

NORTHERN TERRITORY OF AUSTRALIA

CO-OPERATIVES REGULATIONS

As in force at 24 November 1998

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 24 November 1998

CO-OPERATIVES REGULATIONS

Regulations under the *Co-operatives Act*

1 Citation

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

2 Objective

The objective of these Regulations is to provide for:

- (a) fees payable under the *Co-operatives Act*;
- (b) maximum fines which can be imposed by a co-operative on its members;
- (c) matters relating to active membership of co-operatives;
- (d) matters relating to the operation and management of co-operatives;
- (e) certain forms and procedures required by the Act and the particulars to be included in forms;
- (f) accounting and audit requirements for co-operatives;
- (g) the form and content of registers required to be kept by co-operatives;
- (h) the procedure to be followed when conducting a postal ballot;
- (j) other matters that are necessary or convenient for carrying out or giving effect to the Act.

3 Definition

In these Regulations, ***financial institution*** has the same meaning as in the *Financial Institutions Duty Act*.

4 **Definition of *debenture***

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

- (a) a passbook or other document:
 - (i) that contains all or some of the terms and conditions pursuant to which deposits are accepted by, or withdrawn from, a co-operative;
 - (ii) that acknowledges the receipt of a deposit with a co-operative;
 - (iii) that enables further deposits to be made at any time adding to the balance of an existing deposit;
 - (iv) that enables the withdrawal of the whole or part of the balance of a deposit, whether at call or on the giving of a fixed period of notice; and
 - (v) that acknowledges the amount of the withdrawal and the balance remaining;
- (b) a document acknowledging a debt incurred by a co-operative:
 - (i) in the ordinary course of carrying on so much of a business as neither comprises, nor forms part of, a business of borrowing money and providing finance; and
 - (ii) in respect of money that is or may be deposited with or lent to the co-operative by a person in the ordinary course of a business carried on by the co-operative;
- (c) a document that is issued by a company and that constitutes evidence of a debt owed by the company to a co-operative that is a holding company (within the meaning of the Corporations Law) of the company;
- (d) a document that is issued by a co-operative and that constitutes evidence of a debt owed by the co-operative to a body corporate that is a subsidiary of the co-operative.

Part 2 Rules

5 Maximum fine which may be imposed on a member

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

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

Part 3 Active membership

6 Factors and considerations for determining primary activities

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

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

(2) For the purposes of section 124 of the Act, the following matters may be taken into account in determining whether an activity makes a significant contribution to the business of the co-operative:

- (a) if the activity contributes at least 10% of the co-operative's:
 - (i) turnover;
 - (ii) income;
 - (iii) expenses;
 - (iv) surplus; or
 - (v) business;

- (b) if the failure by the co-operative to conduct that activity would result in a reduction of 10% or more in the business conducted by the co-operative.

7 Register of cancelled memberships

For the purposes of section 136 of the Act, a register of cancelled memberships must specify the particulars set out in clause 5 of Schedule 2.

Part 4 Shares and voting

8 Notice in respect of bonus shares

For the purposes of section 153(c) of the Act, a prescribed person is:

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

9 Postal ballots

For the purposes of section 194 of the Act, a postal ballot must be conducted in accordance with Schedule 3.

Part 5 Management and administration of co-operatives

10 Disqualified persons

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

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

- (f) the Governor of the prison in Victoria in which the person was detained in custody on the date of release;
- (g) the permanent head of the Department of Corrective Services of Western Australia.

11 Adoption of Corporations Law provisions concerning officers of co-operatives

For the purposes of section 223(2) of the Act, section 592 of the Corporations Law is modified and applies as if, in section 592(1)(a), there were omitted "before the commencement of Part 5.7B".

12 Requirements for accounts and accounting records

- (1) For the purposes of section 233(1) of the Act, a co-operative must comply with the provisions of the Corporations Law adopted by subregulation (2) as modified in accordance with the Act and this regulation.
- (2) The adopted provisions of the Corporations Law are Parts 3.6 and 3.7 (except sections 283B, 283C, 291, 309A, 313, 314, 317 and 325).
- (3) In the adopted provisions specified in subregulation (2):
 - (a) references to "the Court" are to be read as references to "the Supreme Court";
 - (b) references to "prescribed" are to be read as references to "approved by the Registrar"; and
 - (c) references to "securities" are to be read as references to "debentures".
- (4) In the adopted provisions specified in subregulation (2), section 290 applies as if, in that section, for subsections (10), (11), (12), (13) and (14) there were substituted:
 - "(10) If the Registrar serves a copy of an order made under subsection (9) on a co-operative, the directors of that co-operative may, within 2 months after the service of that order, appeal against the order to the Supreme Court.
 - "(11) The Court may determine the appeal and may for that purpose:
 - (a) exercise any power that the Registrar has; and
 - (b) make any order that the Registrar may make,

on an application under this section.

