contract;

excluded shares, in relation to a scheme or contract involving a transfer to a person of shares in a class of shares in a co-operative, means shares in that class that, when the offer relating to the scheme or contract is made, are held by—

(a) in any case, the person or a nominee of the person; or

(b) if the person is a body corporate, a subsidiary of the body.

354 Schemes and contracts to which 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 11 applies.

355 Acquisition of shares pursuant to notice to dissenting shareholder

(1) The transferee under the scheme or contract may, within 2 months after the offer is so approved, give notice as prescribed (a ***compulsory acquisition notice***) to a dissenting shareholder that the transferee wishes to acquire the shares held by that shareholder.

(2) When a compulsory acquisition notice is given, the dissenting shareholder may, by written notice given to the transferee within one month after the day on which the compulsory acquisition notice was given, ask for a statement in writing of the names and addresses of all other dissenting shareholders as shown in the register of members and the transferee must give that statement.

(3) Having given the compulsory acquisition notice, the transferee is, unless the Supreme Court orders to the contrary, entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee.

(4) The Supreme Court may give an order to the contrary only on the application of the dissenting shareholder made within 28 days after the compulsory acquisition notice was given or within 14 days after any statement asked for under subsection (2) was given, whichever is the later.

(5) If alternative terms are offered to the approving shareholders—

(a) the dissenting shareholder is entitled to elect which of those terms are preferred but must make that election within the time allowed

for the making of an application to the Supreme Court under subsection (4); and

(b) if the dissenting shareholder fails to make the election within that time, the transferee may, unless the Supreme Court otherwise orders, determine which of those terms is to apply to the acquisition of the shares of the dissenting shareholder.

356 Restrictions when excluded shares exceed 10%

If the nominal value of excluded shares exceeds 10% of the aggregate nominal value of all the shares (including excluded shares) to be transferred under the scheme or contract, section 355 does not apply unless—

(a) the transferee offers the same terms to all holders of the shares (other than excluded shares) to be transferred under the scheme or contract; and

(b) the holders who approve the scheme or contract together hold at least 90% in nominal value of the shares (other than excluded shares) to be transferred under the scheme or contract and are also at least 75% in number of the holders of those shares (with joint owners of shares being counted as one person).

357 Remaining shareholders may require acquisition

(1) If, under a scheme or contract to which this Division applies, the transferee becomes beneficially entitled to shares in the transferor which, together with any other shares in the transferor to which the transferee or a body corporate related to the transferee is beneficially entitled comprise or include 90% in nominal value of the shares concerned, then—

(a) the transferee must, within 28 days after becoming beneficially entitled to those shares, give notice of the fact as prescribed to the holders of the remaining shares concerned who, when the notice was given, had not assented to the scheme or contract or been given a compulsory acquisition notice by the transferee under this Division; and

(b) such a holder may, within 3 months after being given that notice, by notice to the transferee require the transferee to acquire the holder's share and, if alternative terms were offered to the approving shareholders, elect which of those terms the holder will accept.

(2) If a shareholder gives notice under this section with respect to the shareholder's shares, the transferee is entitled and bound to acquire those shares—

(a) on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to the transferee and, if alternative terms were offered to those shareholders, on the terms for which the shareholder has elected, or, if no election is made, for whichever of the terms the transferee determines; or

(b) on such other terms as are agreed or as the Supreme Court, on the application of the transferee or of the shareholder, thinks fit to order.

358 Transfer of shares pursuant to compulsory acquisition

(1) A transferee who has given a compulsory acquisition notice must—

(a) send a copy of the notice to the transferor together with an instrument of transfer that relates to the shares that the transferee is entitled to acquire under this Division and that is executed, on the shareholder's behalf, by a person appointed by the transferee and, on the transferee's own behalf, by the transferee; and

(b) pay, allot or transfer to the transferor the consideration for the shares.

(2) The transferee must 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 expires;

(b) the period of 14 days after a statement of the names and addresses of dissenting shareholders is supplied under this Division expires;

(c) if an application has been made to the Supreme Court by a dissenting shareholder, the application is disposed of.

(3) When the transferee has complied with this section, the transferor must register the transferee as the holder of the shares.

(4) This section does not apply if the Supreme Court on the application of the dissenting shareholder orders to the contrary.

359 Disposal of consideration for shares compulsorily acquired

(1) All sums received by the transferor under this Division must be paid into a separate account with an authorised deposit-taking institution and those sums, and any other consideration so received, are to be held by the transferor in trust for the several persons entitled to the shares in respect of which they were respectively received.

S. 359(1) amended by No. 11/2001 s. 3(Sch. item 16.3).

(2) If a sum or other property received by the transferor under this Division has been held in trust by the transferor for a person for at least 2 years, the transferor must pay the sum or transfer the consideration, and any accretions to it and any property that may become substituted for it or for part of it, to the Registrar.

(3) Anything paid or transferred to the Registrar under subsection (2) is declared to be applied Corporations legislation matter for the purposes of Part 3 of the **Corporations (Ancillary Provisions) Act 2001** in relation to the provisions of Part 9.7 (Unclaimed property) of the Corporations Act, subject to the following modifications—

S. 359(3) amended by No. 35/2000 s. 34(l), substituted by No. 44/2001 s. 3(Sch. item 18.36).

(a) a reference in those provisions to unclaimed property is to be read as a reference to the thing paid or transferred to the Registrar under subsection (2);

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

(c) a reference in those provisions to the Commonwealth is to be read as a reference to Victoria;

(d) any other modifications (within the meaning of Part 3 of the **Corporations (Ancillary Provisions) Act 2001**) that are prescribed by the regulations.

Note

See note under section 10(1).

(4) The transferor must comply with subsection (2) before the end of 10 years after the day on which the sum was paid, or the consideration was allotted or transferred, to the transferor.

Division 4—Miscellaneous

360 Notification of appointment of scheme manager

Within 14 days after being appointed to administer a compromise or arrangement approved under this Part, a person must lodge with the Registrar a written notice of the appointment.

Penalty: 10 penalty units.

361 Power of Supreme Court to require reports

When an application is made to the Supreme Court under this Part in relation to a proposed compromise or arrangement, the Supreme Court may—

(a) before making any order on the application, require the Registrar or any other person to give to the Court a report as to—

(i) the terms of the compromise or arrangement or of the scheme for the purposes of or in connection with which the compromise or arrangement has been proposed; and

(ii) the conduct of the officers of the body or bodies concerned; and

(iii) any other matters that, in the opinion of the Registrar or that person, ought to be brought to the attention of the Court; and

(b) in deciding the application, have regard to anything contained in the report; and

(c) make such order or orders as to the payment of the costs of preparing and giving the report as the Court thinks fit.

362 Effect of out-of-jurisdiction compromise or arrangement

(1) A compromise or arrangement that is binding on any creditors of a foreign co-operative because of a provision of the law of another State or a Territory that corresponds to this Part is also binding on the creditors of the foreign co-operative whose debts are recoverable by action in a court of this State.

(2) If the Supreme Court of another State or a Territory makes an order under a provision of the law of that State or Territory that is prescribed as corresponding to a provision of this Part, the order is to be considered to have been made by the Supreme Court of Victoria under that corresponding provision of this Act and has effect and may be enforced accordingly.

363 Jurisdiction to be exercised in harmony with Corporations Act jurisdiction

S. 363 amended by No. 44/2001 s. 3(Sch. item 18.37).

The jurisdiction of the Supreme Court under this Part is intended to complement the Supreme Court's jurisdiction under the Corporations Act (as applied under this Act) and should be exercised in harmony with that jurisdiction.

364 Registrar may appear etc.

In any 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 duly appointed representative.

PART 14—FOREIGN CO-OPERATIVES

Pt 14 (Heading and ss 365-387) amended by Nos 35/2000 s. 34(m), 79/2000 s. 285(Sch. 1 item 1.2), 11/2001 s. 3(Sch. item 16.3), substituted as Pt 14 (Heading and ss 365-387K) by No. 13/2008 s. 14.

Division 1—Introductory

365 Definitions

S. 365 substituted by No. 13/2008 s. 14.

In this Part—

authorisation notice means a written notice issued by the Registrar under this Part to a foreign co-operative certifying that the co-operative is authorised to carry on business in this State;

co-operatives law means a law of another State that, under section 367, is certified to be a co-operatives law for the purposes of this Part;

non participating co-operative means a foreign co-operative other than a participating co-operative;

participating co-operative means a foreign co-operative that is registered, incorporated or formed under, or subject to, a co-operatives law;

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

participating State means any State in which a co-operatives law is in force;

State means any State in Australia, the Australian Capital Territory and the Northern Territory.

S. 366 substituted by No. 13/2008 s. 14.

366 What constitutes carrying on business

(1) For the purposes of this Part, a foreign co-operative carries on business in this State if it—

(a) solicits for members in this State; or

(b) seeks share capital in this State, takes deposits in this State or offers other securities in the co-operative in this State (including the issue of CCUs and debentures); or

(c) provides any goods or services within this State.

(2) A foreign co-operative is not to be regarded as carrying on business in this State merely because in this State it—

(a) is or becomes a party to any action or suit or arbitration proceeding; or

(b) effects settlement of an action, suit or proceeding or of any claim or dispute; or

(c) holds meetings of its directors or members or carries on other activities concerning its internal affairs; or

(d) maintains any account with an authorised deposit-taking institution; or

(e) effects any sale through an independent contractor; or

(f) solicits or procures any offer that becomes a binding contract only if the offer is accepted outside this State; or

(g) creates evidence of any debt or creates a charge on real or personal property; or

(h) secures or collects any of its debts or enforces its rights in regard to any securities relating to the debts; or

(i) conducts an isolated transaction that is completed within a period of 31 days, not being one of a number of similar transactions repeated from time to time.

367 Co-operatives law

S. 367 substituted by No. 13/2008 s. 14.

(1) A law of another State is a co-operatives law for the purposes of this Part if the Minister certifies in writing that the law substantially corresponds to the provisions of this Act (including this Part).

(2) If the Minister certifies a law of another State as a co-operatives law under subsection (1), the Minister must—

(a) notify the Minister administering the co-operatives law in that State; and

(b) publish a copy of the certification in the Government Gazette.

368 Excluded matter

S. 368 substituted by No. 13/2008 s. 14.

(1) A foreign co-operative authorised under this Part to carry on business in this State is declared to be an excluded matter for the purposes of section 5F of the Corporations Act in relation to the whole of the Corporations legislation other than to the extent specified in this section.

Note

This section ensures that neither the Corporations Act nor Part 3 of the Australian Securities and Investments Commission Act 2001 of the Commonwealth will apply to a foreign co-operative, other than to the extent specified in this section. Section 5F of the Corporations Act provides that if a State 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 concerned. However, other provisions of this Act apply certain provisions of the Corporations legislation to co-operatives as laws of this State.

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

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

(b) provisions that relate to the role of a co-operative in the formation of a company; and

(c) provisions that relate to substantial holdings of shares, by or involving a co-operative, in a company; and

(d) provisions that confer or impose functions on a co-operative as a member, or former member, of a corporation; and

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

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

(g) provisions that relate to securities of a co-operative, other than shares in, CCUs issued by, debentures of or deposits with a co-operative; and

(h) provisions relating to derivatives; and

(i) provisions relating to—

(i) financial services licensees (as defined in section 761A of the Corporations Act) whose licence covers dealing in, or providing advice about, securities; or

(ii) regulated principals (as defined in section 1430 of the Corporations Act) when dealing in, or providing advice about, securities as authorised by Subdivision D of Division 1 of Part 10.2 of that Act; and

(j) provisions relating to the carrying on of a financial services business (as defined in section 761A of the Corporations Act) relating to securities; and

(k) provisions relating to financial statements, and audits of financial statements, of—

(i) financial services licensees (as defined in section 761A of the Corporations Act) whose licence covers dealing in, or providing advice about, securities; or

(ii) regulated principals (as defined in section 1430 of the Corporations Act) when dealing in, or providing advice about, securities as authorised by Subdivision D of Division 1 of Part 10.2 of that Act; and

(l) provisions relating to money and scrip of clients of—

(i) financial services licensees (as defined in section 761A of the Corporations Act) whose licence covers dealing in, or providing advice about, securities; or

(ii) regulated principals (as defined in section 1430 of the Corporations Act) when dealing in, or providing advice about, securities as authorised by Subdivision D of Division 1 of Part 10.2 of that Act; and

(m) provisions relating to registers of interests in securities; and

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

(3) Subsection (1) does not operate 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 foreign co-operative—

(a) Part 1.2A (Disclosing entities); and

(b) Chapter 2L (Debentures); and

(c) Chapter 6D (Fundraising); and

(d) Part 7.10 (Market misconduct and other prohibited conduct relating to financial products and financial services).

Division 2—Mutual recognition of foreign co-operatives

S. 369 substituted by No. 13/2008 s. 14.

369 Operation of foreign co-operatives in this State

A foreign co-operative must not carry on business in this State as a co-operative unless it is authorised under this Part to carry on business in this State.

Penalty: 240 penalty units.

370 Authorisation to carry on business

S. 370 substituted by No. 13/2008 s. 14.

(1) A participating co-operative is, by this Act, authorised to carry on business in this State after notifying the Registrar in accordance with section 371 and section 437 (Lodgment of documents) that the participating co-operative intends to carry on business in this State.

(2) 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 State.

(3) A non-participating co-operative is, by this Act, authorised to carry on business in this State if the Registrar issues the co-operative an authorisation notice.

371 Notification to Registrar

S. 371 substituted by No. 13/2008 s. 14.

(1) A foreign co-operative that proposes to carry on business in this State must lodge with the Registrar a written notice in the form approved by the Registrar.

(2) The notice must be accompanied by the following—

(a) a statement, signed by 2 directors, or a director and the secretary of the co-operative, as to the following matters—

(i) that the co-operative is able to pay its debts as and when they become due and payable; and

(ii) that the co-operative complies and will continue to comply with the provisions of applicable laws of another State or other place under which the co-operative is registered, incorporated or formed; and

(iii) that no legal proceedings have been commenced or are pending against the co-operative in respect of a failure to comply, in its capacity as a co-operative, with a law of another State or any other place in which the co-operative carries on business under which the co-operative is registered, incorporated, formed or authorised to carry on business; and

(iv) the full name and address of each person who is to act as agent of the co-operative in this State; and

(v) the address of the proposed principal office of the co-operative in this State (if any); and

(vi) the name under which the co-operative proposes to carry on business in this State; and

(b) a copy of the certificate of registration, incorporation or formation of the co-operative and particulars of any condition or restriction to which the registration, incorporation or formation is subject; and

(c) any other documents or information that the Registrar may require or that are prescribed by the regulations; and

(d) the fee, if any, prescribed by the regulations.

(3) In the case of a non-participating co-operative, the notice must also be accompanied by the following—

(a) a copy of the current rules of the co-operative; and

(b) a copy of the latest financial report, directors' report and auditor's report for the co-operative; and

(c) the full name, date of birth and address of each director of the co-operative; and

(d) details of the proposed business activities to be carried on in this State; and

(e) details of any charges required to be registered pursuant to this Act.

372 Authorisation notices for participating co-operatives

S. 372 substituted by No. 13/2008 s. 14.

(1) The Registrar must, on a notice and documents being lodged in accordance with section 371 by a participating co-operative, issue to the co-operative a written notice certifying that the co-operative is authorised to carry on business in this State.

(2) A failure to issue any such notice to a participating co-operative does not affect the authority of the co-operative to carry on business in this State.

373 Authorisation notices for non-participating co-operatives

S. 373 substituted by No. 13/2008 s. 14.

The Registrar may issue to a non-participating co-operative a written notice certifying that the co-operative is authorised to carry on business in this State if a notice and documents are lodged by the co-operative in accordance with section 371 and the Registrar is satisfied that the rules of the co-operative—

(a) comply with co-operative principles; and

(b) include acceptable active membership provisions; and

(c) provide procedures acceptable to the Registrar for disclosure of information; and

(d) provide that a member has one vote only; and

(e) make adequate provision for the duties of directors; and

(f) provide for acceptable accounting standards for the co-operative.

S. 374 substituted by No. 13/2008 s. 14.

374 Name of foreign co-operative

A foreign co-operative that is authorised to carry on business in this State 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.

S. 375 substituted by No. 13/2008 s. 14.

375 When foreign co-operative not authorised to carry on business

A foreign co-operative ceases to be authorised to carry on business in this State 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 authority to carry on business in this State is withdrawn under section 376; or

(c) the Registrar notifies it under section 382 that it is not authorised to carry on business as a co-operative in this State.

S. 376 substituted by No. 13/2008 s. 14.

376 Withdrawal of authority to carry on business

(1) The Registrar may give written notice to a foreign co-operative requiring it to show cause (a ***show cause notice***), within the period specified in the notice, why its authority to carry on business in this State 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 State does not comply with this Division;

(b) that any of the statements, documents or information notified or lodged by the co-operative under this Division are materially false or misleading;

(c) that the circumstances of the co-operative have materially changed since the date the notice under section 371 was lodged by the co-operative;

(d) that the co-operative has, after notice from the Registrar, failed to comply with provisions of this Act applicable to the co-operative or provisions of the rules of the co-operative.

(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 foreign 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) has been established in relation to the foreign co-operative, give the co-operative a written notice withdrawing its authority to carry on business in this State.

(6) The Registrar may withdraw a show cause notice or other notice given under this section.

S. 377 substituted by No. 13/2008 s. 14.

377 Appeals

(1) A foreign co-operative may appeal to the Supreme Court against the following decisions—

(a) a decision not to issue an authorisation notice to the co-operative; and

(b) a decision of the Registrar to give written notice to the co-operative that it is not authorised to carry on business in this State.

(2) The Registrar must comply with an order of the Supreme Court on an appeal under this section.

S. 378 substituted by No. 13/2008 s. 14.

378 Application of Act and regulations to foreign co-operatives

The provisions of this Act that are specified in Schedule 7 apply with all necessary modifications and any modifications prescribed by the regulations, to a foreign co-operative that is authorised to carry on business in this State under this Part.

Division 3—General

S. 379 substituted by No. 13/2008 s. 14.

379 Name and place of origin to appear on seal and in business and other documents

(1) The name and place of origin of a foreign co-operative must appear in legible characters—

(a) on its seal; and

(b) in all notices, advertisements and other official publications of the co-operative; and

(c) in all its business documents.

(2) A foreign co-operative must not contravene subsection (1).

Penalty: 20 penalty units.

(3) An officer of a foreign 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 any 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—

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

Penalty: 20 penalty units.

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

Penalty: 20 penalty units.

(5) In this section—

business document, in relation to a foreign 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 regulations as a class of business documents.

S. 380 substituted by No. 13/2008 s. 14.

380 Supply of information to participating Registrars

The Registrar must, if requested to do so by a participating Registrar, supply free of charge to the participating Registrar information, or copies of public documents, held by the Registrar relating to a co-operative (including a foreign co-operative).

S. 381 substituted by No. 13/2008 s. 14.

381 Registrar to be notified of changes

A foreign co-operative must lodge with the Registrar particulars of any change in the information provided by the co-operative under section 371 within 28 days after the change (other than information of a kind referred to in section 371(3)(e)).

Penalty: 20 penalty units.

S. 382 substituted by No. 13/2008 s. 14.

382 Cessation of business

(1) A foreign co-operative authorised to carry on business under this Part must, within 7 days after ceasing to carry on business as a co-operative in this State, give the Registrar written notice of that fact.

Penalty: 60 penalty units.

(2) On notifying the Registrar that it has ceased to carry on business as a co-operative in this State, a foreign co-operative is no longer required to comply with this Part (other than Division 4).

(3) Unless the Registrar has been given written notice that the foreign co-operative has resumed carrying on business as a co-operative in this State, the Registrar must, one year after receiving the notice, notify it that it is not authorised to carry on business in this State.

383 Functions conferred on Registrar under co-operatives laws

S. 383 substituted by No. 13/2008 s. 14.

The Registrar may exercise any function conferred on the Registrar by or under a co-operatives law.

Division 4—Winding up of foreign co-operatives in this State

384 Winding up to relate to State activities

S. 384 substituted by No. 13/2008 s. 14.

(1) This Division applies to the winding up of the affairs of a foreign co-operative in or in relation to this State.

(2) A foreign co-operative may be wound up under this Division whether or not 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 Division has effect in addition to, and not in derogation of, any other provisions of this Act or any other law with respect to the winding up of co-operatives.

385 Court may order winding up

S. 385 substituted by No. 13/2008 s. 14.

(1) The Supreme Court may order the winding up of a foreign co-operative if—

(a) the Registrar has, as a result of an inquiry conducted under Division 2 or 4 of Part 15, stated that it is in the interests of the public, of the members, or of the creditors, that the co-operative be wound up; or

(b) the co-operative's authority to carry on business in this State has been withdrawn under this Act; or

(c) 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 foreign 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 foreign co-operative the subject of the application.

S. 386 substituted by No. 13/2008 s. 14.

386 Application of Corporations Act to winding up of foreign co-operatives

(1) The winding up or deregistration or withdrawal of an authority to carry on business in this State of a foreign co-operative is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the **Corporations (Ancillary Provisions) Act 2001** in relation to the application of Parts 5.4B and 5.6 and section 601AE of the Corporations Act.

(2) Parts 5.4B and 5.6 of the Corporations Act are applied subject to the modifications set out in Schedule 8 to this Act.

(3) Section 601AE of the Corporations Act applies to property that vests in the Registrar under section 387 of this Act as if the property were vested in the Registrar under section 601AD(2) of that Act.

(4) The fact that a foreign 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 Division.

387 Outstanding property of foreign co-operative

S. 387 substituted by No. 13/2008 s. 14.

(1) This section applies if, after the winding up of a foreign co-operative in this State, outstanding property of the body remains in this State.

(2) The estate and interest in the property, at law or in equity, of the body 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, vests by force of this section in—

(a) if the co-operative was registered, formed or incorporated in Australia or an external Territory, the person entitled to the property under the law of the place in which the co-operative was registered, formed or incorporated; or

(b) in any other case, the Registrar.

(3) If any claim, right or remedy of a liquidator may under this Division be made, exercised or availed of only with the approval or concurrence of the Supreme Court or some other person, the Registrar may, for the purposes of this section, make, exercise or avail himself or herself of the claim, right or remedy without the approval or concurrence.

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

387A Definitions

S. 387A inserted by No. 13/2008 s. 14.

In this Division—

appropriate Registrar, in relation to a proposed merger or transfer of engagements, means—

(a) the State Registrar, if the merger is to result in a State co-operative or the transfer is to a State 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 State concerned or the transfer is to such a co-operative;

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money) and includes securities, choses in action and documents;

instrument means an instrument (other than this Act) which creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law) and includes any judgment, order and process of a court;

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

original 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;

State co-operative means a co-operative registered in this State;

State Registrar means the person for the time being holding the office of Registrar of Co-operatives under this Act;

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.

387B Authority for merger or transfer of engagements

S. 387B inserted by No. 13/2008 s. 14.

(1) A State 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 Division.

(2) A State co-operative and a non-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 Division if—

(a) the merger is to result in a State co-operative; or

(b) the transfer is to a State co-operative.

387C Requirements before application can be made

S. 387C inserted by No. 13/2008 s. 14.

(1) Before a State co-operative and a participating co-operative 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—

(a) by a special resolution passed by special postal ballot; or

(b) if permitted by subsection (3), by a special resolution, or by a resolution of the board, of the co-operative.

(2) Before a State co-operative and a non-participating co-operative can apply for approval under this Division of a merger or transfer of engagements, the proposed merger or transfer of engagements—

(a) must have been approved—

(i) in the case of the non-participating co-operative, by a special resolution of the co-operative; or

(ii) in the case of the State co-operative, by a special resolution passed by special ballot; or

(b) if permitted by subsection (3), must have been approved—

(i) in the case of the non-participating co-operative, by a resolution of the board of the co-operative; or

(ii) in the case of the State co-operative, by a special resolution, or by a resolution of the board, of the co-operative.

(3) 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 State Registrar consents to that procedure applying in the particular case; and

(b) in the case of a merger or transfer affecting a participating co-operative, the participating Registrar also consents to that procedure applying in the particular case.

(4) A consent referred to in subsection (3) may be granted subject to conditions, including any condition that a disclosure statement be provided to members or directors.

(5) A co-operative that contravenes a condition of a consent is taken not to have been given consent.

387D Disclosure statement required

S. 387D inserted by No. 13/2008 s. 14.

(1) A special resolution of a State co-operative or foreign 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 appropriate Registrar specifying the following—

(a) the financial position of the State co-operative and the foreign 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; and

(b) any interest that any officer of the State co-operative or the foreign co-operative has in the proposed merger or transfer of engagements; and

(c) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to any officer or member of the State co-operative or foreign 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) in the case of a transfer of engagements—whether it is a total or partial transfer of engagements; and

(f) in the case of a merger—whether the merged co-operative will result in a State co-operative or a co-operative under the co-operatives law of the participating State concerned; and

(g) any other information that the Registrar directs.

(3) The disclosure statement must be sent to the members of the State co-operative or foreign 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 State co-operative or foreign co-operative from complying with this section.

(5) The appropriate Registrar may grant an exemption, or approve a disclosure statement, subject to any conditions it considers appropriate.

S. 387E inserted by No. 13/2008 s. 14.

387E Making an application

(1) An application for approval of a merger or transfer of engagements under this Division must be made to the State 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) in the case of a non-participating co-operative, details of voting on the special resolution (if any) of the co-operative; and

(c) any other information required by the Registrar to whom the application is made.

387F Approval of merger

S. 387F inserted by No. 13/2008 s. 14.

(1) If the State Registrar is the appropriate Registrar, he or she must approve a merger pursuant to an application under this Division if satisfied that—

(a) this Division has been complied with in relation to the application; and

(b) the proposed rules of the merged co-operative are adequate; and

(c) the certificate of registration of the State co-operative has been surrendered to the State Registrar; and

(d) in the case of a merger with a participating co-operative, the certificate of registration of the participating co-operative has been surrendered to the Registrar for the participating State concerned; and

(e) in the case of a merger with a non-participating co-operative, the merged co-operative will comply with this Act; and

(f) there is no good reason why the merged co-operative and its rules should not be registered.

(2) If the State Registrar is not the appropriate Registrar, he or she must approve a merger pursuant to an application under this Division if satisfied that the merger has been approved under the provision of the co-operatives law of the participating State that corresponds with subsection (1).

(3) On approving an application for merger, the State Registrar must—

(a) cancel the registration of the State co-operative involved in the merger; and

(b) if the merger is to result in a State co-operative, register the merged co-operative and its rules and issue to it a certificate of registration under this Act.

(4) A merger takes effect on the issue of the certificate of registration for the merged co-operative (whether under this Act or under the co-operatives law of the participating State concerned).

S. 387G inserted by No. 13/2008 s. 14.

387G Approval of transfer of engagements

(1) If the State Registrar is the appropriate Registrar, he or she must approve a transfer of engagements pursuant to an application under this Division if satisfied that—

(a) this Division has been complied with in relation to the application; and

(b) the rules or proposed rules of the transferee 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) in the case of a total transfer of engagements from a non-participating co-operative, the certificate of registration of the non-participating co-operative has been surrendered to the State Registrar; and

(e) in the case of a transfer of engagements by a non-participating co-operative, the transferee co-operative will comply with this Act; and

(f) there is no good reason why the transfer of engagements should not take effect.

(2) If the State Registrar is not the appropriate Registrar, he or she must approve a transfer of engagements pursuant to an application under this Division if satisfied that the transfer has been approved under the provision of the co-operatives law of the participating State that corresponds with subsection (1).

(3) A transfer of engagements takes effect on the day specified in the approval of the State Registrar.

387H Effect of merger or transfer of engagements

S. 387H inserted by No. 13/2008 s. 14.

(1) When a merger or transfer of engagements takes effect under this Division (the ***transfer day***), the following provisions apply to the extent necessary to give effect to the merger or transfer—

(a) persons who were members of the original co-operative immediately before the transfer day are members of the successor co-operative in accordance with its rules; and

(b) the assets of the original co-operative vest in the successor co-operative without the need for any conveyance, transfer, assignment or assurance; and

(c) the rights and liabilities of the original co-operative become the rights and liabilities of the successor co-operative; and

(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; and

(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; and

(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 as—

(a) a breach of contract or confidence or otherwise as a civil wrong; or

(b) a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or

(c) 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.

(3) A document or an instrument executed or registered for or with respect to a transfer of any property to give effect to this section in respect of a transfer of engagements is not liable to duty or to any fee chargeable under any Act for registration.

(4) A document or an instrument executed or registered for or with respect to a transfer of any property to give effect to this section in respect of a merger is not liable to duty or to any fee chargeable under any Act for registration if the co-operative formed by the merger is a non-trading co-operative.

387I Division applies instead of certain other provisions of this Act

S. 387I inserted by No. 13/2008 s. 14.

(1) This Division applies instead of Division 1 (Mergers and transfers of engagements) of Part 12, in respect of the merger of a State co-operative with a foreign co-operative.

(2) This Division applies instead of Division 1 of Part 12, in respect of a transfer of engagements between a State co-operative and a foreign co-operative.

Division 6—Liability of foreign co-operatives and State co-operatives operating in other States

387J Offences under this Act and co-operatives law

S. 387J inserted by No. 13/2008 s. 14.

If—

(a) an act or omission constitutes an offence under this Act and under a co-operatives law of a participating State; and

(b) the offender has been punished for that offence under the co-operatives law of the participating State—

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

Division 7—Savings and transitional provisions

S. 387K inserted by No. 13/2008 s. 14.

387K Application of Part to registered foreign co-operatives

(1) A foreign co-operative registered under this Part immediately before the commencement day (a ***registered foreign co-operative***) is taken on and after the commencement day to be authorised to carry on business as a foreign co-operative under this Part and this Part (except sections 370 and 371(1)) applies accordingly.

(2) The authorisation of a registered foreign co-operative is subject to the same conditions or restrictions that applied to its registration under this Act immediately before the commencement day.

(3) A registered foreign co-operative must lodge with the Registrar particulars of any change in relation to the co-operative in any matter of a kind listed in section 371(2)(a) within 28 days after the change.

Penalty: 20 penalty units.

(4) In addition to the grounds set out in section 376(1), the Registrar may give a show cause notice under that section to a registered foreign co-operative if the circumstances of the co-operative have materially changed since the co-operative was registered.

(5) In this section—

commencement day means the day on which section 14 of the **Co-operatives and Private Security Acts Amendment Act 2008** comes into operation.

PART 15—SUPERVISION AND PROTECTION OF CO-OPERATIVES

Division 1—Supervision and inspection

388 Definitions

In this Part—

co-operative venture means—

(a) any body corporate or unit trust formed by a co-operative or in the formation of which a co-operative participated; or

(b) any partnership, joint venture or association of persons or bodies formed or entered into by a co-operative;

legal practitioner means an Australian legal practitioner within the meaning of the **Legal Profession Act 2004**;

S. 388 def. of *legal practitioner* inserted by No. 18/2005 s. 18(Sch. 1 item 19.2).

premises includes any structure, building, aircraft, vehicle, vessel and place (whether built on or not) and any part of such a structure, building, aircraft, vehicle, vessel or place;

relevant documents means records or other documents that relate to the promotion, formation, membership, control, transactions, dealings, business or property of a co-operative.

389 *Co-operative* includes subsidiaries, foreign 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 foreign co-operative;

(b) a subsidiary of a co-operative or foreign co-operative;

(c) a co-operative venture;

(d) a co-operative or foreign co-operative, or a subsidiary of either, or a co-operative venture, that is in the course of being wound up or has been dissolved.

390 Appointment of inspectors

The Minister may appoint persons to be inspectors for the purposes of this Act.

391 Registrar and investigators have functions of inspectors

The Registrar, and any investigator exercising functions under Division 2, have and may exercise all the functions of an inspector and for that purpose are to be considered to be inspectors.

392 Inspector's identity card

(1) The Minister must provide each inspector with an identity card.

(2) An inspector must produce his or her identity card on request on applying for admission to any premises.

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

(1) An inspector may by notice in the prescribed form—

(a) require a co-operative to produce to the inspector at a time and place specified in the notice specified relevant documents relating to the co-operative; and

(b) require any person who is involved in the activities of a co-operative to produce to the inspector at a time and place specified in the notice specified relevant documents relating to the co-operative; and

(c) require any person who is involved in the activities of a co-operative—

(i) to attend before the inspector at a time and place specified in the notice; and

(ii) to answer any questions put to the person by the inspector relating to the promotion, formation, membership, control, transactions, dealings, business or property of the co-operative.

(2) A person is to be 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, banker, legal practitioner, auditor or other person acting in any capacity for or on behalf of, the co-operative; or

S. 393(2)(a) amended by No. 18/2005 s. 18(Sch. 1 item 19.3).

(b) is a person who has any relevant documents relating to the co-operative in his or her possession or control; or

(c) is a person who was a party to the creation of any relevant documents relating to the co-operative.

(3) A person is not subject to any liability by reason of complying with a requirement made or purportedly made under this section.

394 Inspectors' powers of entry

(1) An inspector has power to enter any of the following premises—

(a) any premises on which the affairs or activities of a co-operative are managed or conducted;

(b) any premises on which the inspector suspects on reasonable grounds there is evidence of the commission of an offence under this Act or the regulations;

(c) any premises on which the inspector suspects on reasonable grounds there are relevant documents.

(2) Despite subsection (1), the consent of the occupier or the authority of a search warrant is required to enter—

(a) any part of premises not used for the management or conduct of the affairs or activities of a co-operative; and

(b) any part of premises used for residential purposes (whether or not the part is also used for the management or conduct of the affairs or activities of a co-operative).

395 Powers of inspectors on premises entered

An inspector has the following powers on premises that the inspector is authorised to enter—

(a) power to search for evidence of any contravention of this Act or the regulations;

(b) power to search for relevant documents and to require any person on the premises to produce to the inspector any relevant

documents in the person's custody or under the person's control;

(c) power to require any person on the premises who is apparently involved in the management or conduct of the affairs or activities of a co-operative to answer questions or provide information;

(d) power to exercise the functions of an inspector under section 396 in relation to any relevant documents found on the premises or produced to the inspector.

396 Functions of inspectors in relation to relevant documents

(1) An inspector has the following powers in relation to relevant documents found by an inspector on premises entered by the inspector or produced to the inspector pursuant to a requirement made under this Division—

(a) power to take possession of the documents or secure them against interference;

(b) power to make copies, or take extracts from, the documents;

(c) power to require any person who was party to the creation of the documents to make a statement providing any explanation that the person is able to provide as to any matter relating to the creation of the documents or as to any matter to which the documents relate;

(d) power to retain possession of the documents for such period as is necessary to enable the documents to be inspected, and copies of, or extracts from, the documents to be made or taken.

(2) While an inspector retains possession of a document, the inspector must permit a person who would be entitled to inspect the document were it not in the possession of the inspector to inspect the document at any reasonable time and make a copy of, or take extracts from, the document.

(3) If an inspector takes possession of or secures against interference any relevant document and a person has a lien on the document, the inspector's actions do not prejudice the lien.

397 Offence—failing to comply with requirements of inspector

(1) A person who fails to comply with any requirement made of the person by an inspector under the authority of this Part is guilty of an offence and liable to a penalty not exceeding 120 penalty units or imprisonment for 12 months, or both unless the person establishes that he or she had a reasonable excuse for failing to comply.

(2) A person who in purported compliance with a requirement under this Division furnishes information or makes a statement that is false or misleading in a material particular is guilty of an offence and liable to a penalty not exceeding 120 penalty units or imprisonment for 12 months, or both unless the person establishes that he or she believed on reasonable grounds that it was true and not misleading.

(3) A person must not without reasonable excuse obstruct or hinder an inspector exercising functions under this Act.

Penalty: 120 penalty units or imprisonment for 12 months, or both.

(4) The occupier or person in charge of any premises must provide a person who enters the premises under the authority of this Part or pursuant to a search warrant referred to in section 399 with all reasonable facilities and assistance for the effective exercise of the person's powers under this Part or under the warrant.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

398 Protection from incrimination

(1) A person is not excused from making a statement pursuant to a requirement under this Division on the ground that the statement might tend to incriminate him or her.

(2) 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 Division.

(3) Except as provided by subsection (2), a statement made by a person in compliance with a requirement under this Division may be used in evidence in any criminal or civil proceedings against the person.

399 Search warrants

(1) An inspector may apply to a magistrate for the issue of a search warrant in respect of premises if the inspector believes on reasonable grounds—

(a) that the affairs or activities of a co-operative are being managed or conducted on the premises; or

(b) that there is evidence on the premises of the commission of an offence under this Act or the regulations; or

(c) that there are relevant documents on the premises.

(2) If a magistrate is satisfied by the evidence on oath, whether oral or by affidavit, that there are reasonable grounds for doing so, the magistrate may issue a search warrant authorising an inspector named in the warrant and any assistants the inspector considers necessary to enter the premises and exercise all or specified functions of an inspector on the premises.

(3) In addition to any other requirement, a search warrant issued under this section must state—

(a) the grounds for the issue of the warrant; and

(b) the premises to be searched; and

(c) any conditions to which the warrant is subject; and

(d) whether entry is authorised to be made at any time or during stated hours; and

(e) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.

(4) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and in the form prescribed under that Act.

(5) The rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

(6) A member of the police force may accompany an inspector executing a search warrant issued under this section and may take all reasonable steps to assist in the exercise of the functions of the inspector under this Act.

(7) Before executing a search warrant, the inspector named in the warrant or a person assisting the inspector must announce that he or she is authorised by the warrant to enter the premises and give any person at the premises an opportunity to allow entry to the premises.

(8) The inspector or a person assisting the inspector need not comply with subsection (7) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure that the effective execution of the search warrant is not frustrated.

(9) If an occupier or another person who apparently represents the occupier is present at premises when a search warrant is being executed, the inspector must—

(a) identify himself or herself to that person by producing his or her identity card for inspection by that person; and

(b) give to that person a copy of the execution copy of the warrant.

400 Copies or extracts of records to be admitted in evidence

(1) Subject to this section, in any legal proceedings (whether proceedings under this Act or otherwise), a copy of or extract from a record relating to affairs of a co-operative is admissible in evidence as if it were the original record or the relevant part of the original record.

(2) A copy of or extract from a record is not admissible in evidence under subsection (1) unless it is proved that the copy or extract is a true copy of the record or of the relevant part of the record.

(3) For the purposes of subsection (2), evidence that a copy of or extract from a record is a true copy of the record or of a part of the record may be given either orally or by an affidavit or statutory declaration by a person who has compared the copy or extract with the record or the relevant part of the record.

401 Privilege

(1) A legal practitioner is entitled to refuse to comply with a requirement under section 393 or 396 relating to a relevant document if—

(a) the document contains a privileged communication made by or on behalf of or to the legal practitioner in his or her capacity as a legal practitioner; or

(b) the legal practitioner is not able to comply with the requirement without disclosing a privileged communication made by or on behalf of or to the legal practitioner in his or her capacity as a legal practitioner.

(2) The legal practitioner is not entitled to refuse to comply with the requirement to the extent that he or she is able to comply with it without disclosing the privileged communication.

S. 401(3) amended by No. 44/2001 s. 3(Sch. item 18.38).

(3) The legal practitioner is also not entitled to refuse to comply with the requirement if the person by or on behalf of whom the communication was made or (if the person is under administration under Part 5.3A of the Corporations Act as applying under this Act, or in the course of being wound up) the administrator or the liquidator agrees to the legal practitioner complying with the requirement.

(4) If the legal practitioner refuses to comply with the requirement, he or she must immediately furnish 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 legal practitioner); and

(b) sufficient particulars to identify the document containing the communication (if the communication was made in writing).

Penalty: 60 penalty units.

402 Police aid for inspectors

(1) An inspector may call to his or her aid a member of the police force if he or she is obstructed, or believes on reasonable grounds that he or she will be obstructed, in the exercise of his or her functions as an inspector.

(2) A member of the police force has, while acting in aid of an inspector, all the functions of an inspector.

Division 2—Inquiries

403 Definitions

S. 403 amended by No. 11/2002 s. 3(Sch. 1 item 10).

In this Division—

affairs, in relation to 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, in relation to an inquiry under this Division, includes—

(a) the expenses of, and incidental to, the inquiry; and

(b) the expenses payable by the Registrar in any proceedings instituted by the Registrar under this Division in the name of the co-operative the subject of the inquiry; and

(c) so much of the remuneration of an officer or employee of the Crown as is determined by the Treasurer to be attributable to matters connected with the inquiry;

investigator means a person appointed under section 404;

S. 403 def. of *involved person* amended by No. 18/2005 s. 18(Sch. 1 item 19.4).

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 banker, legal practitioner, auditor or actuary, or in any other capacity, for the co-operative; or

(c) a person who has, or at any time had, in his or her possession any 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) to (e).

404 Appointment of investigators

(1) The Minister may appoint a person or persons to hold an inquiry into the affairs of a co-operative if the Minister considers that it is desirable to do so for the protection or otherwise in the interests of the public or of the members or creditors of the co-operative.

(2) The Minister may vary the terms and conditions of appointment of an investigator if the investigator agrees to the variation.

(3) In the course of an inquiry into the affairs of a 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.

405 Powers of investigators

(1) An investigator inquiring into the affairs of a co-operative may, by giving an involved person a notice in the prescribed form, require the person—

(a) to produce any document of which the person has custody or control and which relates to those affairs; or

(b) to give the investigator all reasonable assistance in connection with the inquiry; or

(c) to appear before the investigator for examination on oath or affirmation.

(2) An investigator may administer an oath or affirmation to an involved person given a notice under subsection (1).

(3) An investigator may take possession of a document produced by an involved person under subsection (1) and may retain it for the period that the investigator decides is necessary for the inquiry.

(4) While an investigator retains possession of a document, the investigator must permit a person who would be entitled to inspect the document were it not in the possession of the investigator to inspect the document at any reasonable time and make a copy of, or take extracts from, the document.

406 Examination of involved person

(1) A legal practitioner acting for an involved person—

(a) may attend an examination of the involved person by an investigator; and

(b) may, to the extent that the investigator permits, address the investigator and examine the involved person.

(2) An involved person is not excused from answering a question asked by the investigator even if seeking to be excused on the ground of possible self-incrimination.

(3) If an involved person answers a question of an investigator after having claimed possible self-incrimination by doing so, neither the question nor

the answer is admissible in evidence in any criminal proceedings other than—

(a) proceedings under section 408 for giving a false or misleading answer to the question; or

(b) proceedings on a charge of perjury in respect of the answer.

(4) An involved person who attends for examination by an investigator is entitled to be paid the prescribed allowance and the prescribed expenses.

407 Privilege

(1) An involved person who is a 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 legal practitioner in his or her capacity as a legal practitioner.

S. 407(2) amended by No. 44/2001 s. 3(Sch. item 18.38).

(2) The legal practitioner is not entitled to refuse to produce the document if the person by or on behalf of whom the communication was made or (if the person is under administration under Part 5.3A of the Corporations Act as applying under this Act, or in the course of being wound up) the administrator or the liquidator agrees to the legal practitioner producing the document.

(3) If the legal practitioner refuses to comply with the requirement to produce a document, he or she must immediately furnish in writing to the investigator—

(a) the name and address of the person to whom or by or on behalf of whom the communication was made (if known to the legal practitioner); and

(b) sufficient particulars to identify the document.

Penalty: 60 penalty units.

408 Offences by involved person

(1) An involved person must not—

(a) refuse or fail to comply with a lawful requirement of an investigator without showing reasonable cause for the refusal or failure; or

(b) give an investigator information knowing the information to be false or misleading in a material particular; or

(c) when appearing before an investigator—

(i) make a statement knowing the statement to be false or misleading in a material particular; or

(ii) fail to be sworn or to make an affirmation.

Penalty: 240 penalty units or imprisonment for 2 years, or both.

(2) If an investigator considers that a refusal or failure by a person to comply with a requirement of the investigator is an offence under subsection (1)(a), the investigator may certify the refusal or failure to the Supreme Court and the Supreme Court may then—

(a) order the involved person to comply with the requirement of the investigator within a stated period; or

(b) instead of, or in addition to, making that order, punish the involved person as for a contempt of the Supreme Court if satisfied that there was no lawful excuse for the refusal or failure to comply with the requirement of the investigator.

409 Offences relating to documents

If an inquiry into the affairs of a co-operative is being held under this Division, 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 the State any document or other property that belongs to, or is under the control of, the co-operative—

is guilty of an offence and liable to a penalty not exceeding 120 penalty units or 12 months imprisonment, or both, unless it is established that the person charged did not intend to defeat, delay or obstruct the inquiry.

409A Retention of records

S. 409A inserted by No. 35/2000 s. 31.

If an agent or other person has lodged a copy of a document under this Act signed by the agent or other person in accordance with an approval under section 438B, the agent or person must ensure that the original document signed by the person who is required to sign the document is kept so that it is able to be produced readily to the Registrar for not less than 7 years after the document was lodged with the Registrar.

Penalty: 30 penalty units.

410 Record of examination

(1) Except as provided by section 406, 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 provide a legal practitioner with a copy of a record of examination made by an investigator if the Registrar is satisfied that the legal practitioner is conducting, or is in good faith contemplating, legal proceedings in respect of affairs of the co-operative to which the record relates.

(4) A legal practitioner must not—

(a) use a copy of a record of examination otherwise than in connection with the preparation for, institution of, or conduct of, legal proceedings; or

(b) publish or communicate the record or any part of it for any other purpose.

Penalty: 60 penalty units.

411 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) an order should be made under section 414(3); or

(b) an application should be made under section 414(4) or (5); or

(c) an order and an application should both be made.