"(12) If an application under this section is made by the directors of a co-operative, subsection (1) does not apply to the corporation that is a subsidiary to which the application relates until the application is granted or an appeal against a refusal to grant that application is determined.

"(13) If the Registrar or the Court makes an order granting an application under this section, compliance with the terms of that order is to be taken to be compliance with subsection (1).

"(14) If the Registrar or the Court makes an order refusing an application under this section, the directors of the co-operative must comply with subsection (1) within 12 months after:

- (a) if no appeal is lodged – the date of service of the copy of the Registrar's order;
- (b) if an appeal is lodged and the appeal is withdrawn – the date on which the appeal is withdrawn; or
- (c) if an order is made by the Court – the date on which the Court makes the order.

"(15) If an application under this section is refused by the Registrar or on appeal, the directors of the co-operative are not entitled to make a further application under this section within 3 years after the date of refusal."

- (5) The provisions of the Corporations Law adopted by this regulation apply as if:
 - (a) any offence created in respect of those provisions were the offence set out in section 233(1) of the Act; and
 - (b) any penalty for that offence were the penalty set out in section 233(1) of the Act.

13 Registers to be kept by co-operatives

- (1) The registers that a co-operative is required to keep under section 239 of the Act must:
 - (a) be kept in written or electronic form; and
 - (b) contain the particulars specified in Schedule 2.

- (2) A register may include:
- (a) any document in the English language in which the required particulars are recorded; and
 - (b) any disc, tape, soundtrack or other device in which the required particulars are recorded, so long as they are capable (with or without the aid of some other equipment) of being reproduced in a document in the English language.
- (3) For the purposes of section 239(1)(g) of the Act, a co-operative must keep:
- (a) a register of fixed assets containing the particulars specified in clause 6 of Schedule 2; and
 - (b) a register of subordinated debt containing the particulars specified in clause 7 of Schedule 2.

14 Inspection of registers, &c.

- (1) For the purposes of section 241(1)(g) of the Act, the following registers are prescribed:
- (a) the register of any loans made by or guaranteed by the co-operative, and of any securities taken by the co-operative, required to be kept under section 239(1)(d) of the Act;
 - (b) the register of memberships cancelled under Part 6 of the Act required to be kept under section 239(1)(e) of the Act;
 - (c) the register of subordinated debt required to be kept under section 239(1)(g) of the Act;
 - (d) the register of notifiable interests required to be kept under section 280 of the Act.
- (2) For the purposes of section 241(7) of the Act, the following documents are prescribed:
- (a) a copy of the Act and these Regulations;
 - (b) a copy of the rules of the co-operative;
 - (c) a copy of the last annual report of the co-operative under section 249 of the Act.

15 Notice of appointment, &c., of directors and officers

For the purposes of section 243(2)(c) of the Act, the prescribed particulars are:

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

- (iii) date of birth; and
- (iv) office held.

16 Annual report

For the purposes of section 244(1)(e) of the Act, the prescribed particulars are:

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

17 Advertising change of name of co-operative

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

Part 6 Funds and property**18 Fund raising to be in accordance with Act and regulations**

- (1) This regulation applies to a co-operative that is a deposit taking co-operative.
- (2) For the purposes of section 253 of the Act, a deposit taking co-operative is restricted from accepting money on deposit from persons other than its members and employees.
- (3) Subregulation (2) does not apply to persons who had a current deposit or deposits with a deposit taking co-operative at the commencement of this regulation for as long as they continue to be a depositor with that co-operative.
- (4) A deposit taking co-operative must provide a depositor with a copy of a current disclosure statement prior to the first deposit made by the depositor after the commencement of this regulation and, thereafter, at least once in each period of 12 months.
- (5) A current disclosure statement is a disclosure statement that:
 - (a) has been submitted to and registered by the Registrar;
 - (b) has not, within 23 days after the date on which it was submitted to the Registrar, been the subject of a direction by the Registrar under section 256 of the Act;
 - (c) complies with any such direction given by the Registrar;
 - (d) complies with any conditions imposed by the Registrar under subregulation (7); and
 - (e) is not more than 12 months old.
- (6) A disclosure statement that is submitted to the Registrar under subregulation (5) must contain:
 - (a) a statement of the assets and liabilities of the co-operative;
 - (b) a statement of the financial position of the co-operative;
 - (c) a profit and loss statement for the co-operative; and
 - (d) such other information as the Registrar directs.
- (7) The Registrar may register a disclosure statement submitted under this regulation with or without conditions.