(4) A report by an investigator may be accompanied by any document of which the investigator has taken possession after being produced under this Division, in which case the Registrar—

(a) may retain the document for the period that the Registrar considers necessary in order to decide whether legal proceedings should be instituted as a result of the inquiry; and

(b) may retain the document for any further period that the Registrar considers to be necessary to enable legal proceedings to be instituted and prosecuted; and

(c) may permit the use of the document for any legal proceedings instituted as a result of the inquiry; and

(d) must permit inspection of the document by a person who would be entitled to inspect it if it were returned to its former custody; and

(e) may permit inspection of the document by another person while it is in the possession of the Registrar but only if the Registrar considers that the person has an interest in the inquiry and, because of that interest, refusal of the inspection would be unjust.

412 Proceedings following inquiry

(1) If legal proceedings are to be, or have been, instituted by the Registrar as a result of an inquiry under this Division, the Registrar may, by order, require a person who, in relation to the inquiry, was an involved person to give all such assistance in connection with the proceedings as the person is reasonably able to give.

(2) The Supreme Court may, on the application of the Registrar, order a person to comply with an order under subsection (1) if the person has refused or failed to do so.

(3) If the Registrar considers that, as a result of an inquiry under this Division, legal proceedings should, in the public interest, be instituted by a co-operative for the recovery of—

(a) damages in respect of fraud or other misconduct in connection with 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.

413 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 Division is admissible as evidence of any findings made by the investigator.

(2) Subsection (1) does not authorise the admission of evidence that is inadmissible under section 406.

414 Costs of inquiry

(1) The costs of an inquiry under this Division are to be paid out of money appropriated by Parliament.

(2) At the direction of the Treasurer, the Registrar must act under one or more of subsections (3), (4) and (5).

(3) The Registrar may, by order served on a co-operative, direct the co-operative to pay to the Crown all or part of the costs of an inquiry under this Division into the affairs of the co-operative.

(4) If proceedings are instituted by the Registrar under section 412 in the name of a co-operative, the court may, in the course of the proceedings and on the application of the Registrar, order that all or part of the costs of the inquiry that led to the proceedings be paid to the Crown by a specified 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 not more than 14 days later, order the convicted person to pay to the Crown 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 due to the Crown.

Division 3—Prevention of fraud etc.

415 Falsification of records

A person must not make, order or allow to be made any entry or erasure in, or any omission from—

(a) any financial records or financial statements of a co-operative or of a subsidiary of a co-operative; or

S. 415(a) amended by No. 44/2001 s. 3(Sch. item 18.39).

(b) any return, document or other record required to be sent, kept or delivered for the purposes of this Act—

with intent to falsify them or it, or to evade any of the provisions of this Act.

Penalty: 60 penalty units.

416 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 any property of a co-operative in his or her possession, withhold or misapply it or wilfully apply any part of it to purposes other than those authorised by the rules of the co-operative or by this Act.

Penalty: 60 penalty units.

(2) A person who is found guilty of an offence under subsection (1) must, if ordered to do so by the court, deliver up all such property and repay all money improperly applied.

Penalty: 60 penalty units or imprisonment for 6 months, or both.

417 Offering or paying commission

A person must not offer or pay any commission, fee or reward, whether pecuniary or otherwise, to an officer of a co-operative for or in connection with a transaction or proposed transaction between the person and the co-operative.

Penalty: 60 penalty units or imprisonment for 6 months, or both.

418 Accepting commission

(1) An officer of a co-operative must not accept any commission, fee or reward, whether pecuniary or otherwise, from any person for or in connection with a transaction or proposed transaction between the person and the co-operative.

Penalty: 60 penalty units or imprisonment for 6 months, or both.

(2) An officer of a co-operative who is guilty of any 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.

419 False statements in loan application etc.

(1) A person must not in or in relation to any application, request or demand for money made to or of any co-operative—

(a) give any information or makes any 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 any other person knowing it to be false or misleading in a material particular.

Penalty: 60 penalty units or imprisonment for 6 months, or both.

(2) If a person is convicted 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 such rights under a mortgage or other security given to it by the person to secure the repayment of money as it could exercise if there were a breach of a

covenant or of a term of any contract by which the security was given.

(3) The co-operative may exercise those rights whether the mortgage or other security was executed by the person alone or by the person and another person or other persons.

Division 4—Miscellaneous powers of the Registrar

420 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 such evidence as the Registrar directs for the purpose of showing that the applicants have good reason for requiring the meeting or inquiry and that the application is made without malicious motive.

(3) Notice of the application must be given to the co-operative as the Registrar directs.

(4) The applicants must give such security for the expenses of the meeting or inquiry as the Registrar directs.

421 Holding of special meeting

(1) The Registrar may direct the time and place at which the special meeting is to be held and the matters that are to be discussed and determined at the meeting.

(2) The Registrar must give such notice to members of the holding of the special meeting as the Registrar considers appropriate (despite any provision in the co-operative's rules as to the giving of notice).

(3) The special meeting has all the powers of a meeting called in accordance with the rules of the co-operative and has power to appoint its own chairperson (despite any rule of the co-operative to the contrary).

(4) The Registrar or any person nominated by the Registrar for the purpose may attend and address the meeting.

422 Expenses of special meeting or inquiry

The expenses of and incidental to a meeting called or an inquiry held under this Division (including under section 423) must be defrayed in such proportions as 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 any officer, member, former officer or former member of the co-operative.

423 Power to hold special inquiry into co-operative

The Registrar may without any 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.

424 Special meeting following inquiry

(1) On completion of any inquiry under this Division, the Registrar may call a special meeting of the co-operative.

(2) Sections 421 and 422 apply to such a meeting.

425 Information and evidence

(1) On any application for registration of a co-operative or registration or approval of any rule or document under this Act, the Registrar may require from the applicant such information and evidence as may be reasonable in order to show that the application should be granted.

(2) The Registrar may require from any co-operative such information and evidence as may be reasonable in order to show that the co-operative is bona fide carrying on business in accordance with the provisions of this Act.

(3) The Registrar may require from a co-operative such evidence as the Registrar thinks proper of all matters required to be done and of the entries in any document required to be furnished to the Registrar under this Act.

426 Extension or abridgment of time

(1) The Registrar may grant an extension of, or may abridge, any time for doing anything required to be done by a co-operative by this Act, the regulations or the rules of a co-operative on such terms (if any) as the Registrar determines.

(2) The Registrar may grant an extension of time even if the time for doing the thing has expired.

427 Power of Registrar to intervene in proceedings

(1) The Registrar may intervene in any proceedings relating to a matter arising under this Act or the regulations.

(2) When the Registrar intervenes in proceedings, the Registrar is taken to be a party to the proceedings and, subject to this Act, has all the rights, duties and liabilities of such a party.

(3) The Registrar may appear and be represented in any proceedings in which the Registrar wishes to intervene pursuant to this section—

(a) by a person to whom the Registrar has delegated the Registrar's functions under this Act or such of those functions as relate to a matter to which the proceedings relate; or

(b) by an employee of the public service who is engaged in the administration of this Act; or

S. 427(3)(b) amended by No. 46/1998 s. 7(Sch. 1).

(c) by a legal practitioner.

PART 16—ADMINISTRATION OF THIS ACT

Division 1—The Registrar

S. 428 amended by Nos 46/1998 s. 7(Sch. 1), 108/2004 s. 117(1) (Sch. 3 item 43).

428 Employment of Registrar

There is to be employed under Part 3 of the **Public Administration Act 2004** a Registrar of Co-operatives for the purposes of this Act.

429 Registrar's functions

(1) Subject to this Act, the Registrar is responsible for the general administration of this Act.

(2) The Registrar has the functions that are conferred on the Registrar by or under this Act.

(3) The Registrar must have a seal of office.

(4) The Registrar may enter into any arrangements or agreements with any person or body to act as the agent of the Registrar in the carrying out of his or her functions.

430 Deputy Registrar and other staff

S. 430(1) amended by Nos 46/1998 s. 7(Sch. 1), 108/2004 s. 117(1) (Sch. 3 item 43).

(1) There is to be appointed under the **Public Administration Act 2004** a Deputy Registrar and Assistant Registrars as are necessary for the purposes of this Act.

(2) The Deputy Registrar or an Assistant Registrar may exercise any of the functions conferred on the Registrar.

431 Delegation by Registrar

(1) The Registrar may by instrument delegate to any employee of the public service any of the Registrar's functions including this power of delegation.

S. 431(1) amended by No. 46/1998 s. 7(Sch. 1).

(2) A delegate may by instrument sub-delegate to an employee of the public service any function delegated under this section if the delegate is authorised by the terms of the delegation to do so.

S. 431(2) amended by No. 46/1998 s. 7(Sch. 1).

432 Register of Co-operatives

(1) There is established a Register of Co-operatives for the purposes of this Act.

(2) The Registrar must record in the Register those documents relating to co-operatives and proposed co-operatives lodged with the Registrar which the Minister requires by order published in the Government Gazette to be recorded in the Register.

433 Keeping of registers

(1) The Registrar must keep the Register of Co-operatives and such other registers as the Registrar considers necessary or desirable for the purposes of this Act.

(2) Subject to section 432, a register must be kept in the form and contain the particulars that the Registrar thinks fit.

(3) Subject to section 434, any document lodged with, furnished to or registered by the Registrar under this Act must be kept in the office of the Registrar.

(4) The Registrar may correct any error or omission in the Register by—

S. 433(4) inserted by No. 35/2000 s. 32.

(a) inserting an entry; or

(b) amending an entry; or

(c) omitting an entry—

if he or she decides that the correction is necessary.

S. 433(5) inserted by No. 35/2000 s. 32.

(5) The Registrar must not omit an entry in the Register unless satisfied that the whole of the entry was included in error.

434 Disposal of records by Registrar

Subject to the **Public Records Act 1973**, the Registrar may, if in the opinion of the Registrar it is no longer necessary or desirable to retain them, destroy or dispose of any of the following—

(a) any annual return or balance-sheet lodged more than 7 years ago;

(b) any document creating or evidencing a charge, or the complete or partial satisfaction of a charge, if a memorandum of satisfaction of the charge was registered more than 7 years ago;

(c) any other document (except the rules or any document affecting the rules of a co-operative) that was lodged, furnished or registered more than 15 years ago;

(d) any document lodged, furnished or registered in relation to a co-operative that was dissolved or ceased to be registered more than 15 years ago;

(e) any document a transparency or electronic image of which has been incorporated with a register kept by the Registrar or is otherwise kept in the office of the Registrar.

435 Inspection of Register

(1) A person may—

(a) inspect the Register on payment of the prescribed fee (if any); and

(b) inspect prescribed documents or documents of a prescribed class kept by the Registrar relating to a co-operative on payment of the prescribed fee (if any); and

(c) obtain, on payment of the prescribed fee, a certified copy of a document that the person may inspect under paragraph (b); and

(d) obtain, on payment of the prescribed fee, a copy of a document that the person may inspect under paragraph (b).

(2) If a reproduction or transparency of a document or an extract of information contained in a document and recorded in the Register is produced for inspection, a person is not entitled under subsection (1) to require the production of the original of that document.

436 Approvals by Registrar

(1) This section applies to any provision of this Act which imposes a requirement for the Registrar's approval of any action or thing.

(2) The Registrar may indicate in writing to an applicant for such an approval that the approval is to be considered to have been granted at the end of a specified period unless the Registrar informs the applicant in writing within that period that the approval has not been granted or is still being considered.

437 Lodgment of documents

A document is not to be taken to have been lodged under this Act or the regulations unless—

(a) all information required to be provided in or with the document is provided; and

(b) the prescribed fee (if any) has been paid.

438 Method of lodgment

(1) Subject to section 437, it is sufficient compliance with a requirement under this Act or the regulations that a document be lodged with the Registrar if the Registrar receives a copy of the document by facsimile or electronic transmission.

(2) If the Registrar receives from a person a copy of a document under subsection (1), the Registrar may require that person to produce and lodge 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 lodged the document.

S. 438A inserted by No. 35/2000 s. 29.

438A Signing of documents

(1) Despite any other provision of this Act if the Registrar is satisfied that it is not practicable to obtain the signature of a person required by this Act to sign a document the Registrar may accept the document without its being signed by that person but the person is not relieved of the requirement to sign the document.

(2) If a copy of a document has been received by the Registrar for the purposes of lodgement under this Act or the regulations made under this Act, it is sufficient compliance with a requirement for the document to be signed if the original document is signed.

438B Approval of special lodging arrangements

S. 438B inserted by No. 35/2000 s. 29.

(1) Despite the requirements of this Act, the Registrar, by written notice, may give approval for a special arrangement for the electronic transmission or lodging of copies of documents under this Act to a specified agent or person on behalf of a specified person or persons or class of persons.

(2) An approval may provide an exemption (or a partial exemption) for the person or persons for or on behalf of whom the documents are lodged from specified provisions of this Act relating to the authentication or signature of documents and the lodging of documents.

(3) The Registrar may grant or refuse an approval to a person who applies in writing for that approval.

(4) The Registrar may vary or cancel an approval by written notice.

(5) The Registrar may impose any condition on an approval under this section including a condition that the Registrar will refuse to accept a document for lodgement unless he or she is satisfied that the board of the co-operative or proposed co-operative has given written authorisation to the agent or other person specified in the approval—

(a) to sign copies of specified documents for or on behalf of the person or persons who would otherwise be required by or under this Act to sign the documents;

(b) to lodge with the Registrar copies of specified documents for or on behalf of the person who would otherwise be required by or under this Act to lodge the documents.

(6) The Registrar must note on the Register details of any authorisations required under subsection (5).

(7) A document required to be lodged by a person under this Act is deemed to be signed by the person or persons required to sign the document if a copy of the document is signed on the person's or persons' behalf by a person authorised in accordance with subsection (5) to so sign the copy of the document.

(8) Subsection (7) does not relieve any person who would otherwise be required to sign the document from signing the original document.

439 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 that the document—

(a) contains matter contrary to law; or

(b) contains matter, that in a material particular, is false or misleading in the form or context in which it is included; or

(c) by reason of an omission or misdescription, has not been duly completed; or

(d) does not comply with the requirements of this Act; or

S. 439(1)(e) amended by No. 35/2000 s. 30.

(e) contains any error, alteration or erasure; or

S. 439(1)(f) inserted by No. 35/2000 s. 30.

(f) if submitted in electronic form, is not readily accessible by the Registrar so as to be useable by the Registrar.

(2) If the Registrar refuses to register or rejects a document under subsection (1), the Registrar may request—

(a) that the document be appropriately amended; or

(b) that a fresh document be submitted in its place; or

(c) if the document has not been duly completed, that a supplementary document in the form approved by the Registrar be submitted.

Division 2—Evidence

440 Certificate of registration

(1) A certificate of registration of a co-operative issued under this Act is conclusive evidence that the co-operative is incorporated under this Act and that all the requirements of this Act in respect of registration have been complied with.

(2) This section does not affect any provisions of this Act for the winding up or dissolution of the co-operative or the cancellation of its registration.

441 Certificate evidence

(1) If a function under this Act 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—

(a) that the thing had or had not been done within that period; or

(b) that the thing had or had not been done by a specified date.

(2) The Registrar may issue a certificate stating that a requirement of this Act specified in the certificate—

(a) had, or had not, been complied with at a date or within a period specified in the certificate; or

(b) had been complied with at a date specified in the certificate but not before that date.

(3) The 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 Act.

(4) A certificate given by the Registrar under this section is evidence of the matters stated in the certificate.

442 Orders published in the Government 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 or the regulations is evidence of the giving or issuing of the order, notice, exemption or other instrument of which it purports to be a copy.

443 Records kept by co-operatives

(1) A record kept by a co-operative under a requirement of this Act is admissible in evidence in any proceedings and is evidence of any matter stated or recorded in the record.

(2) A document purporting to be a record kept by a co-operative is, unless the contrary is proved, to be considered to be a record kept by the co-operative under a requirement of this Act.

(3) A copy of any 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 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.

444 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 duly 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.

445 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.

446 The Registrar and proceedings

(1) Judicial notice must be taken of the signature or the facsimile of the signature (by whatever process it is produced) and seal of any person who holds or has held the office of Registrar, if the signature or facsimile signature or seal purports to be attached to any certificate or other official document.

(2) This section extends to any copy of the rules of a co-operative certified by the Registrar to be a true copy of its registered rules.

(3) In any proceedings, no proof is required (until evidence is given to the contrary) of the appointment of the Registrar or any former Registrar.

447 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 any proceedings evidence of the rules.

448 Registers

The register of directors, members and shares of a co-operative is evidence of the particulars directed or authorised by or under this Act to be inserted in the register.

PART 17—OFFENCES AND PROCEEDINGS

Division 1—General enforcement provisions

Pt 17 Div. 1 (Heading) inserted by No. 103/2004 s. 29.

449 Offences by officers of co-operatives

(1) If a co-operative contravenes a provision of this Act or the regulations—

(a) any person who is a director of the co-operative or concerned in its management is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention; and

(b) any other officer of the co-operative who by a wilful act or omission is the cause of the contravention is taken to have contravened the same provision.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the co-operative has been proceeded against or convicted under that provision.

(3) This section does not affect any liability imposed on a co-operative for an offence committed by the co-operative against this Act.

450 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 Act or the regulations, the co-operative must, not later than 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 in respect of the offence to which the conviction relates; and

(c) the nature of the offence to which the conviction relates.

451 Secrecy

(1) A person—

(a) who is, or at any time was, engaged in the administration of this Act or the former Act; and

(b) who, except as provided by this section, records, makes use of or divulges any information obtained in the course of that administration—

is guilty of an offence and liable to a penalty not exceeding 60 penalty units.

(2) Subsection (1) does not apply to—

(a) the recording, making use of or divulging of information in the course of the administration of this Act; or

(b) the recording or making use of information for the purpose of divulging it as permitted by subsection (3) or (4); or

(c) the divulging of information as permitted by subsection (3) or (4).

(3) Information may be divulged—

(a) for the purposes of criminal proceedings; or

(b) for the purposes of any proceedings under this Act or of an inquiry authorised by an Act; or

(c) with the consent of the person to whom the information relates; or

(d) in accordance with a requirement imposed under the **Ombudsman Act 1973**; or

(e) in accordance with a reciprocal arrangement under section 461.

(4) Information may be divulged to—

(a) the Minister; or

(b) the Treasurer; or

(c) the Commissioner of State Revenue; or

(d) the Auditor-General;

S. 451(4)(d) substituted by Nos 93/1997 s. 28(Sch. item 7), 53/1999 s. 26(Sch. item 6).

(e) the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation holding office under a law of the Commonwealth; or

(f) the Australian Securities and Investments Commission; or

S. 451(4)(f) amended by No. 44/2001 s. 3(Sch. item 18.40).

(g) the person who, under a law of another State, or of a Territory, administers a law of the State or Territory that relates to taxation or the imposition of a duty; or

(h) any special commission (within the meaning of the **Evidence (Commissions) Act 1982**) if—

(i) the Registrar has received a written request in writing 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 that person written approval of the communication of the communication of that information; or

(i) a person seeking information under a reciprocal arrangement under section 461; or

(j) a member of the police force exercising functions as such; or

(k) a person nominated by a person referred to in paragraphs (a) to (g); or

(l) any person, to whom, in the opinion of the Registrar, it is in the public interest that the information be divulged.

(5) For the purposes of this section, a person is, or was, engaged in the administration of this Act or the former Act if the person exercises, or at any time exercised, a function as—

(a) the Registrar holding office under this Act or the former Act; or

(b) an inspector appointed under this Act or the former Act; or

(c) an investigator appointed under this Act; or

(d) a person appointed or employed for the purposes of this Act or the former Act.

(6) In this section—

divulge, in relation to information, means—

(a) communicate the information verbally; or

(b) make available a document containing the information; or

(c) make available anything from which, by electronic process or otherwise, the information may be obtained; or

(d) communicate the information in any other manner;

former Act means the **Co-operation Act 1981**.

452 False or misleading statements

(1) A person who, in a document required for the purposes of this Act or lodged with the Registrar makes, or authorises the making of, a statement knowing it to be false or misleading in a material particular is guilty of an offence and liable to a penalty not exceeding 120 penalty units.

(2) A person who, from a document required for the purposes of this Act or lodged with the Registrar omits, or authorises the omission of, anything knowing that the omission makes the document misleading in a material particular is guilty of an offence and liable to a penalty not exceeding 120 penalty units.

(3) A person who, in a document required for the purposes of this Act or lodged with the Registrar makes, or authorises the making of, a statement that is false or misleading in a material particular is guilty of an offence and liable to a penalty not exceeding 60 penalty units unless it is proved that the person had taken reasonable precautions aimed at avoiding the making or authorising of false or misleading statements in such a document.

(4) If an omission makes a document required for the purposes of this Act or lodged with the Registrar misleading in a material respect, a person who made or authorised the omission is guilty of an offence and liable to a penalty not exceeding 60 penalty units unless it is proved that the person

had taken reasonable precautions aimed at avoiding the making or authorising of omissions that would make such a document false or misleading.

453 Further offence for continuing failure to do required act

(1) If a provision of this Act requires an act to be done and it has not been done, the obligation to do the act continues until the act is done—

(a) even if a person has been convicted of an offence in relation to the failure to do the act; and

(b) even if the provision required the act to be done within a particular period or before a particular time and that period has ended or that time has passed.

(2) If a person is convicted of an offence (***a primary conviction***) for a failure to do the act (whether it is the first or a second or subsequent offence in relation to the failure) and the failure to do the act continues after the time of the conviction, the person is guilty of a further offence for that continuing failure.

(3) That further offence is constituted by the failure to do the act during the period that begins with the primary conviction and ends when proceedings for the further offence are commenced or the act concerned is done (whichever happens first). This period is ***the further offence period***.

(4) Proceedings for the further offence are to be considered to have been commenced on the day on which the information for the further offence is laid or on such earlier day as the information may specify for that purpose.

(5) The maximum penalty for the further offence is the penalty calculated by multiplying half the value of a penalty unit fixed by the Treasurer under section 5(3) of the **Monetary Units Act 2004** by the number of days in the further offence period.

S. 453(5) amended by No. 10/2004 s. 15(Sch. 1 item 2).

454 Civil remedies

(1) If a co-operative in making, guaranteeing or raising any loan or receiving any deposit contravenes any provision of this Act or the regulations or any rule of the co-operative, the civil rights and liabilities of the co-operative or any other person in respect of the recovery of the loan or deposit are not affected or prejudiced by the contravention but the money becomes immediately payable.

(2) The same remedies may be had for the recovery of the loan or deposit and for the enforcement of any security for it as if there had not been a contravention of this Act or the regulations or of the rules of the co-operative.

455 Injunctions

(1) If the Supreme Court is satisfied on the application of the Registrar or a person whose interests have been, are or would be affected by the conduct that another person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute—

(a) a contravention of this Act or the regulations; or

(b) attempting to contravene this Act or the regulations; or

(c) aiding, abetting, counselling or procuring a person to contravene this Act or the regulations; or

(d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act or the regulations; or

(e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act or the regulations; or

(f) conspiring with others to contravene this Act or the regulations—

the Supreme Court may grant an injunction on such terms as the Supreme Court thinks appropriate, restraining that other person from engaging in the conduct and, if in the opinion of the Supreme Court it is desirable to do so, requiring that other person to do any act or thing.

(2) If in the opinion of the Supreme Court it is desirable to do so, the Court may grant an interim injunction pending determination of the application.

(3) The Supreme Court may discharge or vary an injunction granted under this section.

(4) The power of the Supreme Court to grant an injunction restraining a person from engaging in conduct may be exercised—

(a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and

(b) whether or not the person has previously engaged in conduct of that kind; and

(c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

(5) The power of the Supreme Court to grant an injunction requiring a person to do an act or thing may be exercised—

(a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and

(b) whether or not the person has previously refused or failed to do that act or thing; and

(c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

(6) If the Supreme Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.

456 Proceedings for offences etc.

(1) Proceedings for an offence under this Act may be instituted at any time before the expiration of 3 years after the alleged commission of the offence.

(2) Proceedings for an offence may be instituted by the Registrar or any aggrieved person.

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

Division 2—Infringement notices

Pt 17 Div. 2 (Heading and ss 456A–456I) inserted by No. 103/2004 s. 30.

S. 456A inserted by No. 103/2004 s. 30.

456A Definition

In this Division—

authorised officer means—

(a) an inspector appointed under Part 15;

(b) a member of the police force;

(c) a person authorised in writing by the Registrar.

S. 456B inserted by No. 103/2004 s. 30.

456B Power to serve a notice

(1) An authorised officer may serve an infringement notice on any person that he or she has reason to believe has committed an offence against a provision of this Act specified in Schedule 6.

S. 456B(2) substituted by No. 32/2006 s. 94(Sch. item 6(1)).

(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** and the penalty for that offence is the prescribed infringement penalty in respect of that offence.

Ss 456C-456I inserted by No. 103/2004 s. 30, repealed by No. 32/2006 s. 94(Sch. item 6(2)).

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PART 18—GENERAL

457 Exemption from stamp duty

S. 457 amended by No. 13/2008 s. 15 (ILA s. 39B(1)).

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

(a) the certificate of registration of a co-operative;

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

S. 457(2) inserted by No. 13/2008 s. 15.

(2) An instrument issued or executed in connection with a CCU of a co-operative is not exempt under subsection (1).

458 Co-operative ceasing to exist

(1) As soon as practicable after a co-operative is dissolved or has otherwise ceased to exist, the Registrar must register the dissolution and cancel the registration of the co-operative.

(2) The Registrar may remove from any register kept by the Registrar the name of any co-operative that has been dissolved or otherwise ceased to exist.

(3) A co-operative that has transferred its engagements to another co-operative is to be considered to have ceased to exist.

459 Service of documents on co-operative

(1) A document may be served on a co-operative by post or by leaving it at the registered office of the co-operative with a person who appears to be aged 16 or more.

(2) A document may be served on a foreign co-operative—

(a) by post; or

(b) by leaving it with a person who appears to be aged 16 or more and is at a place where the foreign co-operative carries on business in Victoria; or

(c) by leaving it at the registered office in Victoria of the foreign co-operative registered under Part 14.

(3) For the purpose of serving a document under this section by post, it is properly addressed if—

(a) in the case of a co-operative, it is addressed to the registered office of the co-operative; or

(b) in the case of a foreign co-operative, it is addressed to a place in Victoria where the foreign co-operative carries on business.

(4) This section does not affect the operation of any provision of a law or of the rules of a court authorising a document to be served on a co-operative or a foreign co-operative in any other way.

460 Service on member of co-operative

(1) A notice required under this Act to be given to a member of a co-operative must be in writing.

(2) A notice or other document required under this Act 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 Victoria or in the area served by the co-operative, if—

(i) the co-operative is a non-trading co-operative; or

(ii) the member's whereabouts are unknown to the co-operative; or

(iii) the Registrar permits notice to be given to members of that co-operative in that manner.

461 Reciprocal arrangements

(1) If a reciprocal arrangement with another State or a Territory is in force, the Registrar—

(a) may, at the request of the appropriate official of the State or Territory, provide the official with information or documents relating to a co-operative; and

(b) may request the appropriate official of the State or Territory to provide the Registrar with documents or information relating to an organisation that, under the arrangement, is an organisation corresponding to a co-operative.

(2) A reciprocal arrangement with another State or a Territory is an arrangement made between the Minister and a representative of the government of the other State or the Territory under which it is agreed—

(a) that the 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.

462 Translations of documents

A requirement imposed by or under this Act to furnish or lodge a document or make a document available for inspection is, in the case of a document that is not in the English language, to be considered to include a requirement that a

translation of the document be furnished, lodged or made available for inspection at the same time.

463 Regulations

(1) The Governor in Council may make regulations not inconsistent with this Act for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without affecting the generality of subsection (1), regulations may be made for or with respect to the following—

(a) the making of applications for the exercise of a function by the Registrar, including the use of a form approved by the Registrar;

(b) the manner of lodgment of documents with the Registrar (including electronic lodgment and lodgment by facsimile);

(c) fees to be paid in connection with the administration of this Act including fees for lodgment of any documents under this Act and additional fees for late lodgment of any documents under this Act;

S. 463(2)(d) inserted by No. 35/2000 s. 33.

(d) the keeping of records of documents required under this Act in any form approved by the Registrar.

(3) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

(4) Regulations relating to fees—

(a) may prescribe different fees for different classes of cases;

(b) may authorise the Registrar to waive, reduce or refund fees in particular cases or classes of cases.

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PART 19—REPEALS, AMENDMENTS, SAVINGS AND TRANSITIONAL

464 Repeal of Co-operation Act 1981

The **Co-operation Act 1981** is **repealed**.

465 Repeal of Part VI of the Housing Act 1983

Part VI of the **Housing Act 1983** is **repealed**.

466 Savings and transitional provisions

Schedule 5 has effect.

S. 467 repealed by No. 103/2004 s. 31.

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SCHEDULES

SCHEDULE 1

MATTERS FOR WHICH RULES MUST MAKE PROVISION

1 Requirements for all co-operatives

The rules of all co-operatives must set out or make provision for each of the following—

1. The name of the co-operative;
2. Active membership provisions (within the meaning of Part 6);
3. 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;
4. 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;
5. The circumstances in which members may be expelled or suspended, and the rights and liabilities of expelled and suspended members;
6. The circumstances in which membership ceases;
7. Any charges or subscriptions which are to be payable by a member to the co-operative;
8. The circumstances in which fines and forfeitures may be imposed on members of the co-operative, and the amount of the fines, not exceeding the prescribed maximum amount;

9. The grievance procedures for settling disputes under the rules between the co-operative and any of its members as defined in section 88, or between a member and any other member;

10. The restrictions, if any, on the powers of the co-operative and the board;

11. The number of directors, the qualification of directors, and the manner of electing, remunerating and removing directors and filling a vacancy, the period for which directors are to hold office, and whether directors are to retire by rotation or otherwise and for the holding of annual elections;

12. The quorum for meetings, and the procedure at meetings, of the board;

13. The device, custody and use of the seal of the co-operative;

14. The manner in which 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 and on behalf of the co-operative;

15. Provision for the custody of securities belonging to the co-operative;

16. The manner in which debentures may be transferred;

17. The date on which the financial year of the co-operative concludes;

Sch. 1 cl. 1 item 18 amended by No. 44/2001 s. 3(Sch. item 18.41).

18. Provision for the financial statements of the co-operative to be audited annually or more frequently and the manner of appointment of the auditor;

19. The manner in which any loss which may result from the transactions of the co-operative is to be provided for;

20. The manner of calling general and special meetings, the requisite notices of meetings, and the quorum for meetings, of the co-operative;

21. The procedure at meetings of the co-operative, including the rights of members in voting at meetings, the manner of voting, and the majority necessary for carrying resolutions;

22. The method of conducting postal ballots, including special postal ballots, including the sending and lodgment of information and votes by facsimile or electronic means;

23. The manner of altering the rules;

24. The manner in which the co-operative may be wound-up;

25. Any matters that may be prescribed, whether in addition to or in substitution for any matter specified in this clause;

26. Any other matters that to the co-operative appear necessary or desirable.

2 Additional matters—co-operatives with share capital

In addition to the matters specified in clause 1, the rules of a co-operative with a share capital must set out or make provision for each of the following—

1. The nominal value of each share in the co-operative;

2. The amount of the contingent liability, if any, attaching to shares;

3. 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;

4. The periodic subscriptions by which or the manner in which shares are to be paid for;

5. In the case of a trading co-operative, the manner in which any surplus may be distributed;

6. The allocation of a deficiency on the winding up of a co-operative;

7. Provision for the forfeiture of shares on expulsion or on failure to pay any subscription or call, the extent to which members whose shares have been forfeited are to remain liable for any amount still unpaid in respect of them, and the sale or cancellation of forfeited shares;

8. The manner in which shares may be transferred;

9. Any matters that may be prescribed, whether in addition to or in substitution for any matter specified in this clause.

3 Additional matters—non-trading co-operatives

In addition to the matters specified in clauses 1 and 2, the rules of a non-trading co-operative must provide—

1. That there must be no return or distribution on surplus or share capital to members other than the nominal value of shares (if any) at winding up;

2. For the manner of distribution of the surplus property at winding up.

SCHEDULE 2

RELEVANT INTERESTS, ASSOCIATES, RELATED BODIES

PART 1—RELEVANT INTERESTS

1 Terminology used in this Schedule

(1) This clause applies for the purposes of this Part.

(2) Power to vote in respect of a right to vote is power to exercise, or to control the exercise of, the right to vote.

(3) A reference to power to dispose of a share includes a reference to power to exercise control over the disposal of the share.

(4) A reference to power or control includes a reference to power or control that is direct or indirect or is, or can be, exercised as a result of, by means of, in breach of, or by revocation of, trusts, agreements and practices, or any of them, whether or not they are enforceable.

(5) Power to vote in respect of a right to vote, or power to dispose of a share, that is exercisable by 2 or more persons jointly is to be considered to be exercisable by either or any of those persons.

(6) A reference to a controlling interest includes a reference to an interest that gives control.

2 Basic rules—relevant interests

(1) A person who has power to vote in respect of a right to vote has a relevant interest in the right to vote.

(2) A person who has power to dispose of a share has a relevant interest in the share.

3 Control of body corporate having power in relation to a share

If a body corporate has, or is by this Part to be considered to have—

(a) power to vote in respect of a right to vote; or

(b) power to dispose of a share—

a person is to be considered for the purposes of this Part to have in relation to the right to vote or share the same power as the body has, or is to be considered to have, if—

(c) the body is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person in relation to the exercise of the power referred to in paragraph (a) or (b); or

(d) the person has a controlling interest in the body.

4 Control of 20% of voting power in body corporate having power in relation to a share

If a body corporate or an associate of a body corporate has, or is by this Part (other than this clause) to be considered to have—

(a) power to vote in respect of a right to vote; or

(b) power to dispose of a share—

a person is to be considered for the purposes of this Part to have in relation to the right to vote or share the same power as the body or associate has, or is to be considered to have, if—

(c) the person has; or

(d) an associate of the person has; or

(e) associates of the person together have; or

(f) the person and an associate or associates of the person together have—

power to vote in respect of the right to vote attached to not less than 20% of the voting shares in the body.

5 Deemed relevant interest in advance of performance of agreement that will give rise to a relevant interest

If a person—

(a) has entered into an agreement with another person with respect to an issued share or right to vote in which the other person has a relevant interest; or

(b) has a right enforceable against another person in relation to an issued share or right to vote in which the other person has a relevant interest, whether the right is enforceable presently or in the future and whether or not on the fulfilment of a condition; or

(c) has an option granted by another person, or has granted to another person an option, with respect to an issued share or right to vote in which the other person has a relevant interest—

and, on performance of the agreement, enforcement of the right, or exercise of the option, the first-mentioned person would have a relevant interest in the share or right to vote, the first-mentioned person is to be considered for the purposes of this Part to have that relevant interest in the share or right to vote.

6 Control of body corporate having a relevant interest by virtue of clause 5

If a body corporate is by clause 5 to be considered to have a relevant interest in a share in or right to vote at meetings of a co-operative, a person is to be considered for the purposes of this Part to have a relevant interest in the share or right to vote if—

(a) the body corporate is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person in relation to the exercise of power to vote in respect of that right to vote or power to dispose of those shares; or

(b) the person has a controlling interest in the body corporate; or

(c) the person has power to vote in respect of the right to vote attached to not less than 20% of the voting shares in the body corporate.

7 Matters not affecting application of Schedule

(1) It is immaterial for the purposes of this Part whether or not power to vote in respect of a right to vote, or power to dispose of a share—

(a) is express or implied or formal or informal; or

(b) is exercisable by a person alone or jointly with any other person or persons; or

(c) cannot be related to a particular share; or

(d) is, or can be made, subject to restraint or restriction.

(2) A relevant interest in a share or right to vote is not to be disregarded merely because of either or both of the following—

(a) its remoteness;

(b) how it arose.

8 Body corporate may have a relevant interest in its own shares

A body corporate may, by virtue of this Part, be considered to have a relevant interest in a share in or right to vote arising from membership of the body itself.

9 Exclusions—money-lenders

A relevant interest of a person in a share or right to vote is to be disregarded if the person's ordinary business includes lending money and the person has authority to exercise powers as the holder of the relevant interest only because of a security given for the purposes of a transaction entered into in the ordinary course of business in connection with lending money, other than a transaction entered into with an associate of the person.

10 Exclusions—certain trustees

A relevant interest of a person in a share or right to vote is to be disregarded if—

(a) the share or right is subject to a trust; and

(b) the person has the relevant interest as a trustee of the trust; and

(c) either—

(i) a beneficiary under the trust is by clause 5 to be considered to have a relevant interest in the share or right because the beneficiary has a presently enforceable and unconditional right referred to in clause 5(b); or

(ii) the person is a bare trustee.

11 Exclusions—instructions to securities dealer to dispose of share

A relevant interest of a person in a share or right to vote is to be disregarded if—

(a) the person's ordinary business includes dealing in securities; and

(b) the person has authority to exercise powers as the holder of the relevant interest only because of instructions given to the person, by or on behalf of another person, to dispose of the share on the other person's behalf in the ordinary course of that business.

12 Exclusions—honorary proxies

A relevant interest of a person in a share or right to vote is to be disregarded if the person has it only because of having been appointed, otherwise than for valuable consideration given by the person or an associate of the person, to vote as a proxy or representative at a meeting of members, or of a class of members, of a body corporate.

13 Exclusions—holders of prescribed offices

A relevant interest of a person in a share or right to vote is to be disregarded if the person has it because of holding a prescribed office.

14 Prescribed exclusions

The regulations may provide that specified relevant interests in specified shares are, in specified circumstances and subject to specified conditions (if any), to be disregarded for the purposes of specified provisions of this Act.

15 Effect of Schedule

(1) Nothing in this Schedule limits the generality of anything else in it.

(2) A person does not have a relevant interest in a share of a co-operative or right to vote in respect of a co-operative except as provided in this Schedule.

16 Relevant interest—body corporate other than co-operative

Sch. 2 cl. 16 amended by No. 44/2001 s. 3(Sch. item 18.42).

A reference in this Act (including in this Schedule) to a relevant interest in a share of a body corporate other than a co-operative or a right to vote in respect of a body corporate other than a co-operative is to be construed in accordance with the Corporations Act.

PART 2—ASSOCIATES

17 Effect of Part

A person is not an associate of another person except as provided by this Part.

18 Associates of a body corporate

The associates of a body corporate include the following—

(a) a director or secretary of the body;

(b) a related body corporate;

(c) a director or secretary of a related body corporate.

19 Matters relating to voting rights

(1) If a reference to an associate of a person relates to—

(a) the extent of power to exercise, or to control the exercise of, the voting power attached to voting shares in or arising from membership of a body corporate; or

(b) the person's entitlement to shares in a body corporate; or

(c) an offer to purchase shares to which Division 2 of Part 11 applies—

the reference includes a reference to another person with whom the person has, or proposes to enter into, an agreement referred to in subclause (2).

(2) Subclause (1) applies to an agreement—

(a) because of which one of the persons referred to in subclause (1) has or will have power (even if it is in any way qualified)—

(i) to exercise; or

(ii) to control, directly or indirectly, the exercise of; or

(iii) to influence substantially the exercise of—

any voting power attached to shares in the body; or

(b) for the purpose of controlling or influencing—

(i) the composition of the body's board; or

(ii) the conduct of affairs of the body; or

(c) under which one of those persons—

(i) will or may acquire; or

(ii) may be required by the other to acquire—

shares in the body in which the other has a relevant interest; or

(d) under which one of those persons may be required to dispose of shares in the body in accordance with the other's directions.

(3) Subclause (1) applies despite any other effect the agreement may have.

(4) In relation to a matter relating to shares in a body corporate, a person may be an associate of the body and the body may be an associate of a person.

20 General

(1) A reference to an associate of a person includes a reference to—

(a) any other person in concert with whom the person is acting or proposes to act;

(b) any other person who, under the regulations, is, for the purposes of the provision in which the reference occurs, an associate of the person;

(c) any other person with whom the person is or proposes to become associated, whether formally or informally, in any other way—

in respect of the matter to which the reference relates.

(2) If a person has entered, or proposes to enter, into a transaction, or has done, or proposes to do, any act or thing, in order to become associated with another person as mentioned in an applicable provision of this Part, a reference to an associate of the person includes a reference to that other person.

21 Exclusions

A person is not an associate of another person by virtue of clause 19 or 20(1), or by virtue of clause 20(2) as it applies in relation to clause 19 or 20(1), merely because of one or more of the following—

(a) one gives advice to the other, or acts on the other's behalf, in the proper performance of the functions attaching to a professional capacity or a business relationship;

(b) one, a client, gives specific instructions to the other, whose ordinary business includes dealing in securities, to acquire shares on the client's behalf in the ordinary course of that business;

(c) one has made, or proposes to make, to the other an offer to which Division 2 of Part 11 applies, in relation to shares held by the other;

(d) one has appointed the other, otherwise than for valuable consideration given by the other or by an associate of the other, to vote as a proxy or representative at a meeting of members, or of a class of members, of a body corporate.

PART 3—RELATED BODIES

22 Related bodies corporate

For the purposes of this Act, a body corporate is to be taken to be related to—

(a) another body corporate that is its subsidiary; and

(b) another body corporate of which it is a subsidiary; and

(c) another body corporate if both it and that other body corporate are subsidiaries of the same body corporate.

SCHEDULE 3

REGISTRATION ETC. OF CHARGES

PART 1—PRELIMINARY

1 Interpretation

In this Part—

co-operative includes a foreign co-operative registered under Part 14;

document of title means a document—

(a) used in the ordinary course of business as proof of possession or control, or of the right to possession or control, of property other than land; or

(b) authorising or purporting to authorise, whether by endorsement or delivery, the possessor of the document to transfer or receive property other than land—

and includes—

(c) a bill of lading; and

(d) a warehousekeeper's certificate; and

(e) a wharfinger's certificate; and

(f) a warrant or order for the delivery of goods; and

(g) a document that is, or evidences title to, a marketable security;

marketable security has the same meaning as in the Corporations Act;

Sch. 3 cl. 1 def. of *marketable security* amended by No. 44/2001 s. 3(Sch. item 18.43(a)).

present liability, in relation to a charge, means a liability that has arisen, being a liability the extent or amount of which is fixed or capable of being ascertained, whether or not the liability is immediately due to be met;

property, in relation to a co-operative, means property within Victoria held by the co-operative, whether or not as trustee;

prospective liability, in relation to a charge, means any liability that may arise in the future, or any other liability, but does not include a present liability;

Register means the Register of Co-operative Charges referred to in clause 18;

registrable charge means a charge in relation to which, by virtue of clause 4, the provisions of this Schedule mentioned in clause 4(1) apply.

2 Application to charges referred to in clause 17

(1) A charge referred to in clause 17 is, until the charge is registered, to be treated for the purposes of this Schedule as if it were not a registrable charge but, when the charge is so registered, it has the priority accorded to a registered charge as from the time of registration.

(2) The registration of a charge referred to in clause 17 does not prejudice any priority that would have been accorded to the charge under any other law (whether or not a law of a place in Australia) if the charge had not been registered.

3 Lodgment of documents

For the purposes of this Schedule, a notice or other document is taken to be lodged when it is received at the office of the Registrar by an officer authorised to receive it.

PART 2—REGISTRATION

Division 1—Charges

4 To which charges does Schedule apply?

(1) Subject to this Division, the provisions of this Schedule relating to the giving of notice in relation to, the registration of, and the priorities of, charges—

(a) apply in relation to the charges referred to in subclause (2) (whether legal or equitable) on property of a co-operative; and

(b) do not apply in relation to any other charges.

(2) Subclause (1) applies to the following charges—

(a) a floating charge on the whole or a part of the property, business or undertaking of the co-operative;

(b) a charge on uncalled share capital or uncalled share premiums;

(c) a charge on a call, whether in respect of share capital or share premiums, made but not paid;

(d) a charge on a personal chattel, including a personal chattel that is unascertained or is to be acquired in the future, but not including a ship registered in an official register kept under a law of a place in Australia relating to title to ships;

(e) a charge on goodwill, on a patent or licence under a patent, on a trade mark or service mark or a licence to use a trade mark or service mark, on a copyright or a licence under a copyright or on a registered design or a licence to use a registered design;

(f) a charge on a book debt;

(g) a charge on a marketable security, not being—

(i) a charge created in whole or in part by the deposit of a document of title to the marketable security; or

(ii) a mortgage under which the marketable security is registered in the name of the chargee or a person nominated by the chargee;

(h) a lien or charge on a crop, a lien or charge on wool or a stock mortgage;

(i) a charge on a negotiable instrument other than a marketable security.

5 Excluded charges

The provisions of this Schedule mentioned in clause 4(1) do not apply in relation to—

(a) a charge, or a lien over property, arising by operation of law; or

(b) a pledge of a personal chattel or of a marketable security; or

(c) a charge created in relation to a negotiable instrument or a document of title to goods, being a charge by way of pledge, deposit, letter of hypothecation or trust receipt; or

(d) a transfer of goods in the ordinary course of the practice of any profession or the carrying on of any trade or business; or

(e) a dealing, in the ordinary course of the practice of any profession or the carrying on of any trade or business, in respect of goods outside Australia.