- (8) The Registrar may require a deposit taking co-operative to give to a depositor, within such time as the Registrar may determine, a document of a kind referred to in regulation 5(a).
- (9) This regulation does not apply to the acceptance of money in connection with the issue by the co-operative of debentures.
- (10) This regulation does not apply to the acceptance by a co-operative of a deposit of money in connection with goods or services to be supplied by the co-operative in the ordinary course of business.

19 Compulsory loan by member to co-operative

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

20 Limited dividend

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

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

21 Notice of relevant interest in member's right to vote

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

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

22 Notice of substantial share interest

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

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

- (g) particulars of any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers of the relevant shares;
- (h) particulars of any additional benefit that any person from whom a relevant interest was acquired has, or may, become entitled to receive, whether on the happening of a contingency or not, in relation to that acquisition, other than the valuable consideration referred to in paragraph (d) above; and
- (j) the date on which notice is given.

23 Notice of change in substantial share interest

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

- (a) the name of the co-operative to whom notice is being given;
- (b) the full name and address of the person giving notice;
- (c) the following particulars applicable before the change:
 - (i) the name and address of the holder of the relevant interest;
 - (ii) the number and description of the shares in which the relevant interest was held;
 - (iii) the name and address of the person registered as the holder of the shares;
 - (iv) the name and address of the person entitled to become registered as the holder of the shares;
 - (v) the total number of shares in which the holder of the relevant interest held the relevant interest;
- (d) the following particulars relating to the change:
 - (i) the date of the change in the relevant interest;
 - (ii) particulars of the valuable consideration given in relation to the change, including the nature of that part that did not consist of money;
 - (iii) particulars of any contract, scheme, arrangement or other circumstance by reason of which the change in the relevant interest occurred;

- (iv) particulars of any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers of those shares in which the relevant interest in which the change occurred is held;
 - (v) particulars of any additional benefit that a person has, or may, become entitled to receive, whether upon the happening of a contingency or not, as a consequence of a change in a relevant interest;
- (e) the following particulars applicable after the change:
- (i) the name and address of the holder of the relevant interest;
 - (ii) the number and description of the shares in which the relevant interest is held;
 - (iii) the name and address of the person entitled to become registered as the holder of the shares; and
- (f) the date on which notice is given.

24 Notice of cessation of substantial share interest

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

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

- (ii) the nature of the change;
 - (iii) the consideration given in relation to the change; and
 - (iv) the class and number of shares affected by the change; and
- (g) the date on which notice is given.

Part 8 Merger, transfer of engagements, winding up

25 Application for registration or incorporation under another law

For the purposes of section 301(e) of the Act, the *Aboriginal Councils and Associations Act 1976* of the Commonwealth is a prescribed law.

26 Winding up on Registrar's certificate

For the purposes of section 310(6) of the Act, the security a liquidator must give is \$50,000 in the form of:

- (a) cash;
- (b) a cheque drawn on a financial institution;
- (c) a certificate of deposit issued by a financial institution;
- (d) a debenture or security that is guaranteed by the Government of a State or Territory or by the Government of the Commonwealth; or
- (e) a surety issued by a financial institution or a body corporate authorised to carry on insurance business under the *Insurance Act 1973* of the Commonwealth.

27 Application of Corporations Law to winding up

For the purposes of section 311(3) the following modifications are prescribed:

- (a) section 461(h) of the Corporations Law applies as if, for "the Commission has stated in a report prepared under Division 1 of Part 3 of the ASC Law that, in its opinion:" there were substituted "the Registrar has, as a result of an inquiry conducted under Division 2 or Division 4 of Part 15 of the Act, stated that –";

- (b) section 464 of the Corporations Law applies as if, for "Where the Commission is investigating, or has investigated, under Division 1 of Part 3 of the ASC Law:" there were substituted "Where the Registrar is holding or has held an inquiry under Division 2 or Division 4 of Part 15 of the Act in relation to –";
- (c) section 542 of the Corporations Law applies as if after subsection (3)(c) there were inserted –"and
- (d) in the case of a winding up on a certificate of the Registrar under section 310 of the *Co-operatives Act* – with the consent of the Registrar."