6 Personal chattels

The reference in clause 4(2)(d) to a charge on a personal chattel is a reference to a charge on any article capable of complete transfer by delivery, whether at the time of the creation of the charge or at some later time, and includes a reference to a charge on a fixture or a growing crop that is charged separately from the land to which it is affixed or on which it is growing, but does not include a reference to a charge on—

(a) a document evidencing title to land; or

(b) a chattel interest in land; or

(c) a marketable security; or

(d) a document evidencing a thing in action; or

(e) stock or produce on a farm or land that by virtue of a covenant or agreement ought not to be removed from the farm or land where the stock or produce is at the time of the creation of the charge.

7 Book debts

The reference in clause 4(2)(f) to a charge on a book debt—

(a) is a reference to a charge on a debt due or to become due to the co-operative at some future time on account of or in connection with a profession, trade or business carried on by the co-operative, whether entered in a book or not; and

(b) includes a reference to a charge on a future debt of the same nature although not incurred or owing at the time of the creation of the charge—

but does not include a reference to a charge on a marketable security, on a negotiable instrument or on a debt owing in respect of a mortgage, charge or lease of land.

8 Crops or stock

The reference in clause 4(2)(h) to a lien or charge on a crop, a lien or charge on wool or a stock mortgage includes a reference to a security (however described) that is registrable under a prescribed law of a State or Territory.

9 Deposit of documents of title

For the purposes of this Division, a co-operative is to be considered to have deposited a document of title to property with another person (in this clause referred to as the ***chargee***) in a case where the document of title is not in the possession of the co-operative if—

(a) the person who holds the document of title acknowledges in writing that the person holds the document of title on behalf of the chargee; or

(b) a government, an authority or a body corporate that proposes to issue a document of title in relation to the property agrees, in writing, to deliver the document of title, when issued, to the chargee.

10 Charges on land or fixtures on land

(1) The provisions of this Schedule mentioned in clause 4(1) do not apply in relation to a charge on land.

(2) The provisions of this Schedule mentioned in clause 4(1) do not apply in relation to a charge on fixtures given by a charge on the land to which they are affixed.

11 What if other property is also charged?

For the purposes of this Division, a charge is to be considered to be a charge on property of a kind to which a particular paragraph of clause 4(2) applies even though the instrument of charge also charges other property of the co-operative including other property that is of a kind to which none of the paragraphs of that subclause applies.

12 Effect of failure to lodge or give notice or document

A charge on property of a co-operative is not invalid merely because of the failure to lodge with the Registrar, or give to the co-operative or another person, a notice or other document that is required by this Part to be so lodged or given.

Division 2—Notice of charge

13 Lodgment of notice of charge and copy of instrument

(1) If a co-operative creates a charge, the co-operative must ensure that there is lodged with the Registrar within 45 days after the creation of the charge, a notice in the form approved by the Registrar setting out the following particulars—

(a) the name of the co-operative and the date of the creation of the charge;

(b) whether the charge is a fixed charge, a floating charge or both a fixed and floating charge;

(c) if the charge is a floating charge, whether there is any provision in the resolution or instrument creating or evidencing the charge that prohibits or restricts the creation of subsequent charges;

(d) a short description of the liability (whether present or prospective) secured by the charge;

(e) a short description of the property charged;

(f) whether the charge is created or evidenced by a resolution, by an instrument or by a deposit or other conduct;

(g) if the charge is constituted by the issue of a debenture or debentures, the name of the trustee (if any) for debenture holders;

(h) if the charge is not constituted by the issue of a debenture or debentures or there is no trustee for debenture holders, the name of the chargee;

(i) any other information that is prescribed.

(2) If, pursuant to a resolution or resolutions passed by the co-operative, the co-operative issues a series of debentures constituting a charge to the benefit of which all the holders of debentures in the series are entitled in equal priority, and the charge is evidenced only by the resolution or resolutions and the debentures, the notice under subclause (1) must be accompanied by—

(a) a copy of the resolution or of each of the resolutions verified by a statement in writing to be a true copy; and

(b) a copy of the first debenture issued in the series and a statement in writing verifying the execution of that first debenture.

(3) If, in a case to which subclause (2) does not apply, the charge created by the co-operative was created or evidenced by an instrument or instruments, the notice under subclause (1) must be accompanied by—

(a) the instrument or each of the instruments; or

(b) a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy, and a statement in writing verifying the execution of the instrument or of each of the instruments.

14 Series of debentures

In a case to which clause 13(2) applies—

(a) the charge is, for the purposes of clause 13, to be considered to be created when the first debenture in the series of debentures is issued; and

(b) if, after the issue of the first debenture in the series, the co-operative passes a further resolution authorising the issue of debentures in the series, the co-operative must ensure that a copy of that resolution, verified by a statement in writing to be a true copy of that resolution, is lodged within 45 days after the passing of that resolution.

15 Operation of priority provisions in respect of issue of debentures

If a notice with respect to an instrument creating a charge has been lodged under clause 13(1), being a charge in respect of an issue of several debentures the holders of which are entitled under the instrument in equal priority to the benefit of the charge, clauses 46 to 49 have effect as if any charges constituted by those debentures were registered at the time when the charge to which the notice relates was registered.

16 Discounts

(1) If a payment or discount has been made or allowed, either directly or indirectly, by a co-operative to a person in consideration of the person's subscribing or agreeing to subscribe, whether absolutely or conditionally, for debentures, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for debentures, the notice required to be lodged under clause 13(1) must include particulars as to the amount or rate per cent of the payment or discount.

(2) If a co-operative issues debentures as security for a debt of the co-operative, the co-operative is not thereby to be regarded, for the purposes of subclause (1), as having allowed a discount in respect of the debentures.

17 Acquisition of property subject to charge

(1) If a co-operative acquires property that is subject to a charge, being a charge that would have been registrable when it was created if it had been created by a co-operative, the co-operative must, within 45 days after the acquisition of the property—

(a) ensure that there is lodged with the Registrar a notice in the form approved by the Registrar in relation to the charge, setting out—

(i) the name of the co-operative; and

(ii) the date on which the property was so acquired; and

(iii) any other particulars required by clause 13(1); and

(b) give to the chargee notice that it has acquired the property and the date on which it was so acquired.

(2) If the charge referred to in subclause (1) was created or evidenced as mentioned in clause 13(2), the notice under subclause (1)(a) must be accompanied by—

(a) a copy of the resolution or of each of the resolutions referred to in clause 13(2) verified by a statement in writing to be a true copy; and

(b) a copy of the first debenture issued in the series referred to in clause 13(2) verified by a statement in writing to be a true copy.

(3) If the charge referred to in subclause (1) was created or evidenced by an instrument or instruments (otherwise than as mentioned in clause 13(2)), the notice under subclause (1)(a) must be accompanied by—

(a) the instrument or each of the instruments; or

(b) a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy.

Division 3—Registration

18 Register of Co-operative Charges

The Registrar must keep a register to be known as the Register of Co-operative Charges.

19 Registration of documents relating to charge

(1) If a notice is lodged with the Registrar in accordance with Division 2, the Registrar must as soon as practicable cause to be entered in the Register the time and date when the notice was

lodged and the following particulars in relation to the charge—

(a) if the charge is a charge created by the co-operative, the date of its creation;

(b) if the charge was a charge existing on property acquired by the co-operative, the date on which the property was so acquired;

(c) a short description of the liability (whether present or prospective) secured by the charge;

(d) a short description of the property charged;

(e) the name of the trustee for debenture holders or, if there is no such trustee, the name of the chargee.

(2) Subclause (1) only applies if the notice contains the required particulars and is accompanied by the required documents.

(3) Subclause (1) applies whether the notice is lodged during or after the period within which the notice is required to be lodged.

Sch. 3 cl. 19(3) amended by No. 35/2000 s. 34(n).

(4) Subject to this Division, if particulars in respect of a charge are entered in the Register in accordance with subclause (1), the charge is to be considered to be registered, and to have been registered from and including the time and date entered in the Register under that subclause.

(5) The Registrar may enter in the Register in relation to a charge, in addition to the particulars expressly required by this Division to be entered, such other particulars as the Registrar thinks fit.

20 Provisional registration if stamp duty not paid

(1) If—

(a) a notice in respect of a charge on property of a co-operative is lodged under Division 2; and

(b) the notice is not accompanied by a certificate to the effect that all documents accompanying the notice have been duly stamped as required by any applicable law relating to stamp duty—

the Registrar must cause to be entered in the Register the time and date when the notice was lodged and the particulars referred to in clause 19(1)(a) to (e), but must cause the word "provisional" to be entered in the Register next to the entry specifying that time and date.

(2) Subclause (1) applies whether the notice was lodged during or after the period within which the notice was required to be lodged.

(3) The Registrar must delete the word "provisional" entered in the Register under subclause (1) from an entry relating to a charge if a certificate to the effect set out in subclause (1)(b) has been produced to the Registrar—

(a) within a period of 28 days; or

(b) within such longer period as is prescribed after the notice was lodged; or

(c) within such further period as the Registrar, if the Registrar considers it to be appropriate in a particular case, allows.

(4) The Registrar must delete from the Register all the particulars that were entered in relation to a charge if—

(a) the word "provisional" is entered in the Register under subclause (1) in relation to an entry relating to the charge; and

(b) a certificate to the effect set out in subclause (1)(b) is not produced within the period, or the further period, referred to in subclause (3).

21 Provisional registration if required particulars not supplied

(1) If a defective notice in respect of a charge on property is lodged with the Registrar under clause 19, the Registrar must cause to be entered in the Register—

(a) the time and date when the document was lodged; and

(b) such of the particulars referred to in clause 19(1)(a) to (e) as are ascertainable; and

(c) the word "provisional" next to the entry specifying the time and date.

(2) If a defective notice in respect of a charge is lodged under clause 19, the Registrar must, by written notice to the person who lodged the defective notice, direct the person to ensure that there is lodged, on or before the day specified in the notice, a notice in relation to the charge that complies with the requirements of Division 2.

(3) Subclauses (1) and (2) apply whether the defective notice was lodged during or after the period within which the notice was required to be lodged.

(4) The giving by the Registrar of a direction to the person under subclause (2) does not affect any liability that the co-operative may have incurred or may incur by reason of a contravention of Division 2.

(5) If the Registrar gives a direction to a person under subclause (2) in relation to a charge and the direction is complied with on or before the day specified in the notice containing the direction, the Registrar must—

(a) delete from the Register the word "provisional" that was inserted pursuant to subclause (1); and

(b) cause to be entered in the Register in relation to the charge any particulars referred to in clause 19(1) that have not previously been entered.

(6) If the Registrar gives a direction to a person under subclause (2) in relation to a charge and the direction is not complied with on or before the day specified in the notice, the Registrar must delete from the Register all the particulars that were entered in relation to the charge.

(7) If the Registrar gives a direction to a person under subclause (2) in relation to a charge and the direction is complied with after the day specified in the notice, the Registrar must cause to be entered in the Register in relation to the charge—

(a) the time at which and day on which the direction was complied with; and

(b) the particulars referred to in clause 19 (1)(a) to (e).

(8) In this clause ***defective notice*** means a document that—

(a) purports to be a notice in respect of a charge on property of a co-operative for the purposes of Division 2; and

(b) contains the name of the co-operative concerned and the particulars referred to in clause 13(1)(g) or (h), as the case requires—

but does not contain some or all of the other particulars that are required to be included in the notice or is otherwise defective.

22 Effect of provisional registration

(1) Subject to this clause, if the word "provisional" is entered in the Register next to an entry specifying a time and day in relation to a charge, the charge is to be considered not to have been registered.

(2) If the word "provisional" is deleted from the Register pursuant to clause 20 or 21(5), the charge is to be considered to be registered and to have been registered from and including the time and day specified in the Register pursuant to clause 20 or 21(1), as the case may be.

Sch. 3 cl. 22(2) amended by No. 35/2000 s. 34(o).

(3) If the particulars in relation to the charge are deleted from the Register pursuant to clause 21(6) and those particulars and a time and day are subsequently entered in the Register in relation to the charge pursuant to clause 21(7) the charge is to be considered to be registered from and including that last-mentioned time and day.

23 What if 2 or more charges relate to the same property?

(1) If, pursuant to clause 17, a co-operative lodges notices relating to 2 or more charges on the same property acquired by the co-operative (being charges that are not already registered under this

Division), the time and day that is to be entered in the Register in relation to each of those charges are the time and day when the first notice was lodged.

(2) If, in accordance with subclause (1), the time and day that are entered in the Register are the same in relation to 2 or more charges on property acquired by a co-operative, those charges are to have, as between themselves, the respective priorities that they would have had if they had not been registered under this Division.

24 Registration of assignment or variation of charge

(1) If a notice is lodged under clause 36, the Registrar must as soon as practicable cause to be entered in the Register the time and day when the notice was so lodged and the particulars set out in the notice.

(2) Subclause (1) applies whether the notice was lodged during or after the period within which the notice was required to be lodged.

25 Standard time for the purposes of this Division

(1) The Registrar may, by notice published in the Government Gazette, declare a specified standard time to be the standard time for the purposes of this Division.

(2) If a notice is in force under subclause (1), a reference in this Division to entering the time when a particular event happened is a reference to entering that time as expressed in terms of the standard time specified in the notice.

Division 4—Certain charges void against liquidator or administrator

26 Definitions

In this Division—

critical day, in relation to a co-operative, means—

(a) if the co-operative is being wound up, the day when the winding up began; or

(b) if the co-operative is under administration, the relevant day in relation to the administration; or

(c) if the co-operative has executed a deed of arrangement, the relevant day in relation to the administration that ended when the deed was executed.

relevant day, in relation to the administration of a co-operative, means—

Sch. 3 cl. 26 def. of *relevant day* amended by No. 44/2001 s. 3(Sch. item 18.43(b)).

(a) if, when the administration began, a winding up of the co-operative was in progress, the day on which the winding up is taken because of Division 1A of Part 5.6 of the Corporations Act (as applying under this Act) to have begun; or

(b) otherwise, the day on which the administration began.

27 Certain charges void against liquidator or administrator

(1) Subject to this Division, if—

(a) an order is made, or a resolution is passed, for the winding up of a co-operative; or

(b) the Registrar gives a certificate under section 315 for the winding up of the co-operative; or

Sch. 3 cl. 27(1)(c) amended by No. 44/2001 s. 3(Sch. item 18.43(c)).

(c) an administrator of a co-operative is appointed under Part 5.3A of the Corporations Act as applying under this Act; or

(d) a co-operative executes a deed of arrangement—

a registrable charge on property of the co-operative is void as a security on that property as against the liquidator, the administrator of the co-operative, or the deed's administrator, as the case may be.

(2) A charge is not void under subclause (1) if—

(a) a notice in respect of the charge was lodged under clause 13 or 17, as the case requires—

(i) within the relevant period; or

(ii) at least 6 months before the critical day; or

(b) the period within which a notice in respect of the charge (other than a notice under clause 36) is required to be lodged, being the period specified in the relevant clause or that period as extended by the Supreme Court under clause 29, has not ended at the start of the critical day and the notice is lodged before the end of that period; or

(c) in relation to a charge to which clause 17 applies, the period of 45 days after the chargee becomes aware that the property charged has been acquired by a co-operative has not ended at the start of the critical day and the notice is lodged before the end of that period.

(3) The reference in subclause (2)(a) to the relevant period shall be construed as a reference to—

(a) in relation to a charge to which clause 13 applies, the period of 45 days specified in that clause, or that period as extended by the Supreme Court under clause 29; or

(b) in relation to a charge to which clause 17 applies, the period of 45 days after the chargee becomes aware that the property has been acquired by a co-operative.

28 Certain varied charges void against liquidator or administrator

(1) Subject to this Division, if, after there has been a variation in the terms of a registrable charge on property of a co-operative having the effect of increasing the amount of the debt or increasing the liabilities (whether present or prospective) secured by the charge—

(a) an order is made, or a resolution is passed, for the winding up of the co-operative; or

(b) an administrator of a co-operative is appointed under Part 5.3A of the Corporations Act (as applying under this Act); or

Sch. 3 cl. 28(1)(b) amended by No. 44/2001 s. 3(Sch. item 18.43(d)).

(c) a co-operative executes a deed of arrangement—

the registrable charge is void as a security on that property to the extent that it secures the amount of the increase in that debt or liability.

(2) A charge is not void under subclause (1) if—

(a) a notice in respect of the variation was lodged under clause 36—

(i) within the period of 45 days specified in clause 36(2) or that period as extended by the Supreme Court under clause 29; or

(ii) not later than 6 months before the critical day; or

(b) the period of 45 days specified in clause 36(2), or that period as extended by the Supreme Court under clause 29, has not ended at the start of the critical day and the notice is lodged before the end of that period.

29 Supreme Court may extend required period

The Supreme Court, if it is satisfied that the failure to lodge a notice in respect of a charge, or in respect of a variation in the terms of a charge, as required by any provision of this Schedule—

(a) was accidental or due to inadvertence or some other sufficient cause; or

(b) is not of a nature to prejudice the position of creditors or shareholders—

or that on other grounds it is just and equitable to grant relief, may, on the application of the co-operative or any person interested and on such terms and conditions as seem to the Court just and expedient, by order, extend the period for such further period as is specified in the order.

30 Certain later charges void

(1) Subject to subclause (3), if—

(a) a registrable charge (in this subclause referred to as the ***later charge***) is created before the end of 45 days after the creation

of an unregistered registrable charge (in this subclause referred to as the ***earlier charge***); and

(b) the later charge relates to all or any of the property to which the earlier charge related; and

(c) the later charge is given as a security for the same liability as is secured by the earlier charge or any part of that liability—

the later charge, to the extent to which it is a security for the same liability or part thereof, and so far as it relates to the property comprised in the earlier charge, is void as a security on that property as against a liquidator or administrator of the co-operative, or an administrator of a deed of arrangement executed by the co-operative.

(2) Subclause (1) applies even if a notice in respect of the later charge was lodged under clause 13 within the period mentioned in clause 27(2)(a).

(3) Subclause (1) does not apply if it is proved to the satisfaction of the Supreme Court that the later charge was given in good faith for the purpose of correcting some material error in the earlier charge or under other proper circumstances and not for the purposes of avoiding or evading the provisions of this Division.

31 Effect of provisions on purchaser in good faith

(1) Nothing in clause 27(1) or (2) or 28 operates to affect the title of a person to property purchased for value from a chargee or from a receiver appointed by a chargee in the exercise of powers conferred by the charge or implied by law if that person purchased the property in good faith and without notice of—

(a) the filing of an application for an order for the winding up of the co-operative; or

(b) the passing of the necessary resolution for the voluntary winding up of the co-operative; or

Sch. 3 cl. 31(1)(c) amended by No. 44/2001 s. 3(Sch. item 18.43(d)).

(c) an administrator of the co-operative being appointed under Part 5.3A of the Corporations Act (as applying under this Act); or

(d) the co-operative executing a deed of arrangement.

(2) The onus of proving that a person purchased property in good faith and without notice of any of the matters referred to in subclause (1)(a), (b), (c) and (d) is on the person asserting that the property was so purchased.

Division 5—Certain charges in favour of persons void

32 Definitions

In this Division—

chargee, in relation to a charge, means—

(a) in any case, the holder, or all or any of the holders, of the charge; or

(b) in the case of a charge that is an agreement to give or execute a charge in favour of a person or persons, whether on demand or otherwise, that person, or all or any of those persons;

officer, in relation to a co-operative, includes, in the case of a foreign co-operative, a local agent of the foreign co-operative;

receiver includes a receiver and manager;

relevant person, in relation to a charge created by a co-operative, means—

(a) a person who is at the time when the charge is created, or who has been at any time during the period of 6 months ending at that time, an officer of the co-operative; or

(b) a person associated, in relation to the creation of the charge, with a person of a kind referred to in paragraph (a).

33 Charges in favour of certain persons void in certain cases

(1) If—

(a) a co-operative creates a charge on property of the co-operative in favour of a person who is, or in favour of persons at least one of whom is, a relevant person in relation to the charge; and

(b) within 6 months after the creation of the charge, the chargee purports to take a step in the enforcement of the charge without the Supreme Court having, under clause 34, given leave for the charge to be enforced—

the charge, and any powers purported to be conferred by an instrument creating or evidencing the charge, are, and are to be considered always to have been, void.

(2) Without limiting the generality of subclause (1), a person who—

(a) appoints a receiver of property of a co-operative under powers conferred by an instrument creating or evidencing a charge created by the co-operative; or

(b) whether directly or by an agent, enters into possession or assumes control of property of a co-operative for the purposes of enforcing a charge created by the co-operative—

is to be taken, for the purposes of subclause (1), to take a step in the enforcement of the charge.

34 Supreme Court may give leave for enforcement of charge

On application by the chargee under a charge, the Supreme Court may give leave for the charge to be enforced, if the Court is satisfied that—

(a) immediately after the creation of the charge, the co-operative that created the charge was solvent; and

(b) in all the circumstances of the case, it is just and equitable for the Court to do so.

35 Certain transactions excluded

(1) Nothing in clause 33 affects a debt, liability or obligation of a co-operative that would, if that clause had not been enacted, have been secured by a charge created by the co-operative.

(2) Nothing in clause 33 operates to affect the title of a person to property (other than the charge concerned or an interest in the charge concerned) purchased for value from a chargee under a charge, from an agent of a chargee under a charge, or from a receiver appointed by a chargee under a charge in the exercise of powers conferred by the charge or implied by law, if that person purchased the property in good faith and without notice that the charge was created in favour of a person who is, or in favour of persons at least one of whom is, as the case may be, a relevant person in relation to the charge.

(3) The onus of proving that a person purchased property in good faith and without notice that a charge was created as mentioned in subclause (2) is on the person asserting that the property was so purchased.

Division 6—Assignment, variation or satisfaction of charges

36 Assignment and variation of charges

(1) If, after a registrable charge on property of a co-operative has been created, a person other than the original chargee becomes the holder of the charge, the person who becomes the holder of the charge must, within 45 days after he, she or it becomes the holder of the charge—

(a) lodge a notice with the Registrar stating that he, she or it has become the holder of the charge; and

(b) give the co-operative a copy of the notice.

(2) If, after a registrable charge on property of a co-operative has been created, there is a variation in the terms of the charge having the effect of—

(a) increasing the amount of the debt or increasing the liabilities (whether present or prospective) secured by the charge; or

(b) prohibiting or restricting the creation of subsequent charges on the property—

the co-operative must, within 45 days after the variation occurs, ensure that there is lodged with the Registrar a notice setting out particulars of the variation and accompanied by the instrument (if any) effecting the variation or a certified copy of that instrument.

(3) If a charge created by a co-operative secures a debt of an unspecified amount or secures a debt of a specified amount and further advances, a

payment or advance made by the chargee to the co-operative in accordance with the terms of the charge is not to be taken, for the purposes of subclause (2), to be a variation in the terms of the charge having the effect of increasing the amount of the charge or the liabilities (whether present or prospective) secured by the charge.

(4) A reference in this clause to the chargee in relation to a charge is, if the charge is constituted by a debenture or debentures and there is a trustee for debenture holders, to be construed as a reference to the trustee for debenture holders.

(5) Nothing in clause 13 requires the lodgment of a notice under that clause in relation to a charge merely because of the fact that the terms of the charge are varied only in a manner mentioned in this clause.

37 Satisfaction of, and release of property from, charges

(1) If, with respect to a charge registered under this Part—

(a) the debt or other liability the payment or discharge of which was secured by the charge has been paid or discharged in whole or in part; or

(b) the property charged or part of that property is released from the charge—

the person who was the holder of the charge at the time when the debt or other liability was so paid or discharged or the property or part of the property was released must, within 14 days after receipt of a request in writing made by the co-operative on whose property the charge exists, give to the co-operative a memorandum in the form approved by the Registrar acknowledging that the debt or other liability has been paid or

discharged in whole or in part or that the property or that part of it is no longer subject to the charge, as the case may be.

(2) The co-operative may lodge the memorandum with the Registrar and, on the memorandum being lodged, the Registrar must enter in the Register particulars of the matters stated in the memorandum.

(3) The reference in subclause (1) to the person who was the holder of a charge at the time when the debt or other liability was so paid or discharged or the property or part of the property was released is, if the charge was constituted by a debenture or debentures and there was a trustee for debenture holders, to be construed as a reference to the person who was, at that time, the trustee of debenture holders.

Division 7—General

38 Lodgment of notices

(1) If a notice in respect of a charge on property of a co-operative is required to be lodged under clause 13, 17 or 36(2), the notice may be lodged by the co-operative or by any interested person.

(2) If a document required by this Part other than clause 36(1) to be lodged with the Registrar is lodged by a person other than the co-operative concerned, that person—

(a) must, within 7 days after the lodgment of the document, give to the co-operative a copy of the document; and

(b) is entitled to recover from the co-operative the amount of any fees properly paid by the person on lodgment of the document.

39 Lodgment offences

(1) If clause 13, 17 or 36(2) is contravened in relation to a registrable charge on property of a co-operative, the co-operative and any officer of the co-operative who is knowingly concerned in or a party to the contravention is guilty of an offence and liable to a penalty not exceeding 10 penalty units.

(2) If a person who becomes the holder of a registrable charge fails to comply with clause 36(1), the person and, if the person is a body corporate, any officer of the body corporate who is in default, each contravene this subclause.

40 Co-operative to keep documents relating to charges

A co-operative must, at the place where the register referred to in clause 41 is kept, keep a copy of—

(a) every document relating to a charge on property of the co-operative that is lodged with the Registrar under this Part; and

(b) every document given to the co-operative under this Part.

Penalty: 10 penalty units.

41 Co-operative to keep register

(1) A co-operative must keep a register.

(2) On the creation of a charge (whether registrable or not) on property of the co-operative, or on the acquisition of property subject to a charge (whether registrable or not), the co-operative must as soon as practicable enter in the register particulars of the charge, giving in each case—

(a) if the charge is a charge created by the co-operative, the date of its creation or, if the charge was a charge existing on property

acquired by the co-operative, the date on which the property was so acquired; and

(b) a short description of the liability (whether present or prospective) secured by the charge; and

(c) a short description of the property charged; and

(d) the name of the trustee for debenture holders or, if there is no such trustee, the name of the chargee; and

(e) the name of the person whom the co-operative believes to be the holder of the charge.

(3) A register kept by a co-operative pursuant to subclause (1) must be open for inspection—

(a) by any creditor or member of the co-operative, without charge; and

(b) by any other person, on payment for each inspection of such amount, not exceeding the prescribed amount, as the co-operative requires or, where the co-operative does not require the payment of an amount, without charge.

(4) A person may request a co-operative to furnish the person with a copy of the register or any part of the register.

(5) If a person makes a request under subsection (4), the co-operative must send the copy to that person—

(a) if the co-operative requires payment of an amount not exceeding the prescribed amount, within 21 days after payment of the amount is received by the co-operative or within such longer period as the Registrar approves; or

(b) in a case to which paragraph (a) does not apply, within 21 days after the request is made or within such longer period as the Registrar approves.

(6) If default is made in complying with any provision of this clause, the co-operative is guilty of an offence and liable to a penalty not exceeding 10 penalty units.

42 Certificates

(1) If particulars of a charge are entered in the Register in accordance with this Part, the Registrar must, on request by any person, issue to that person a certificate—

(a) setting out those particulars; and

(b) stating the time and day when a notice in respect of the charge containing those particulars was lodged with the Registrar; and

(c) if the word "provisional" appears in the Register next to the reference to that time and day, stating that fact.

(2) A certificate issued under subclause (1) is evidence of the matters stated in the certificate.

(3) If particulars of a charge are entered in the Register in accordance with this Part, and the word "provisional" does not appear in the Register next to the reference to the time and day when a notice in respect of the charge was lodged, the Registrar must, on request by any person, issue to that person a certificate stating that particulars of the charge are entered in the Register in accordance with this Part.

(4) A certificate issued under subclause (3) is conclusive evidence that the requirements of this Part as to registration (other than the requirements relating to the period after the creation of the charge within which notice in respect of the charge is required to be lodged) have been complied with.

43 Power of Supreme Court to rectify Register

If the Supreme Court is satisfied—

(a) that a particular with respect to a registrable charge on property of a co-operative has been omitted from, or mis-stated in, the Register or a memorandum referred to in clause 37; and

(b) that the omission or mis-statement—

(i) was accidental or due to inadvertence or to some other sufficient cause; or

(ii) is not of a nature to prejudice the position of creditors or shareholders—

or that on other grounds it is just and equitable to grant relief—

the Court may, on the application of the co-operative or any person interested and on such terms and conditions as seem to the Court just and expedient, order that the omission or mis-statement be rectified.

44 Power to exempt from compliance with certain requirements of Part

(1) The Registrar may, by instrument in writing, exempt a person, as specified in the instrument and subject to the conditions (if any) that are specified in the instrument, from compliance with such of the requirements of clause 13, 17 or 36 relating to—

(a) the particulars to be contained in a notice under the relevant clause; or

(b) the documents (other than the notice) to be lodged under the relevant clause; or

(c) the verification of any document required to be lodged under the relevant clause—

as are specified in the instrument.

(2) A person who is exempted by the Registrar, subject to a condition, from compliance with a requirement of clause 13, 17 or 36 must not contravene the condition.

(3) If a person has contravened a condition to which an exemption under this clause is subject, the Supreme Court may, on the application of the Registrar, order the person to comply with the condition.

PART 3—ORDER OF PRIORITY

Division 1—General

45 Definitions

(1) In this Part—

priority time, in relation to a registered charge, means—

(a) except as provided by paragraph (b) or (c), the time and date appearing in the Register in relation to the charge, being a time and day entered in the Register pursuant to Division 3 of Part 2; and

(b) if a notice has been lodged under clause 17 in relation to a charge on property, being a charge that, at the time when the notice was lodged, was

already registered under Part 2, the earlier or earliest time and day appearing in the Register in relation to the charge, being a time and day entered in the Register pursuant to clause 17; and

(c) to the extent that the charge has effect as varied by a variation, notice of which was required to be lodged under clause 36(2), the time and day entered in the Register in relation to the charge pursuant to clause 24;

prior registered charge, in relation to another registered charge, means a charge the priority time of which is earlier than the priority time of the other charge;

subsequent registered charge, in relation to another registered charge, means a charge the priority time of which is later than the priority time of the other registered charge;

registered charge means a charge that is registered under Part 2;

unregistered charge means a charge that is not registered under Part 2 but does not include a charge that is not a registrable charge.

(2) A reference in this Part to a person having notice of a charge includes a reference to a person having constructive notice of the charge.

(3) If, by virtue of the definition of ***priority time*** in subclause (1), a registered charge has 2 or more priority times each of which relates to a particular liability secured by the charge, each of those liabilities is, for the purposes of this Part, to be considered to be secured by a separate registered charge the priority time of which is the priority

time of the first-mentioned registered charge that relates to the liability concerned.

46 Priorities of charges

(1) Subject to this clause, Division 2 has effect with respect to the priorities, in relation to each other, of registrable charges on the property of a co-operative.

(2) The application, in relation to particular registrable charges, of the order of priorities of charges set out in Division 2, is subject to—

(a) any consent (express or implied) that varies the priorities in relation to each other of those charges, being a consent given by the holder of one of those charges, being a charge that would otherwise be entitled to priority over the other charge; and

(b) any agreement between those chargees that affects the priorities in relation to each other of the charges in relation to which those persons are the chargees.

(3) The holder of a registered charge, being a floating charge, on property of a co-operative is to be considered, for the purposes of subclause (2), to have consented to that charge being postponed to a subsequent registered charge, being a fixed charge that is created before the floating charge becomes fixed, on any of that property unless—

(a) the creation of the subsequent registered charge contravened a provision of the instrument or resolution creating or evidencing the floating charge; and

(b) a notice in respect of the floating charge indicating the existence of the provision referred to in paragraph (a) was lodged with the Registrar under clause 13, 17 or 36

before the creation of the subsequent registered charge.

(4) If a charge relates to property of a kind or kinds to which a particular paragraph or paragraphs of clause 4(1) applies or apply and also relates to other property, Division 2 applies so as to affect the priority of the charge only in so far as it relates to the first-mentioned property and does not affect the priority of the charge in so far as it relates to the other property.

Sch. 3 cl. 46(4) amended by No. 35/2000 s. 34(p).

Division 2—Priority rules

47 General priority rules in relation to registered charges

(1) A registered charge on property of a co-operative has priority over—

(a) a subsequent registered charge on the property, unless the subsequent registered charge was created before the creation of the prior registered charge and the chargee in relation to the subsequent registered charge proves that the chargee in relation to the prior registered charge had notice of the subsequent registered charge at the time when the prior registered charge was created; and

(b) an unregistered charge on the property created before the creation of the registered charge, unless the chargee in relation to the unregistered charge proves that the chargee in relation to the registered charge had notice of the unregistered charge at the time when the registered charge was created; and

(c) an unregistered charge on the property created after the creation of the registered charge.

(2) A registered charge on property of a co-operative is postponed to—

(a) a subsequent registered charge on the property, if the subsequent registered charge was created before the creation of the prior registered charge and the chargee in relation to the subsequent registered charge proves that the chargee in relation to the prior registered charge had notice of the subsequent registered charge at the time when the prior registered charge was created; and

(b) an unregistered charge on the property created before the creation of the registered charge, where the chargee in relation to the unregistered charge proves that the chargee in relation to the registered charge had notice of the unregistered charge at the time when the registered charge was created.

48 General priority rule in relation to unregistered charges

An unregistered charge on property of a co-operative has priority over—

(a) a registered charge on the property that was created after the creation of the unregistered charge and does not have priority over the unregistered charge under clause 47(1); and

(b) another unregistered charge on the property created after the first-mentioned unregistered charge.

49 Special priority rules

(1) Except as provided by this clause, any priority accorded by this Part to a charge over another charge does not extend to any liability that, at the priority time in relation to the first-mentioned charge, is not a present liability.

(2) If a registered charge on property of a co-operative secures—

(a) a present liability and a prospective liability of an unspecified amount; or

(b) a prospective liability of an unspecified amount—

any priority accorded by this Part to the charge over another charge of which the chargee in relation to the first-mentioned charge does not have actual knowledge extends to the prospective liability, whether the prospective liability became a present liability before or after the registration of the first-mentioned charge.

(3) If a registered charge on property of a co-operative secures—

(a) a present liability and a prospective liability up to a specified maximum amount; or

(b) a prospective liability up to a specified maximum amount—

and the notice lodged under clause 13 or 17 in relation to the charge sets out the nature of the prospective liability and the amount so specified, then any priority accorded by this Part to the charge over another charge extends to any prospective liability secured by the first-mentioned charge to the extent of the maximum amount so specified.

(4) Subclause (3) applies whether the prospective liability became a present liability before or after the registration of the first-mentioned charge and despite the fact that the chargee in relation to the first-mentioned charge had actual knowledge of the other charge at the time when the prospective liability became a present liability.

(5) Subclause (6) applies if—

(a) a registered charge on property of a co-operative secures—

(i) a present liability and a prospective liability up to a specified maximum amount; or

(ii) a prospective liability up to a specified maximum amount—

but the notice lodged under clause 13 or 17 in relation to the charge does not set out the nature of the prospective liability or the maximum amount so specified; or

(b) a registered charge on property of a co-operative secures a prospective liability of an unspecified amount.

(6) In relation to a charge referred to in subclause (5)—

(a) any priority accorded by this Part to the charge over another charge of which the chargee in relation to the first-mentioned charge has actual knowledge extends to any prospective liability secured by the first-mentioned charge that had become a present liability at the time when the chargee in relation to the first-mentioned charge first obtained actual knowledge of the other charge;

(b) any priority accorded by this Part to the charge over another charge of which the chargee in relation to the first-mentioned charge has actual knowledge extends to any prospective liability secured by the first-mentioned charge that became a present liability, as the result of the making of an advance, after the time when the chargee in relation to the first-mentioned charge first

obtained actual knowledge of the other charge if, at that time, the terms of the first-mentioned charge required the chargee in relation to that charge to make the advance after that time.

(7) Subclause (6)(b) extends to the prospective liability whether the advance was made before or after the registration of the first-mentioned charge and despite the fact that the chargee in relation to the first-mentioned charge had actual knowledge of the other charge at the time when the advance was made.

SCHEDULE 4

RECEIVERS, AND OTHER CONTROLLERS, OF PROPERTY OF CO-OPERATIVES

1 Interpretation

In this Schedule—

Sch. 4 cl. 1 def. of *administrator* amended by No. 44/2001 s. 3(Sch. item 18.44(a)).

administrator, in relation to a deed of arrangement, means an administrator of the deed appointed under Part 5.3A of the Corporations Act, as applying under this Act;

control day, in relation to a controller of property of a co-operative, means—

(a) unless paragraph (b) applies—

(i) in the case of a receiver, or receiver and manager, of that property, the day when the receiver, or receiver and manager, was appointed; or

(ii) in the case of any other person who is in possession, or has control, of that property for the purpose of enforcing a charge, the day when the person entered into possession, or took control, of property of the co-operative for the purpose of enforcing that charge; or

(b) if the controller became a controller of property of the co-operative—

(i) to act with an existing controller of that property; or

(ii) in place of a controller of that property who has died or ceased to be a controller of that property—

the day that is, because of any other application or applications of this definition, the control day in relation to the controller referred to in subparagraph (i) or (ii);

controller, in relation to property of a co-operative, means—

(a) a receiver, or receiver and manager, of that property; or

(b) anyone else who (whether or not as agent for the co-operative) is in possession, or has control, of that property for the purpose of enforcing a charge;

co-operative includes a foreign co-operative registered under Part 14;

daily newspaper means a newspaper that is ordinarily published on each day that is a business day in the place where the newspaper is published, whether or not the newspaper is ordinarily published on other days;

managing controller, in relation to property of a co-operative, means—

(a) a receiver and manager of that property; or

(b) any other controller of that property who has functions or powers in connection with managing the co-operative;

national newspaper means a daily newspaper that circulates generally in each State, the Capital Territory and the Northern Territory;

officer, in relation to a co-operative that is a foreign co-operative, includes a local agent of the foreign co-operative;

property, in relation to a co-operative, means property—

(a) in the case of a co-operative that is not a foreign co-operative, within or outside Australia; or

(b) in the case of a co-operative that is a foreign co-operative, within Australia or an external Territory;

receiver, in relation to property of a co-operative, includes a receiver and manager.

2 Application of Schedule

Except in so far as the contrary intention appears, this Schedule applies in relation to a receiver of property of a co-operative who is appointed after the commencement of this Schedule, even if the appointment arose out of a transaction entered into, or an act or thing done, before that commencement.

3 Persons not to act as receivers

(1) A person is not qualified to be appointed, and must not act, as receiver of property of a co-operative if the person—

(a) is a mortgagee of property of the co-operative; or

(b) is an auditor or an officer of the co-operative; or

(c) is an officer of a body corporate that is a mortgagee of property of the co-operative; or

(d) is not a registered liquidator under the Corporations Act; or

Sch. 4 cl. 3(1)(d) amended by No. 44/2001 s. 3(Sch. item 18.44(b)).

(e) is an officer of a body corporate related to the co-operative; or

(f) unless the Registrar directs in writing that this paragraph does not apply in relation to the person in relation to the co-operative, has at any time within the last 12 months been an officer or promoter of the co-operative or of a related body corporate.

(2) In subclause (1)—

officer, in relation to a body corporate, does not include a receiver, appointed under an instrument whether before or after the commencement of this clause, of property of the body.

(3) Subclause (1)(d) does not apply in relation to a body corporate authorised by or under a law of the Commonwealth, of a State or of a Territory to act as receiver of property of the co-operative concerned.

(4) Nothing in this clause prevents a person from acting as receiver of property of a co-operative under an appointment validly made before the commencement of this clause.

4 Supreme Court may declare whether controller is validly acting

(1) If there is doubt, on a specific ground, about—

(a) whether a purported appointment of a person, after the commencement of this clause, as receiver of property of a co-operative is valid; or

(b) whether a person who has entered into possession, or assumed control, of property of a co-operative after the commencement of this clause did so validly under the terms of a charge on that property—

the person, the co-operative or any of the co-operative's creditors may apply to the Supreme Court for an order under subclause (2).

(2) On an application, the Supreme Court may make an order declaring whether or not—

(a) the purported appointment was valid; or

(b) the person entered into possession, or assumed control, validly under the terms of the charge—

as the case may be, on the ground specified in the application or on some other ground.

5 Liability of controller

(1) A receiver, or any other authorised person, who, whether as agent for the co-operative concerned or not, enters into possession or assumes control of any property of a co-operative for the purpose of enforcing any charge is, despite any agreement to the contrary, but without prejudice to the person's rights against the co-operative or any other person, liable for debts incurred by the person in the course of the receivership, possession or control for services rendered, goods purchased or property hired, leased, used or occupied.

(2) Subclause (1) does not constitute the person entitled to the charge a mortgagee in possession.

(3) If—

(a) a person (in this subclause called the ***controller***) enters into possession or assumes control of property of a co-operative; and

(b) the controller purports to have been properly appointed as a receiver in respect of that property under a power contained in an instrument, but has not been properly so appointed; and

(c) civil proceedings in a federal court or a court of a State or Territory arise out of an act alleged to have been done by the controller—

the court may, if it is satisfied that the controller believed on reasonable grounds that the controller had been properly so appointed, order that—

(d) the controller be relieved in whole or in part of a liability that the controller has incurred but would not have incurred if the controller had been properly so appointed; and

(e) a person who purported to appoint the controller as receiver be liable in respect of an act, matter or thing in so far as the controller has been relieved under paragraph (d) of liability in respect of that act, matter or thing.

6 Liability of controller under pre-existing agreement about property used by co-operative

(1) This clause applies if—

(a) under an agreement made before the control day in relation to a controller of property of a co-operative, the co-operative continues after that day to use or occupy, or to be in possession of, property (***the third party property***) of which someone else is the owner or lessor; and

(b) the controller is controller of the third party property.

(2) Subject to subclauses (4) and (7), the controller is liable for so much of the rent or other amounts payable by the co-operative under the agreement as is attributable to a period—

(a) that begins more than 7 days after the control day; and

(b) throughout which—

(i) the co-operative continues to use or occupy, or to be in possession of, the third party property; and

(ii) the controller is controller of the third party property.

(3) Within 7 days after the control day, the controller may give to the owner or lessor a notice that specifies the third party property and states that the controller does not propose to exercise rights in relation to that property as controller of the property, whether on behalf of the co-operative or anyone else.

(4) Despite subclause (2), the controller is not liable for so much of the rent or other amounts payable by the co-operative under the agreement as is attributable to a period during which a notice under subclause (3) is in force, but such a notice does not affect a liability of the co-operative.

(5) A notice under subclause (3) ceases to have effect if—

(a) the controller revokes it by writing given to the owner or lessor; or

(b) the controller exercises, or purports to exercise, a right in relation to the third party property as controller of the property, whether on behalf of the co-operative or anyone else.

(6) For the purposes of subclause (5), the controller does not exercise, or purport to exercise, a right referred to in subclause (5)(b) merely because the controller continues to be in possession, or to have control, of the third party property, unless the controller—

(a) also uses the property; or

(b) asserts a right, as against the owner or lessor, so to continue.

(7) Subclause (2) does not apply in so far as the Supreme Court, by order, excuses the controller from liability, but an order does not affect a liability of the co-operative.

(8) The controller is not taken because of subclause (2)—

(a) to have adopted the agreement; or

(b) to be liable under the agreement otherwise than as mentioned in subclause (2).

7 Powers of receiver

(1) Subject to this clause, a receiver of property of a co-operative has power to do, in Australia and elsewhere, all things necessary or convenient to be done for or in connection with, or as incidental to, the attainment of the objectives for which the receiver was appointed.

(2) Without limiting the generality of subclause (1), but subject to any provision of the court order by which, or the instrument under which, the receiver was appointed, being a provision that limits the receiver's powers in any way, a receiver of property of a co-operative has, in addition to any powers conferred by that order or instrument, as the case may be, or by any other law, power, for the purpose of attaining the objectives for which the receiver was appointed—

(a) to enter into possession and take control of property of the co-operative in accordance with the terms of that order or instrument; and

(b) to lease, let on hire or dispose of property of the co-operative; and

(c) to grant options over property of the co-operative on such conditions as the receiver thinks fit; and

(d) to borrow money on the security of property of the co-operative; and

(e) to insure property of the co-operative; and

(f) to repair, renew or enlarge property of the co-operative; and

(g) to convert property of the co-operative into money; and

(h) to carry on any business of the co-operative; and

(i) to take on lease or on hire, or to acquire, any property necessary or convenient in connection with the carrying on of a business of the co-operative; and

(j) to execute any document, bring or defend any proceedings or do any other act or thing in the name of and on behalf of the co-operative; and

(k) to draw, accept, make and endorse a bill of exchange or promissory note; and

(l) to use a seal of the co-operative; and

(m) to engage or discharge employees on behalf of the co-operative; and

(n) to appoint a legal practitioner, accountant or other professionally qualified person to assist the receiver; and

Sch. 4 cl. 7(2)(n) amended by No. 18/2005 s. 18(Sch. 1 item 19.5).

(o) to appoint an agent to do any business that the receiver is unable to do, or that it is unreasonable to expect the receiver to do, in person; and

(p) if a debt or liability is owed to the co-operative, to prove the debt or liability in a bankruptcy, insolvency or winding up and, in that connection, to receive dividends and to assent to a proposal for a composition or a scheme of arrangement; and

(q) if the receiver was appointed under an instrument that created a charge on uncalled capital or uncalled premiums of the co-operative—

(i) in the name of the co-operative, to make a call in respect of money unpaid on shares in the co-operative (whether on account of the nominal value of the shares or by way of premium); or

(ii) on the giving of a proper indemnity to a liquidator of the co-operative, in the name of the liquidator, to make a call in respect of money unpaid on account of the nominal value of shares in the co-operative; and

(r) to enforce payment of any call that is due and unpaid, whether the calls were made by the receiver or otherwise; and

(s) to make or defend an application for the winding up of the co-operative; and

(t) to refer to arbitration any question affecting the co-operative.