Part 9 Arrangements and reconstructions

28 Registrar to be given notice and opportunity to make submissions

For the purposes of sections 336 and 344(3)(b)(i) of the Act, the prescribed information which must be included in a draft explanatory statement or explanatory statement (as the case may be) is set out in Schedule 4.

29 Compulsory acquisition notice

For the purposes of section 350 of the Act, a compulsory acquisition notice must be in the form set out in Schedule 5.

30 Notice to remaining shareholders

For the purposes of section 352 (1)(a) of the Act, a notice to a remaining shareholder must be in the form set out in Schedule 6.

Part 10 Foreign co-operatives

31 Application for registration of participating co-operative as a foreign co-operative

- (1) An application under section 364 of the Act by a participating co-operative for registration as a foreign co-operative must be made in writing to the Registrar.
- (2) For the purposes of section 364(2)(d) of the Act, the statement must be verified by a statement by a director or the secretary of the applicant co-operative.

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

- (1) An application under section 365 of the Act by a non-participating co-operative for registration as a foreign co-operative must be made in writing to the Registrar.
- (2) For the purposes of section 365(2)(b) of the Act, the statement must be verified by a statement by a director or the secretary of the applicant co-operative.

33 Registration of foreign co-operative

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

34 Application of Act and regulations to foreign co-operatives

- (1) For the purposes of section 369 of the Act:
 - (a) the following provisions of the Act and these Regulations are prescribed in relation to a participating co-operative:
 - (i) Division 4 of Part 1;
 - (ii) section 249;
 - (iii) section 256;
 - (iv) section 311 (but only to the extent that it adopts Part 5.4B of the Corporations Law);
 - (v) section 424;
 - (vi) section 456; and
 - (vii) regulation 47; and
 - (b) the following provisions of the Act and these Regulations are prescribed in relation to a non-participating co-operative:
 - (i) Divisions 3 and 4 of Part 1;
 - (ii) sections 13(2), 14 and 15;
 - (iii) Part 3, except Division 5;
 - (iv) Division 5 of Part 4;

- (v) sections 101, 103 and 104;
 - (vi) sections 245, 246 and 249;
 - (vii) Division 1 of Part 10;
 - (viii) Part 12, except Divisions 1 and 2;
 - (ix) Part 13;
 - (x) Part 17;
 - (xi) section 456;
 - (xii) regulation 47.
- (2) For the purposes of section 369, section 249 is modified in its application to a foreign co-operative to require the name of the foreign co-operative, when appearing as required by section 249(1)(b) or (c), to indicate the State, Territory or country in which the foreign co-operative was originally registered or incorporated.

35 Notification by foreign co-operative of certain changes

When a foreign co-operative lodges with the Registrar particulars of an alteration under section 369 of the Act, the particulars must be accompanied by the following documents:

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

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

- (1) For the purposes of section 373(1) of the Act, the prescribed provisions of the Act are:
- (a) Part 5;

- (b) Part 6;
 - (c) Divisions 5, 6 and 7 of Part 9; and
 - (d) Division 1 of Part 10.
- (2) For the purposes of section 373(3) of the Act, the prescribed documents are:
- (a) a copy, certified by the Registrar, of the co-operative's certificate of registration;
 - (b) a copy, certified by the Registrar, of the co-operative's rules;
 - (c) a copy, certified by the Registrar, of the last audited balance sheet of the co-operative lodged with the Registrar; and
 - (d) a list containing the full name, date and place of birth, and residential address of each director of the co-operative.

Part 11 Supervision and protection of co-operatives

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

For the purposes of section 388 of the Act, a notice must be in the form set out in Schedule 7.

38 Investigator's notice to involved person

For the purposes of section 400 of the Act, a notice must be in the form set out in Schedule 8.

39 Examination of involved person: allowance and expenses

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

- (a) for persons ordinarily receiving wages, salary, remuneration or fees, for each hour, or part of an hour, of attendance, the amount of wages, salary, remuneration or fees actually lost because of the person's attendance, but not exceeding \$217 for any one day;
- (b) in any other case – the actual expenditure incurred (other than expenses under paragraphs (c) and (d)), but not exceeding \$59 for any one day;

- (c) for travelling expenses to and from a person's usual place of residence or business and the place of attendance:
 - (i) the amount actually paid; or
 - (ii) an amount calculated at 18 cents per kilometre travelled, whichever is the lesser; and
- (d) for accommodation and meals, if a person is required to be absent over night from the person's usual place of residence:
 - (i) the amount actually paid; or
 - (ii) an amount not exceeding \$150 for any one night, whichever is the lesser.

Part 12 Administration of the Act

40 Inspection of Register

For the purposes of section 430(1)(b) of the Act, the prescribed documents are:

- (a) documents lodged with or otherwise held by the Registrar under sections 18 and 107 of the Act;
- (b) documents lodged with the Registrar under section 192 of the Act;
- (c) documents lodged with the Registrar under section 243 of the Act;
- (d) documents lodged with the Registrar under section 244 of the Act;
- (e) documents lodged with the Registrar under section 251(3) of the Act;
- (f) copies of certificates of registration issued by the Registrar under section 21, 26 or 368 of the Act;
- (g) disclosure statements submitted to the Registrar under section 17, 150, 195, 259, 262, 296 or 377 of the Act;
- (h) prospectuses lodged with the Registrar under Part 7.12 of the Corporations Law (as adopted by section 258 of the Act);
- (j) documents lodged with the Registrar under Part 5.3A of the

Corporations Law (as adopted by section 318 of the Act);

- (k) documents lodged with or otherwise held by the Registrar under section 364(2)(c), 365(2)(a) and 370(a) of the Act;
- (m) documents evidencing exemptions granted by the Registrar under section 142, 234, 258, 270, 284, 292, 296, 302, 312 or 377 of the Act, or under clause 44 of Schedule 3 to the Act;
- (n) documents evidencing consent or permission given by the Registrar under section 72, 295 336, 376 or 456 of the Act;
- (p) documents lodged with the Registrar under section 371 of the Act;
- (q) documents lodged with the Registrar under Schedule 3 to the Act that create or evidence a charge or the complete or partial satisfaction of a charge;
- (r) documents lodged with the Registrar under clause 18 of Schedule 4 to the Act; and
- (s) documents lodged with the Registrar under clause 23 of Schedule 4 to the Act.

Part 13 The schedules to the Act

41 Minimum number of shares to be subscribed for

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

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

42 Exclusions: holders of prescribed offices

For the purposes of clause 13 of Schedule 2 to the Act, the prescribed offices are those set out in Schedule 9.

43 Charges required to be registered

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

- (a) the *Instruments Act* of the Territory;

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

44 Inspection of register of charges

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

45 Copies of register of charges

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

Part 14 Fees

46 Prescribed fees

For the purposes of a section of the Act specified in an item in Schedule 1, the amount of a type of fee specified in that item is the amount specified opposite that type.

47 Waiver of fees

The Registrar may waive, reduce or refund any fee payable under the Act or these Regulations by:

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

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

Schedule 1 Prescribed fees

regulation 46

Item	Section of the Act	Type of fee	Amount
1	17	Application to Registrar for approval of proposed disclosure statement	\$200
2	18	Application to Registrar for approval of proposed rules	\$100
3	19	Application to Registrar for registration of proposed co-operative	\$100
4	24	Application to Registrar for registration – existing body corporate	\$100
5	35	Issue of duplicate certificate	\$25
6	61(2)	Application for Registrar's certificate	\$25
7	72(2)	Application for Registrar's consent	\$50
8	103(3)	Copy of rules	\$5 and \$1 for each page after the first page to a maximum of \$20
9	107	Application to Registrar for approval of alteration to rules	\$10 per rule to a maximum of \$100
10	110(4)	Issue of certificate of registration of rule alteration	\$25
11	142	Application to Registrar for exemption	\$200
12	150	Application to Registrar for approval of proposed disclosure statement	\$200
13	181	Application to Registrar for review	\$200

14	192	Lodgement of special resolution	\$25
15	195	Application to Registrar for approval of proposed disclosure statement	\$200
16	234	Application to Registrar for exemption	\$200
17	241(5)	Obtaining copy of an entry in the Register	5 and 1 for each page after the first page to a maximum of 20
18	243	Lodgement of notice of appointment of directors, &c.	\$25
19	244	Lodgement of annual report	\$25
20	248(e)	Application to Registrar for approval of abbreviation or elaboration of name	\$25
21	250(1)	Application to Registrar for approval of name change	\$25
22	251(3)	Lodgement of notice of change of address	\$25
23	253	Application to Registrar for approval of proposed disclosure statement	\$200
24	258(6)	Application to Registrar for exemption	\$200
25	259	Approval to Registrar of proposed disclosure statement	\$200
26	262	Application to Registrar for approval of proposed disclosure statement	\$200
27	270	Application to Registrar for exemption	\$200
28	275(2)	Application to Registrar for approval of maximum share interest	\$200
*29	280(3)(b)	Inspection of register of notifiable interests	\$25
30	284	Application to Registrar for exemption	\$200