(3) The conferring by this clause on a receiver of powers in relation to property of a co-operative does not affect any rights in relation to that property of any other person other than the co-operative.

(4) In this clause, a reference, in relation to a receiver, to property of a co-operative is, unless the contrary intention appears, a reference to the property of the co-operative in relation to which the receiver was appointed.

8 Controller's duty of care in exercising power of sale

(1) In exercising a power of sale in respect of property of a co-operative, a controller must take all reasonable care to sell the property for—

(a) if, when it is sold, it has a market value, not less than that market value; or

(b) otherwise, the best price that is reasonably obtainable, having regard to the circumstances existing when the property is sold.

(2) Nothing in subclause (1) limits the generality of anything in Division 2 of Part 9.

9 Supreme Court may authorise managing controller to dispose of property despite prior charge

(1) On the application of a managing controller of property of a co-operative, the Supreme Court may by order authorise the controller to sell, or to dispose of in some other specified way, specified property of the co-operative, even though it is subject to a charge (in this clause called the prior charge) that has priority over a charge (in this clause called the controller's charge) on that property that the controller is enforcing.

(2) The Supreme Court may make an order if satisfied that—

(a) apart from the existence of the prior charge, the controller would have power to sell, or to so dispose of, the property; and

(b) the controller has taken all reasonable steps to obtain the consent of the holder of the prior charge to the sale or disposal, but has not obtained that consent; and

(c) sale or disposal of the property under the order is in the best interests of the co-operative's creditors and of the co-operative; and

(d) sale or disposal of the property under the order will not unreasonably prejudice the rights or interests of the holder of the prior charge.

(3) The Supreme Court may have regard to the need to protect adequately the rights and interests of the holder of the prior charge.

(4) If the property would be sold or disposed of together with other property that is subject to the controller's charge, the Supreme Court may have regard to—

(a) the amount (if any) by which it is reasonable to expect that the net proceeds of selling or disposing of that other property otherwise than together with the first-mentioned property would be less than so much of the net proceeds of selling or disposing of all the property together as would be attributable to that other property; and

(b) the amount (if any) by which it is reasonable to expect that the net proceeds of selling or disposing of the first-mentioned property otherwise than together with the other

property would be greater than so much of the net proceeds of selling or disposing of all the property together as would be attributable to the first-mentioned property.

(5) Nothing in subclause (3) or (4) limits the matters to which the Supreme Court may have regard for the purposes of subclause (2).

(6) An order may be made subject to conditions, for example (but without limitation)—

(a) a condition that—

(i) the net proceeds of the sale or disposal; and

(ii) the net proceeds of the sale or disposal of such other property (if any) as is specified in the condition and is subject to the controller's charge—

or a specified part of those net proceeds, be applied in payment of specified amounts secured by the prior charge; or

(b) a condition that the controller apply a specified amount in payment of specified amounts secured by the prior charge.

10 Receiver's power to carry on co-operative's business during winding up

(1) A receiver of property of a co-operative that is being wound up may—

(a) with the written approval of the co-operative's liquidator or with the approval of the Supreme Court, carry on the co-operative's business either generally or as otherwise specified in the approval; and

(b) do whatever is necessarily incidental to carrying on that business under paragraph (a).

(2) Subclause (1) does not—

(a) affect a power that the receiver has otherwise than under that subclause; or

(b) empower the receiver to do an act that he or she would not have power to do if the co-operative were not being wound up.

(3) A receiver of property of a co-operative who carries on the co-operative's business under subclause (1) does so—

(a) as agent for the co-operative; and

(b) in his or her capacity as receiver of property of the co-operative.

(4) The consequences of subclause (3) include, but are not limited to, the following—

(a) for the purposes of clause 5(1), a debt that the receiver incurs in carrying on the business as mentioned in subclause (3) of this clause is incurred in the course of the receivership;

(b) a debt or liability that the receiver incurs in so carrying on the business is not a cost, charge or expense of the winding up.

11 Controller's duties in relation to bank accounts and financial records

(1) A controller of property of a co-operative must—

(a) open and maintain an account, with an authorised deposit-taking institution, bearing—

(i) the controller's own name; and

(ii) in the case of a receiver of the property, the title "receiver"; and

(iii) otherwise, the title "controller"; and

Sch. 4 cl. 11(1)(a) amended by No. 11/2001 s. 3(Sch. item 16.4).

(iv) the co-operative's name—

or 2 or more such accounts; and

(b) within 3 business days after money of the co-operative comes under the control of the controller, pay that money into such an account that the controller maintains; and

(c) ensure that no such account that the controller maintains contains money other than money of the co-operative that comes under the control of the controller; and

Sch. 4 cl. 11(1)(d) amended by No. 44/2001 s. 3(Sch. item 18.44(c)).

(d) keep such financial records as correctly record and explain all transactions that the controller enters into as the controller.

(2) Any director, creditor or member of a co-operative may, unless the Supreme Court otherwise orders, personally or by an agent, inspect records kept by a controller of property of the co-operative for the purposes of subclause (1)(d).

12 Managing controller to report within 2 months about co-operative's affairs

(1) A managing controller of property of a co-operative must prepare a report about the co-operative's affairs that is in the form approved by the Registrar and is made up to a day not later than 28 days before the day when it is prepared.

(2) The managing controller must prepare the report and lodge it with the Registrar within 2 months after the control day.

(3) As soon as practicable, and in any event within 14 days, after lodging the report with the Registrar, the managing controller must cause to be published in a national newspaper, or in each State and Territory in a daily newspaper that

circulates generally in that State or Territory, a notice stating—

(a) that the report has been prepared; and

(b) that a person can, on paying the prescribed fee, inspect the report at specified offices of the Registrar.

(4) If, in the managing controller's opinion, it would seriously prejudice—

(a) the co-operative's interests; or

(b) the achievement of the objectives for which the controller was appointed, or entered into possession or assumed control of property of the co-operative, as the case requires—

if particular information that the controller would otherwise include in the report were made available to the public, the controller need not include the information in the report.

(5) If the managing controller omits information from the report as permitted by subclause (4), the controller must include instead a notice—

(a) stating that certain information has been omitted from the report; and

(b) summarising what the information is about, but without disclosing the information itself.

13 Reports by receiver

(1) If it appears to the receiver of property of a co-operative that—

(a) a past or present officer, or a member, of the co-operative may have been guilty of an offence under any law of the Commonwealth or of a State or Territory in relation to the co-operative; or

(b) a person who has taken part in the formation, promotion, administration, management or winding up of the co-operative—

(i) may have misapplied or retained, or may have become liable or accountable for, any money or property (whether the property is within or outside Australia) of the co-operative; or

(ii) may have been guilty of any negligence, default, breach of duty or breach of trust in relation to the co-operative—

the receiver must—

(c) lodge with the Registrar as soon as practicable a report about the matter; and

(d) give to the Registrar such information, and such access to and facilities for inspecting and taking copies of any documents, as the Registrar requires.

(2) The receiver may also lodge further reports specifying any other matter that, in the receiver's opinion, it is desirable to bring to the notice of the Registrar.

(3) If it appears to the Supreme Court—

(a) that a past or present officer, or a member, of a co-operative in respect of property of which a receiver has been appointed has been guilty of an offence under a law referred to in subclause (1)(a) in relation to the co-operative; or

(b) that a person who has taken part in the formation, promotion, administration, management or winding up of a co-operative in respect of property of which a receiver has been appointed has engaged in conduct

referred to in subclause (1)(b) in relation to the co-operative—

and that the receiver has not lodged a report with the Registrar about the matter, the Court may, on the application of a person interested in the appointment of the receiver or of its own motion, direct the receiver to lodge such a report.

14 Supervision of controller

(1) If—

(a) it appears to the Supreme Court or to the Registrar that a controller of property of a co-operative has not faithfully performed, or is not faithfully performing, the controller's functions or has not observed, or is not observing, a requirement of—

(i) in the case of a receiver, the order by which, or the instrument under which, the receiver was appointed; or

(ii) otherwise, an instrument under which the controller entered into possession, or took control, of that property; or

(iii) in any case, the Supreme Court; or

(iv) in any case, this Act, the regulations or rules of court; or

(b) a person complains to the Supreme Court or to the Registrar about an act or omission of a controller of property of a co-operative in connection with performing or exercising any of the controller's functions and powers—

the Supreme Court or the Registrar, as the case may be, may inquire into the matter and, where the Supreme Court or Registrar so inquires, the Supreme Court may take such action as it thinks fit.

(2) The Registrar may report to the Supreme Court any matter that in the Registrar's opinion is a misfeasance, neglect or omission on the part of a controller of property of a co-operative and the Court may—

(a) order the controller to make good any loss that the estate of the co-operative has sustained thereby; and

(b) make any other order or orders that it thinks fit.

(3) The Supreme Court may at any time—

(a) require a controller of property of a co-operative to answer questions about the performance or exercise of any of the controller's functions and powers as controller; or

(b) examine a person about the performance or exercise by such a controller of any of the controller's functions and powers as controller; or

(c) direct an investigation to be made of such a controller's books.

Sch. 4 cl. 15 amended by No. 35/2000 s. 34(q).

15 Controller may apply to Supreme Court

(1) A controller of property of a co-operative may apply to the Supreme Court for directions in relation to any matter arising in connection with the performance or exercise of any of the controller's functions and powers as controller.

(2) In the case of a receiver of property of a co-operative, subclause (1) applies only if the receiver was appointed under a power contained in an instrument.

16 Power of Supreme Court to fix receiver's remuneration

(1) The Supreme Court may by order fix the amount to be paid by way of remuneration to any person who, under a power contained in an instrument, has been appointed as receiver of property of a co-operative.

(2) The power of the Supreme Court to make an order under this clause—

(a) extends to fixing the remuneration for any period before the making of the order or the application for the order; and

(b) is exercisable even if the receiver has died, or ceased to act, before the making of the order or the application for the order; and

(c) if the receiver has been paid or has retained for the receiver's remuneration for any period before the making of the order any amount in excess of that fixed for that period, extends to requiring the receiver or the receiver's personal representatives to account for the excess or such part of the excess as is specified in the order.

(3) The power conferred by subclause (2)(c) must not be exercised in respect of any period before the making of the application for the order unless, in the opinion of the Supreme Court, there are special circumstances making it proper for the power to be so exercised.

(4) The Supreme Court may from time to time vary or amend an order under this clause.

(5) An order under this clause may be made, varied or amended on the application of—

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

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

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

(d) the Registrar.

(6) An order under this clause may be varied or amended on the application of the receiver concerned.

(7) An order under this clause may be made, varied or amended only as provided in subclauses (5) and (6).

17 Controller has qualified privilege in certain cases

A controller of property of a co-operative has qualified privilege in respect of—

(a) a matter contained in a report that the controller lodges under clause 12 or 13; or

(b) a comment that the controller makes under clause 20(2)(c).

18 Notification of matters relating to controller

(1) A person who obtains an order for the appointment of a receiver of property of a co-operative, or who appoints such a receiver under a power contained in an instrument, must—

(a) within 7 days after obtaining the order or making the appointment, lodge notice that the order has been obtained, or that the appointment has been made, as the case may be; and

(b) within 21 days after obtaining the order or making the appointment, cause notice that the order has been obtained, or that the appointment has been made, as the case may be, to be published in the Government Gazette.

(2) A person who appoints another person to enter into possession, or take control, of property of a co-operative (whether or not as agent for the co-operative) for the purpose of enforcing a charge otherwise than as receiver of that property must—

(a) within 7 days after making the appointment, lodge notice of the appointment with the Registrar; and

(b) within 21 days after making the appointment, cause notice of the appointment to be published in the Government Gazette.

(3) A person who enters into possession, or takes control, as mentioned in subclause (2) must—

(a) within 7 days after so entering into possession or taking control, lodge notice with the Registrar that the person has done so; and

(b) within 21 days after so entering into possession or taking control, cause to be published in the Government Gazette notice that the person has done so—

unless another person—

(c) appointed the first-mentioned person so to enter into possession or take control; and

(d) complies with subclause (2) in relation to the appointment.

(4) Within 14 days after becoming a controller of property of a co-operative, a person must lodge with the Registrar notice in the form approved by the Registrar of the address of the person's office.

(5) A controller of property of a co-operative must, within 14 days after a change in the situation of the controller's office, lodge with the Registrar notice in the form approved by the Registrar of the change.

(6) A person who ceases to be a controller of property of a co-operative must—

(a) within 7 days after so ceasing, lodge with the Registrar notice that the person has so ceased; and

(b) within 21 days after so ceasing, cause notice that the person has so ceased to be published in the Government Gazette.

19 Statement that receiver appointed or other controller acting

(1) If a receiver of property (whether within or outside this State or within or outside Australia) of a co-operative has been appointed, the co-operative must set out, in every public document, and in every eligible negotiable instrument, of the co-operative, after the name of the co-operative where it first appears, a statement that a receiver, or a receiver and manager, as the case requires, has been appointed.

(2) If there is a controller (other than a receiver) of property (whether within Australia or elsewhere) of a co-operative, the co-operative must set out, in every public document, and in every eligible negotiable instrument, of the co-operative, after the co-operative's name where it first appears, a statement that a controller is acting.

20 Officers to report to controller about co-operative's affairs

(1) In this clause—

reporting officer, in relation to a co-operative in respect of property of which a person is controller, means a person who was—

(a) in the case of a co-operative other than a foreign co-operative, a director or secretary of the co-operative; or

(b) in the case of a foreign co-operative, a local agent of the foreign co-operative—

on the control day.

(2) If a person becomes a controller of property of a co-operative—

(a) the person must serve on the co-operative as soon as practicable notice that the person is a controller of property of the co-operative; and

(b) within 14 days after the co-operative receives the notice, the reporting officers must make out and submit to the person a report in the form approved by the Registrar about the affairs of the co-operative as at the control day; and

(c) the person must, within 28 days after receipt of the report—

(i) lodge with the Registrar a copy of the report and a notice setting out any comments the person sees fit to make relating to the report or, if the person does not see fit to make any comment, a notice stating that the receiver does not see fit to make any comment; and

(ii) send to the co-operative a copy of the notice lodged in accordance with subparagraph (i); and

(d) the person must, within 28 days after receipt of the report, if the person became a controller of the property—

(i) because of an appointment as receiver of the property that was made by or on behalf of the holder of debentures of the co-operative; or

(ii) by entering into possession, or taking control, of the property for the purpose of enforcing a charge securing such debentures—

and there are trustees for the holders of those debentures, send to those trustees a copy of the report and a copy of the notice lodged under paragraph (c)(i).

(3) If notice has been served on a co-operative under subclause (2)(a), the reporting officers may apply to the controller or to the Supreme Court to extend the period within which the report is to be submitted and—

(a) if application is made to the controller, if the controller believes that there are special reasons for so doing, the controller may, by written notice given to the reporting officers, extend that period until a specified day; and

(b) if application is made to the Supreme Court, if the Court believes that there are special reasons for so doing, the Court may, by order, extend that period until a specified day.

(4) As soon as practicable after granting an extension under subclause (3)(a), the controller must lodge a copy of the notice with the Registrar.

(5) As soon as practicable after the Supreme Court grants an extension under subclause (3)(b), the reporting officers must lodge a copy of the order with the Registrar.

(6) Subclauses (2), (3) and (4) do not apply in a case where a person becomes a controller of property of a co-operative—

(a) to act with an existing controller of property of the co-operative; or

(b) in place of a controller of such property who has died or ceased to be a controller of such property.

(7) However, if subclause (2) applies in a case where a controller of property of a co-operative dies, or ceases to be a controller of property of the co-operative, before subclause (2) is fully complied with, then—

(a) the references in subclauses (2)(b), (c) and (d) to the person; and

(b) the references in subclauses (3) and (4) to the controller—

include references to the controller's successor and to any continuing controller.

(8) If a co-operative is being wound up, this clause (including subclause (7)) and clause 21 apply even if the controller and the liquidator are the same person, but with any necessary modifications arising from that fact.

21 Controller may require reports

(1) A controller of property of a co-operative may, by notice given to the person or persons, require one or more persons included in one or more of the following classes of persons to make out as required by the notice, verify by a statement in writing in the form approved by the Registrar, and

submit to the controller, a report, containing such information as is specified in the notice as to the affairs of the co-operative or as to such of those affairs as are specified in the notice, as at a date specified in the notice—

(a) persons who are or have been officers of the co-operative;

(b) if the co-operative was incorporated within one year before the control day, persons who have taken part in the formation of the co-operative;

(c) persons who are employed by the co-operative or have been so employed within one year before the control day and are, in the opinion of the controller, capable of giving the information required;

(d) persons who are, or have been within one year before the control day, officers of, or employed by, a co-operative that is, or within that year was, an officer of the co-operative.

(2) Without limiting the generality of subclause (1), a notice under that subclause may specify the information that the controller requires as to affairs of the co-operative by reference to information that this Act requires to be included in any other report, statement or notice under this Act.

(3) A person making a report and verifying it as required by subclause (1) must, subject to the regulations, be allowed, and must be paid by the receiver (or the controller's successor) out of the controller's receipts, any costs and expenses incurred in and about the preparation and making of the report and the verification of the report that the controller (or the controller's successor) considers reasonable.

(4) A person must comply with a requirement made under subclause (1).

(5) A reference in this clause to the controller's successor includes a reference to a continuing controller.

22 Controller may inspect books

A controller of property of a co-operative is entitled to inspect at any reasonable time any books of the co-operative that relate to that property and a person must not fail to allow the controller to inspect those books at such a time.

23 Lodging controller's accounts

(1) A controller of property of a co-operative must lodge with the Registrar an account—

(a) within 28 days after the end of—

(i) 6 months, or such shorter period as the controller determines, after the day when the controller became a controller of property of the co-operative; and

(ii) each subsequent period of 6 months throughout which the controller is a controller of property of the co-operative; and

(b) within 28 days after the controller ceases to be a controller of property of the co-operative.

(2) An account must be in the form approved by the Registrar and show—

(a) the controller's receipts and payments during—

(i) in the case of an account under subclause (1)(a), the 6 months or shorter period, as the case requires; or

(ii) in the case of an account under subclause (1)(b), the period beginning at the end of the period to which the last account related, or on the control day, as the case requires; and ending on the day when the controller so ceased; and

(b) except in the case of an account lodged under subclause (1)(a)(i), the respective aggregates of the controller's receipts and payments since the control day.

(3) In the case of—

(a) a receiver appointed under a power contained in an instrument; or

(b) anyone else who is in possession, or has control, of property of the co-operative for the purpose of enforcing a charge—

the accounts must also show the following—

(c) the amount (if any) owing under that instrument or charge—

(i) in the case of an account lodged under subclause (1)(a)(i), at the end of the control day and at the end of the period to which the account relates; or

(ii) otherwise, at the end of the period to which the account relates—

(d) the controller's estimate of the total value, at the end of the period to which the account relates, of the property of the co-operative that is subject to the instrument or charge.

(4) The Registrar may, of the Registrar's own motion or on the application of the co-operative or a creditor of the co-operative, cause the accounts lodged in accordance with subclause (1) to be

audited by a registered company auditor appointed by the Registrar.

(5) For the purpose of the audit, the controller must furnish the auditor with any books and information that the auditor requires.

(6) If the Registrar causes the accounts to be audited on the request of the co-operative or a creditor, the Registrar may require the co-operative or creditor, as the case may be, to give security for the payment of the cost of the audit.

(7) The costs of an audit under subclause (3) are to be fixed by the Registrar.

(8) The Registrar may if the Registrar thinks fit make an order declaring that, for the purposes of clause 5(1), the costs of the audit are taken to be a debt incurred by the controller as mentioned in clause 5(1) and, if such an order is made, the controller is liable accordingly.

(9) A person must comply with a requirement made under this clause.

24 Payment of certain debts, out of property subject to floating charge, in priority to claims under charge

(1) This clause applies if—

(a) a receiver is appointed on behalf of the holders of any debentures of a co-operative that are secured by a floating charge, or possession is taken or control is assumed, by or on behalf of the holders of any debentures of a co-operative, of any property comprised in or subject to a floating charge; and

(b) at the date of the appointment or of the taking of possession or assumption of control (in this clause called the ***relevant date***)—

(i) the co-operative has not commenced to be wound up voluntarily; and

(ii) the co-operative has not been ordered to be wound up by the Supreme Court.

(2) The receiver or other person taking possession or assuming control of property of the co-operative must pay, out of the property coming into his, her or its hands, the following debts or amounts in priority to any claim for principal or interest in respect of the debentures—

Sch. 4 cl. 24(2)(a) amended by No. 44/2001 s. 3(Sch. item 18.44(d)).

(a) first, any amount that in a winding up is payable in priority to unsecured debts pursuant to section 556 of the Corporations Act (as applying under this Act);

(b) next, if an auditor of the co-operative had applied to the Registrar for consent to his, her or its resignation as auditor and the Registrar had refused that consent before the relevant date, the reasonable fees and expenses of the auditor incurred during the period beginning on the day of the refusal and ending on the relevant date;

Sch. 4 cl. 24(2)(c) amended by No. 44/2001 s. 3(Sch. item 18.44(e)).

(c) subject to subclauses (4) and (5), next, any debt or amount that in a winding up is payable in priority to other unsecured debts pursuant to section 556(1)(e), (g) or (h) or 560 of the Corporations Act (as applying under this Act).

Sch. 4 cl. 24(3) amended by No. 44/2001 s. 3(Sch. item 18.44(e)).

(3) The receiver or other person taking possession or assuming control of property must pay debts and amounts payable pursuant to subclause (2)(c) in the same order of priority as is prescribed by Division 6 of Part 5.6 of the Corporations Act (as applying under this Act) in respect of those debts and amounts.

(4) If an auditor of the co-operative had applied to the Registrar for consent to his, her or its resignation as auditor and the Registrar had, before the

relevant date, refused that consent, a receiver must, when property comes to the receiver's hands, before paying any debt or amount referred to in subclause (2)(c), make provision out of that property for the reasonable fees and expenses of the auditor incurred after the relevant date but before the date on which the property comes into the receiver's hands, being fees and expenses in respect of which provision has not already been made under this subclause.

(5) If an auditor of the co-operative applies to the Registrar for consent to his, her or its resignation as auditor and, after the relevant date, the Registrar refuses that consent, the receiver must, in relation to property that comes into the receiver's hands after the refusal, before paying any debt or amount referred to in subclause (2)(c), make provision out of that property for the reasonable fees and expenses of the auditor incurred after the refusal and before the date on which the property comes into the receiver's hands, being fees and expenses in respect of which provision has not already been made under this subclause.

(6) A receiver must make provision in respect of reasonable fees and expenses of an auditor in respect of a particular period as required by subclause (4) or (5) whether or not the auditor has made a claim for fees and expenses for that period, but where the auditor has not made a claim, the receiver may estimate the reasonable fees and expenses of the auditor for that period and make provision in accordance with the estimate.