31	286	Application to Registrar for approval of share offer	\$200
32	288(5)	Application to Registrar for extension of period of offer	\$50
33	292	Application to Registrar for exemption	\$200
34	295(2)	Application for Registrar's consent	\$50
35	296(2)	Application to Registrar for approval of proposed disclosure statement	\$200
36	296(4)	Application to Registrar for exemption	\$200
37	297	Application to Registrar for approval of merger or transfer of engagements	\$200
38	302(3)	Application to Registrar for exemption	\$200
39	312(2)	Application to Registrar for exemption	\$200
40	336(1)	Application for Registrar's permission	\$50
41	338(1)(f)	Application to Registrar for direction	\$200
42	345(1)	Application to Registrar for approval of explanatory statement	\$500
43	347(5)	Lodgement of copy of order	\$25
		Additional late lodgement fee	\$25
44	364	Application to Registrar for registration	\$100
45	365	Application to registrar for registration	\$500
46	370	Lodgement of notice of alteration	\$25
		Additional late lodgement fee	\$25
47	371	Lodgement of balance sheet	\$25
48	372	Lodgement of notice of cessation	\$25
49	373	Application to Registrar for certificate of compliance	\$300
50	376	Application for Registrar's consent	\$50

51	377(2)	Application to Registrar for approval of proposed disclosure statement	\$200
52	377(4)	Application to Registrar for exemption	\$200
53	378	Application to Registrar for approval of merger or transfer of engagements	\$200
54	415(1)(a)	Application to Registrar for special meeting	\$200
55	415(1)(b)	Application to Registrar for inquiry	\$500
56	421	Application to Registrar for extension or abridgement of time	\$50
57	430(1)(a)	Inspection of register	\$10
58	430(1)(b)	Inspection of prescribed documents	\$10
59	430(1)(c)	Certified copy of document	\$20 and \$2 for each page after the first page to a maximum of \$40
60	430(1)(d)	Copy of document	\$5 and \$1 for each page after the first page to a maximum of \$20
61	456(2)	Application to Registrar for permission to give notice by newspaper	\$50
62	Sch 3, cl 13(1)	Lodgement of notice of charge	\$25
		Additional late lodgement fee	\$25
63	Sch 3, cl 17(1)	Lodgement of notice of acquisition of property subject to charge	\$25
		Additional late lodgement fee	\$25

64	Sch 3, cl 20(3)(c)	Application to Registrar for extension of time	\$50
65	Sch 3, cl 36(1)	Lodgement of notice of assignment of charge	\$25
		Additional late lodgement fee	\$25
66	Sch 3, cl 36(2)	Lodgement of notice of variation of charge	\$25
		Additional late lodgement fee	\$25
67	Sch 3, cl 37(2)	Lodgement of memorandum of discharge	\$25
		Additional late lodgement fee	\$25
68	Sch 3, cl 42	Request for certificate	\$25
69	Sch 3, cl 44	Application to Registrar for exemption	\$200
70	Sch 4, cl 3(1)(f)	Application to Registrar for direction	\$200
71	Sch 4, cl 12(3)(b)	Inspection of managing controller's report	\$10
72	Sch 4, cl 13(1)(c)	Lodgement of receiver's report	\$25
73	Sch 4, cl 18(1)(a)	Lodgement of notice of order	\$25
		Additional late lodgement fee	\$25
74	Sch 4, cl 18(2)(a)	Lodgement of notice of appointment of controller	\$25
		Additional late lodgement fee	\$25
75	Sch 4, cl 18(3)	Lodgement of notice that a person has entered into possession or taken control of property of a co-operative	\$25
		Additional late lodgement fee	\$25

76	Sch 4, cl 18(5)	Lodgement of notice of change in situation of controller's office	\$25
		Additional late lodgement fee	\$25
77	Sch 4, cl 18(6)	Lodgement of notice of cessation as controller	\$25
		Additional late lodgement fee	\$25
78	Sch 4, cl 20(2)(c)	Lodgement of copy of controller's report	\$25
		Additional late lodgement fee	\$25

*Fees payable to the co-operative

Schedule 2 Particulars to be included in registers

regulation 13

1. Register of members, directors and shares

- (1) The register of members, directors and shares of a co-operative must contain the following particulars for each member:
 - (a) the name and address of each member;
 - (b) the date on which each member was admitted to the co-operative;
 - (c) if the co-operative has share capital, a statement in respect of each member by whom shares are held of:
 - (i) the number of shares held beneficially and non-beneficially;
 - (ii) the identifying number of each share held (if applicable);
 - (iii) the date on which the shares were allotted; and
 - (iv) the amount paid or agreed to be considered as having been paid on the shares;
 - (d) the date of and circumstances under which the member's membership ceased (if applicable);
 - (e) if shares are purchased pursuant to section 176(1) of the Act – a statement of the number of shares purchased and the date on which the shares were purchased;
 - (f) if shares are forfeited pursuant to section 281 of the Act – a statement of the number of shares forfeited and the date on which forfeiture was effected;
 - (g) if there is a conversion to a co-operative without share capital – the date of the repayment of the share capital or the date of disposal and the name and address of the person or body to whom the share capital was repaid.
- (2) The register of members, directors and shares of a co-operative must contain the following particulars for each director:
 - (a) the name, any former names, date and place of birth, and address of each director;
 - (b) the date of that person's election or appointment as a director;

- (c) whether the director is a non-member director;
- (d) the date of termination of office (if applicable);
- (e) the mode of termination of office (if applicable).

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

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

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

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

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

- (d) the amount of the debenture;
 - (e) the rate of interest;
 - (f) the dates of payment of principal;
 - (g) the place of payment;
 - (h) the name of the trustee (if applicable);
 - (j) the name, address and occupation of any transferor;
 - (k) the date of any transfer.
- (3) The register of loans to, securities given by, debentures issued by and received by a co-operative must contain the following particulars for each deposit received by the co-operative:
- (a) the name and address of the depositor;
 - (b) the date of receipt;
 - (c) the amount deposited;
 - (d) the rate of interest (if any);
 - (e) the amount repaid;
 - (f) the date of conversion to shares or debentures (if applicable);
 - (g) the due date for repayment;
 - (h) the balance.

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

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

- (a) the full name and any former names of the person;
- (b) the address of the person;
- (c) whether the person:
 - (i) has given a loan or deposit to the co-operative;
 - (ii) holds securities given by the co-operative; or

- (iii) holds debentures issued by the co-operative;
- (d) a reference to the relevant entry in the register of loans to, securities given by, debentures issued by and deposits received by the co-operative.

4. Register of loans made by or guaranteed by a co-operative and of any securities taken by a co-operative

- (1) The register of loans made by or guaranteed by a co-operative and of any securities taken by a co-operative must contain the following details for each loan made:
 - (a) the name of each person to whom a loan is made;
 - (b) the amount of the loan;
 - (c) the date on which the loan was approved;
 - (d) a reference identifying the account created for the loan;
 - (e) the date of each advance made in relation to the loan and the amount of each advance so made;
 - (f) if the loan is secured by way of mortgage of real property – the address and particulars of title of the property and a reference identifying the mortgage agreement;
 - (g) if the loan is secured otherwise than by way of a mortgage of real property – particulars of the security taken and a reference identifying the agreement that evidences that security;
 - (h) the location of the documents relating to the security taken in respect of the loan;
 - (j) particulars of any movement of those documents from that location;
 - (k) the date of the final repayment made in relation to the loan.
- (2) The register of loans made by or guaranteed by a co-operative and of any securities taken by a co-operative must contain the following particulars for each loan guaranteed by the co-operative:
 - (a) the name of the member;
 - (b) the name of the lender;
 - (c) the amount of the loan;

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

5. Register of memberships cancelled under Part 6 of the Act

- (1) The register of memberships cancelled under Part 6 of the Act must contain the following particulars for each member whose membership is cancelled:
 - (a) the name of the member;
 - (b) if the whereabouts of the member are known:
 - (i) the date of the member's last active dealing with the co-operative; and
 - (ii) the date of giving the required notice to the member;
 - (c) the date of the board's resolution cancelling membership.
- (2) The register of memberships cancelled under Part 6 of the Act must, if the co-operative has a share capital, contain the following additional particulars for each member whose membership is cancelled:
 - (a) the amount subscribed in respect of the shares forfeited;
 - (b) if the whereabouts of the member are unknown:
 - (i) the date when the required period of the member's whereabouts being unknown commenced; and
 - (ii) if the amount required to be repaid to the member in respect of the cancelled membership exceeds \$50 – the date of publication of the required notice in a newspaper and the name of the newspaper;

- (c) the date of the board's resolution forfeiting the shares;
- (d) if the date fixed by the board resolution for repayment of the amount paid up on shares is within 12 months of forfeiture:
 - (i) the date of repayment; or
 - (ii) the date and nature of the application of the amount under section 138(2) of the Act;
- (e) if the amount due is to be transferred to a debenture or deposit account:
 - (i) the date of repayment; and
 - (ii) the date of transfer to such an account.