(7) For the purposes of this clause the references in Division 6 of Part 5.6 of the Corporations Act (as applying under this Act) to the relevant date are to be read as references to the date of the

Sch. 4 cl. 24(7) amended by No. 44/2001 s. 3(Sch. item 18.44(e)).

appointment of the receiver, or of possession being taken or control being assumed, as the case may be.

25 Enforcement of controller's duty to make returns

(1) If a receiver of property of a co-operative—

(a) who has made default in making or lodging any return, account or other document or in giving any notice required by law fails to make good the default within 14 days after the service on the controller, by any member or creditor of the co-operative or trustee for debenture holders, of a notice requiring the controller to do so; or

(b) who has become a controller of property of the co-operative otherwise than by being appointed a receiver of the property by a court and who has, after being required at any time by the liquidator of the co-operative so to do, failed to render proper accounts of, and to vouch, the controller's receipts and payments and to pay over to the liquidator the amount properly payable to the liquidator—

the Supreme Court may make an order directing the controller to make good the default within the time specified in the order.

(2) An application under subclause (1) may be made—

(a) if subclause (1)(a) applies, by a member or creditor of the co-operative or by a trustee for debenture holders; and

(b) if subclause (1)(b) applies, by the liquidator of the co-operative.

26 Supreme Court may remove controller for misconduct

If, on the application of a co-operative, the Supreme Court is satisfied that a controller of property of the co-operative has been guilty of misconduct in connection with performing or exercising any of the controller's functions and powers, the Court may order that, on and after a specified day, the controller cease to act as receiver or give up possession or control, as the case requires, of property of the co-operative.

27 Supreme Court may remove redundant controller

(1) The Supreme Court may order that, on and after a specified day, a controller of property of a co-operative—

(a) cease to act as receiver, or give up possession or control, as the case requires, of property of the co-operative; or

(b) act as receiver, or continue in possession or control, as the case requires, only of specified property of the co-operative.

(2) The Supreme Court may make an order under subclause (1) if it is satisfied that the objectives for which the controller was appointed, or entered into possession or took control of property of the co-operative, as the case requires, have been achieved, so far as is reasonably practicable, except in relation to any property specified in the order under subclause (1)(b).

(3) For the purposes of subclause (2), the Supreme Court may have regard to—

(a) the co-operative's interests; and

(b) the interests of the holder of the charge that the controller is enforcing; and

(c) the interests of the co-operative's other creditors; and

(d) any other relevant matter.

(4) The Supreme Court may make an order under subclause (1) on the application of a liquidator appointed for the purposes of winding up the co-operative in insolvency.

(5) An order under subclause (1) may also prohibit the holder of the charge from doing any or all of the following, except with the leave of the Supreme Court—

(a) appointing a person as receiver of property of the co-operative under a power contained in an instrument relating to the charge;

(b) entering into possession, or taking control, of the property for the purpose of enforcing the charge;

(c) appointing a person so to enter into possession or take control (whether as agent for the chargee or for the co-operative).

28 Effect of clauses 26 and 27

(1) Except as expressly provided in clause 26 or 27, an order under that clause does not affect a charge on property of a co-operative.

(2) Nothing in clause 26 or 27 limits any other power of the Supreme Court to remove, or otherwise deal with, a controller of property of a co-operative (for example, the Supreme Court's powers under clause 14).

SCHEDULE 5

SAVINGS AND TRANSITIONAL

1 Definitions

In this Schedule—

transferred co-operative means a body corporate which is deemed under clause 4, 5, 6 or 7 to be a co-operative, association, federation or foreign co-operative registered under this Act.

2 General savings

Unless the contrary intention appears in this Act or the regulations, all persons things and circumstances appointed or created by or under the **Co-operation Act 1981** or Part VI of the **Housing Act 1983**, or existing or continuing under that Act or Part immediately before the commencement of this clause continue, under and subject to this Act, to have the same status, operation and effect as they respectively would have had if this Act had not been enacted.

3 Regulations

The Governor in Council may make regulations of a saving or transitional nature consequent on the enactment or commencement of this Act.

4 Saving of existing co-operatives

(1) On the commencement of this clause, any existing body corporate which was a society within the meaning of the **Co-operation Act 1981** immediately before that commencement is deemed—

(a) in the case of an association, to be an association registered under this Act; and

(b) in the case of a federation, to be a federation registered under this Act; and

(c) in the case of any other society, to be a co-operative registered under this Act.

(2) On the commencement of this clause, any existing body corporate which was a rental housing co-operative registered under Part VI of the **Housing Act 1983** immediately before that commencement is deemed to be a co-operative registered under this Act.

(3) On the commencement of this clause, any existing body corporate which was a foreign society registered under Part XI of the **Co-operation Act 1981** immediately before that commencement is deemed to be a foreign co-operative registered under Part 14 of this Act.

(4) Each transferred co-operative under this clause is the same legal entity as it was before the commencement of this clause with the same name, rules, directors and membership as it had immediately before that commencement.

5 Saving of Co-operative Federation of Victoria Ltd

On the commencement of this clause, the Co-operative Federation of Victoria Ltd. established under the **Co-operation Act 1981** is deemed to be registered as an association under this Act with the same name, rules, directors and membership as it had immediately before that commencement.

6 Society or co-operative started to be formed before commencement

(1) If, before the commencement of this clause, a meeting to form a body as a society had been held under section 53 of the **Co-operation Act 1981** but the body had not been registered as a society under that Act—

(a) sections 52 to 57 and 58(1), (2), (7) and (8) of that Act continue to apply to the formation of the body as a society; and

(b) on the registration of the body as a society under section 53 the society is deemed to be a co-operative registered under this Act.

(2) If, before the commencement of this clause, a meeting to form a body of persons as a rental housing co-operative had been held under section 53 of the **Co-operation Act 1981** as incorporated by section 47 of the **Housing Act 1983** but the body had not been registered as a rental housing co-operative under the **Housing Act 1983**—

(a) sections 47, 48 and 50 of the **Housing Act 1983** and sections 52 to 57 and 58(1), (2), (7) and (8) of the **Co-operation Act 1981** (as incorporated by sections 47 and 48 of the **Housing Act 1983**) continue to apply to the formation of the body as a rental housing co-operative; and

(b) on the registration of the body of persons as a rental housing co-operative under section 53 of the **Co-operation Act 1981** (as incorporated by section 47 of the **Housing Act 1983**) the co-operative is deemed to be a co-operative registered under this Act.

(3) Each transferred co-operative under this clause is the same legal entity as it was before its deemed registration under this Act with the same name, rules, directors and membership as it had immediately before that deemed registration.

(4) A certificate issued by the Registrar of Co-operatives under section 53(7) of the **Co-operation Act 1981** as continuing in force for the purposes of this clause is, for the purposes of this Act to be taken to be a certificate issued under section 21 of this Act.

7 Mergers

(1) Division 3A of Part III of the **Co-operation Act 1981** continues to apply to an application made by 2 or more societies and to a direction to merge made before the commencement of this clause.

(2) On the registration of the merged society under the **Co-operation Act 1981,** the society is deemed to be a co-operative registered under this Act.

(3) Each transferred co-operative under this clause is the same legal entity as it was before its deemed registration under this Act with the same name, rules, directors and membership as it had immediately before that deemed registration.

(4) A certificate issued by the Registrar of Co-operatives under section 84B of the **Co-operation Act 1981** as continuing in force for the purposes of this clause is, for the purposes of this Act to be taken to be a certificate issued under section 303 of this Act.

8 Rules to conform with Act

(1) A transferred co-operative must bring its rules into conformity with this Act and the regulations—

(a) within 2 years after the commencement of this clause; or

(b) within such further period as may be approved by the Registrar in respect of a particular co-operative.

(2) The rules of the transferred co-operative are deemed to be valid until—

(a) the co-operative complies with subclause (1); or

(b) the expiry of the relevant period under subclause (1).

(3) If there is any inconsistency between a provision of this Act and the rules of the co-operative as to the procedure for alteration of the rules of the co-operative, the provision of this Act prevails.

(4) Nothing in this clause affects the operation of Division 2 of Part 3 in relation to the rules of a transferred co-operative.

9 Modification of certain rules

(1) This clause applies if in the opinion of the Registrar the rules of a transferred co-operative should be altered to achieve conformity with any requirement of this Act.

(2) The Registrar may, by instrument served on the transferred co-operative, require it within a period specified in the instrument to alter its rules—

(a) in a manner specified in the instrument; or

(b) in a manner approved by the Registrar.

(3) If within the period specified in the instrument the co-operative fails to alter its rules as required by the instrument, the Registrar may by notation on the registered copy of the rules alter the rules.

(4) The Registrar must give written notice to a co-operative of any alteration of its rules made by him or her under this clause.

(5) Any alteration made by the Registrar to the rules under this clause is as valid and effectual as an alteration made and registered under Part 5.

10 Rules to contain active membership provisions

The board of directors of a transferred co-operative must comply with Division 2 of Part 6 of this Act—

(a) within 2 years of the commencement of this clause; or

(b) within any further period approved by the Registrar in respect of a particular co-operative.

11 Special resolutions and majority resolutions

(1) A special resolution passed by a transferred co-operative under the **Co-operation Act 1981** and not registered under that Act before the commencement of this clause may be registered by the Registrar of Co-operatives under this Act.

(2) A majority resolution passed by a transferred co-operative under the **Housing Act 1983** and not registered under that Act before the commencement of this clause may be registered by the Registrar of Co-operatives as a special resolution under this Act.

12 Documents

A certificate or other document, relating to a transferred co-operative, issued or registered by, filed or lodged with or given to the registrar of co-operatives under the **Co-operation Act 1981** or the registrar of rental housing co-operatives under the **Housing Act 1983** has effect as if it were a certificate or other document issued or registered by, filed or lodged with or given to the Registrar of Co-operatives under this Act.

13 Existing accounts provisions to apply to transferred co-operatives

(1) Despite anything to the contrary in this Act or the regulations, Part VI of the **Co-operation Act 1981** applies and continues to apply to a transferred co-operative until the end of the financial year of that co-operative next following the commencement of this clause.

(2) Divisions 5 and 6 of Part 9 of this Act do not apply to a transferred co-operative during the period that Part VI of the **Co-operation Act 1981** applies to it under subclause (1).

14 Receivers and managers

If, immediately before the commencement of this clause, there was a receiver or manager or an administrator or official manager of a transferred co-operative, Part VII or Part IX of the **Co-operation Act 1981** continues to apply to the transferred co-operative and the appointment of the receiver or manager, or the administrator or official manager, despite the enactment of this Act.

15 Winding up

If, before the commencement of this clause, a transferred co-operative had commenced to be wound up under Part X of the **Co-operation Act 1981**, that Part and sections 237, 238 and 239 of that Act continue to apply to that winding up.

16 Investigation

If, before the commencement of this clause, an investigation had commenced in respect of a transferred co-operative under Division 2 of Part XII of the **Co-operation Act 1981**, that Division continues to apply in relation to that investigation.

17 Registrar

(1) The person holding the offices of registrar of co-operative societies under the **Co-operation Act 1981** and registrar of rental housing co-operatives under the **Housing Act 1983** immediately before the commencement of this clause is deemed on that commencement to be appointed as Registrar of Co-operatives under this Act.

(2) A person holding the offices of deputy registrar of co-operative societies under the **Co-operation Act 1981** and deputy registrar of rental housing co-operatives under the **Housing Act 1983** immediately before the commencement of this clause is deemed on that commencement to be appointed as a Deputy Registrar under this Act.

(3) Unless the contrary intention appears in this Act or the regulations, all acts, matters and things of a continuing nature done or commenced before the commencement of this clause by or on behalf of or in relation to—

(a) the registrar of co-operative societies under the **Co-operation Act 1981** shall not be affected and shall, under and subject to this Act, continue to have the same status, operation and effect as they would have had if the **Co-operation Act 1981** had not been repealed; or

(b) the registrar of rental housing co-operatives under the **Housing Act 1983** shall not be affected and shall, under and subject to this Act, continue to have the same status, operation and effect as they would have had if Part VI of the **Housing Act 1983** had not been repealed.

(4) If any provision of the **Co-operation Act 1981** is continued in operation by this Schedule, any reference in that provision to the registrar is to be taken for the purposes of that continued operation to be a reference to the Registrar of Co-operatives under this Act.

18 Superseded references

Sch. 5 cl. 18 amended by No. 44/2001 s. 3(Sch. item 18.45) (ILA s. 39B(3)).

(1) On and from the commencement of this clause, any reference in any other Act, or regulation or any other document—

(a) to the **Co-operation Act 1981** is deemed to be a reference to this Act; and

(b) to a society or co-operative society within the meaning of the **Co-operation Act 1981** is deemed to be a reference to a co-operative registered under this Act.

Sch. 5 cl. 18(2) inserted by No. 44/2001 s. 3(Sch. item 18.45).

(2) A reference in any other Act, or regulation or any other document to a foreign society registered under Part XI of the **Co-operation Act 1981** is deemed on and from the commencement of clause 18 of this Schedule to be and always to have been on and from that commencement a reference to a foreign co-operative registered under Part 14 of this Act.

19 Transitional provision—Corporations (Consequential Amendments) Act 2001

Sch. 5 cl. 19 inserted by No. 44/2001 s. 3(Sch. item 18.46).

An order of the Supreme Court under section 93(i) that is in force immediately before the commencement of item 18.6 of the Schedule to the **Corporations (Consequential Amendments) Act 2001** has effect on and after that commencement as if it were an order made under that section as amended by that item.

Sch. 6 substituted by No. 103/2004 s. 32, amended by No. 13/2008 s. 16.

SCHEDULE 6

INFRINGEMENT OFFENCES

Section 71	Section 250
Section 75	Section 251
Section 192(4)	Section 252(4)
Section 238(2)	Section 254(2)
Section 244(1)	Section 256(1)
Section 246(6)	Section 256(2)
Section 246(7)	Section 256(3)
Section 248	
Section 249	Section 409A

SCHEDULE 7

Sch. 7 inserted by No. 13/2008 s. 17.

Section 378

APPLIED CO-OPERATIVES PROVISIONS

1 Provisions applicable to participating co-operatives

The following provisions apply to participating co-operatives—

(a) Division 4 (Application of Corporations Act to co-operatives) of Part 1 (Preliminary) (other than section 9);

(b) section 252 (Name to include certain matter);

(c) section 261 (Registrar's directions re: fundraising);

(d) section 425 (Information and evidence);

(e) section 426 (Extension or abridgment of time);

(f) Part 17 (Offences and proceedings);

(g) section 460 (Service on member of co-operative);

(h) section 461 (Reciprocal arrangements);

(i) section 463 (Regulations).

2 Provisions applicable to non-participating co-operatives

The following provisions apply to non-participating co-operatives—

(a) Division 3 (The co-operative principles) and Division 4 (Application of Corporations Act to co-operatives) of Part 1 (Preliminary) (other than section 9);

(b) section 13(2);

(c) section 14 (Trading co-operatives);

(d) section 15 (Non-trading co-operatives);

(e) Part 3 (Legal capacity and powers);

(f) section 84 (Transfer of share or interest on death of member);

(g) section 85 (Transfer of small shareholdings and interests on death);

(h) Division 5 (Oppressive conduct of affairs) of Part 4 (Membership);

(i) section 106 (Effect of rules);

(j) section 108 (Purchase and inspection of copy of rules);

(k) section 109 (False copies of rules);

(1) section 250 (List of members to be furnished at request of Registrar);

(m) section 251 (Special return to be furnished at request of Registrar);

(n) section 252 (Name to include certain matter);

(o) Division 1 (Power to raise money) of Part 10 (Funds and property);

(p) Part 13 (Arrangements and reconstructions);

(q) section 425 (Information and evidence);

(r) section 426 (Extension or abridgment of time);

(s) Part 17 (Offences and proceedings);

(t) section 460 (Service on member of co-operative);

(u) section 461 (Reciprocal arrangements);

(v) section 463 (Regulations).

SCHEDULE 8

Sch. 8 inserted by No. 13/2008 s. 17.

Section 386

MODIFICATIONS TO CORPORATIONS ACT

Modifications to winding up provisions

Parts 5.4B and 5.6 of the Corporations Act apply with the following modifications—

(a) a reference in those Parts to ASlC is to be read as a reference to the Registrar; and

(b) a reference in those Parts 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 Division 4 of Part 14 of this Act; and

(c) a reference in those Parts 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 Court under Division 4 of Part 14 of this Act; and

(d) a reference in those Parts to an order under a provision of Part 5.4A is a reference to an order under section 385 of this Act; and

(e) for the purposes of an application by the Registrar to wind up a foreign co-operative, those Parts apply, with such modifications as the circumstances require, as if a winding up application had been made by the co-operative; and

(f) those Parts apply as if a ground specified in section 385 of this Act were a ground for winding up by the Court specified in section 461 of the Corporations Act; and

(g) a reference in those Parts 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; and

(h) sections 467(4) and (5), 480(d), 481(5)(b), 513B, 517, 518, 523 and 524 do not apply; and

(i) a reference in section 485(2) to persons entitled to any surplus is a reference to a person entitled to the surplus under section 387 of this Act; and

(j) section 516 is to be read as if the words "together with any charges payable by the member to the co-operative in accordance with the rules" were inserted after "past member"; and

(k) Subdivision C of Division 6 of Part 5.6 does not apply; and

(1) a reference in those Parts to section 233 (Orders the Court can make) is to be read as a reference to Division 5 (Oppressive conduct of affairs) of Part 4 of this Act; and

(m) those Parts are to be read subject to sections 76 (Liability of members to co-operative) and 322 (Liability of member to contribute in a winding up where shares forfeited etc) of this Act for the purposes of determining the liability of members and past members to contribute on a winding up of a co-operative; and

(n) any other modifications (within the meaning of Part 3 of the **Corporations (Ancillary Provisions) Act 2001**) that are prescribed by the regulations.

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 31 October 1996

Legislative Council: 19 November 1996

The long title for the Bill for this Act was "A Bill to provide for the formation, registration and management of co-operatives, to repeal the **Co-operation Act 1981** and to repeal Part VI of the **Housing Act 1983** and for other purposes."

The **Co-operatives Act 1996** was assented to on 23 December 1996 and came into operation as follows:

Part 1 on 23 December 1996: section 2(1); rest of Act on 1 October 1997: Special Gazette (No. 122) 1 October 1997 page 1.

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Co-operatives Act 1996** by Acts and subordinate instruments.

Audit (Amendment) Act 1997, No. 93/1997

Assent Date:	16.12.97
Commencement Date:	S. 28(Sch. item 7) on 1.7.98: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Co-operatives Act 1996**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date:	26.5.98
Commencement Date:	S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Co-operatives Act 1996**

Licensing and Tribunal (Amendment) Act 1998, No. 101/1998

Assent Date:	1.12.98
Commencement Date:	Ss 3–5 on 1.12.98: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Co-operatives Act 1996**

Financial Sector Reform (Victoria) Act 1999, No. 37/1999

Assent Date:	8.6.99
Commencement Date:	S. 58(Sch. 3 item 2) on 1.7.99: Special Gazette (No. 97) 30.6.99 p. 2
Current State:	This information relates only to the provision/s amending the **Co-operatives Act 1996**

Audit (Amendment) Act 1999, No. 53/1999

Assent Date:	14.12.99
Commencement Date:	S. 26(Sch. item 6) on 1.1.00: Government Gazette 23.12.99 p. 2764
Current State:	This information relates only to the provision/s amending the **Co-operatives Act 1996**

Business Registration Acts (Amendment) Act 2000, No. 35/2000

Assent Date:	6.6.00
Commencement Date:	Ss 32–34 on 19.6.00: Government Gazette 15.6.00 p. 1248; ss 29–31 on 1.7.02: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Co-operatives Act 1996**

Duties Act 2000, No. 79/2000

Assent Date:	28.11.00
Commencement Date:	S. 285(Sch. 1 item 1) on 1.7.01: s. 2
Current State:	This information relates only to the provision/s amending the **Co-operatives Act 1996**

Statute Law Amendment (Authorised Deposit-taking Institutions) Act 2001, No. 11/2001

Assent Date:	8.5.01
Commencement Date:	S. 3(Sch. item 16) on 1.6.01: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Co-operatives Act 1996**

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date:	27.6.01
Commencement Date:	Ss 3(Sch. item 18), 4 on 15.7.01: s. 2
Current State:	This information relates only to the provision/s amending the **Co-operatives Act 1996**

Corporations (Financial Services Reform Amendments) Act 2002, No. 9/2002

Assent Date:	23.4.02
Commencement Date:	S. 3(Sch. item 2) on 23.4.02: s. 2
Current State:	This information relates only to the provision/s amending the **Co-operatives Act 1996**

Statute Law (Further Revision) Act 2002, No. 11/2002

Assent Date:	23.4.02
Commencement Date:	S. 3(Sch. 1 item 10) on 24.4.02: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Co-operatives Act 1996**

Fair Trading (Further Amendment) Act 2003, No. 106/2003

Assent Date:	9.12.03
Commencement Date:	S. 20 on 10.12.03: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Co-operatives Act 1996**

Monetary Units Act 2004, No. 10/2004

Assent Date:	11.5.04
Commencement Date:	S. 15(Sch. 1 item 2) on 1.7.04: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Co-operatives Act 1996**

Fair Trading (Enhanced Compliance) Act 2004, No. 103/2004

Assent Date:	21.12.04
Commencement Date:	Ss 29–32 on 22.12.04: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Co-operatives Act 1996**

Public Administration Act 2004, No. 108/2004

Assent Date:	21.12.04
Commencement Date:	S. 117(1)(Sch. 3 item 43) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State:	This information relates only to the provision/s amending the **Co-operatives Act 1996**

Endnotes

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date:	24.5.05
Commencement Date:	S. 18(Sch. 1 item 19) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State:	This information relates only to the provision/s amending the **Co-operatives Act 1996**

Infringements (Consequential and Other Amendments) Act 2006, No. 32/2006

Assent Date:	13.6.06
Commencement Date:	S. 94(Sch. item 6) on 1.7.06: Government Gazette 29.6.06 p. 1315
Current State:	This information relates only to the provision/s amending the **Co-operatives Act 1996**

Co-operatives and Private Security Acts Amendment Act 2008, No. 13/2008

Assent Date:	23.4.08
Commencement Date:	Ss 3–17 on 24.4.08: s. 2
Current State:	This information relates only to the provision/s amending the **Co-operatives Act 1996**

3. Explanatory Details

[1] S. 89(3)(c)(ii): Section 100 of the **Magistrates Court Act 1989** permits certain matters to be heard in the Magistrates' Court rather than the Supreme Court if the parties agree.

[2] S. 337(1): See regulation 4 of the Corporations (Ancillary Provisions) Regulations 2001, S.R. No. 63/2001.

[3] S. 337(2)(b)(ii): See note 2.