6. Register of fixed assets

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

- (a) a short description of the fixed asset;
- (b) the method of financing any fixed asset that is leased;
- (c) the physical location of the asset;
- (d) the date of its purchase or installation;
- (e) the manner in which depreciation is calculated;
- (f) the annual percentage at which depreciation is calculated;
- (g) the annual amount of depreciation or amortisation;
- (h) the total amount of depreciation or amortisation;
- (j) the revaluation increment;
- (k) the sale price;
- (m) the date sold.

7. Register of subordinated debt

The register of subordinated debt must contain for each subordinated debt incurred:

- (a) the name and address of the person to whom the debt is owed;

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

Schedule 3 Postal ballots

regulation 9

1. Ballots

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

2. Returning officers

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

3. Preparation of the voting roll and the ballot papers

- (1) The returning officer must prepare a roll of the full names and addresses of the members of the co-operative, as disclosed by the register of members, directors and shares, together with particulars of the number of votes each member would be entitled to exercise upon a poll.
- (2) A person whose name is on the roll is entitled to vote in the ballot, and no person is otherwise so entitled.
- (3) The returning officer must cause ballot papers to be prepared in or to the effect of Form 1 in this Schedule.
- (4) Each ballot paper must be initialled by the returning officer or an appointed assistant.

- (5) The returning officer must, at least 21 days prior to the date fixed for the closing of the ballot, send by post or otherwise deliver to every member entitled to vote in the ballot one set of the following material:
- (a) one ballot paper;
 - (b) an envelope (in this Schedule referred to as the outer envelope) addressed to the returning officer;
 - (c) a smaller envelope (in this Schedule referred to as the middle envelope), the reverse side of which must be printed in or to the effect of Form 2;
 - (d) a small envelope (in this Schedule referred to as the inner envelope) into which the ballot paper is to be enclosed;
 - (e) a copy of the statement prepared by the board setting out the details of the proposal upon which the decision of the members is to be sought.

4. Duplicate ballot papers

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

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

5. Voting

A member casts a vote in the ballot by:

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

6. Safe keeping of ballot papers

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

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

7. Counting of the votes

- (1) Ballot papers received after noon on the date fixed for the closing of the ballot must not be taken into account at the ballot.
- (2) As soon as practicable after noon on the date fixed for the closing of the ballot, the returning officer must, in the presence of such scrutineers as may be appointed by the board, open the ballot box and deal with the contents in accordance with subclause(3).
- (3) The returning officer must:
 - (a) remove the middle envelope from the outer envelope;
 - (b) where a duplicate outer envelope has been issued and the original outer envelope is received – reject the original envelope and mark it "rejected";
 - (c) according to the information on the middle envelope, for each set of voting papers returned, mark the voter's name on the roll by drawing a line through the name;
 - (d) where a member's name has already been crossed out on the roll – reject the postal vote and mark it "rejected";
 - (e) if the middle envelope has not been signed, or if the details shown on the envelope are not sufficient to disclose by whom the vote is being exercised – reject the envelope and mark it "rejected";
 - (f) extract the inner envelopes containing the ballot papers from all unrejected middle envelopes, separating the contents from the middle envelopes in such a way that no inner envelope could subsequently be identified with any particular voter; and
 - (g) when all the middle envelopes have been dealt with in the above manner, open all unrejected inner envelopes and take the ballot papers from them.
- (4) The ballot papers must be scrutinised by the returning officer who must reject as informal any ballot paper that:
 - (a) is not duly initialled by the returning officer;
 - (b) is so imperfectly marked that the intention of the voter cannot be ascertained by the returning officer;

- (c) has any mark or writing not authorised by this Schedule which, in the opinion of the returning officer, will enable the voter to be identified; or
- (d) has not been marked as prescribed on the ballot paper itself.

8. Statement by returning officer

- (1) The returning officer must count all votes cast and make out and sign a statement of:
 - (a) the number of formal votes cast in favour of the proposal;
 - (b) the number of formal votes cast against the proposal;
 - (c) the number of informal votes cast;
 - (d) the number of middle envelopes marked "rejected"; and
 - (e) the proportion of the formal votes polled which were in the affirmative.
- (2) On the declaration of the returning officer of the result of the postal ballot, the board of the co-operative must cause an entry to be made in the minute book showing the particulars referred to in clause 8(1)(a) to (c).
- (3) The returning officer must forward a copy of the statement to the chairperson of the board of the co-operative who must announce the result of the ballot at the next general meeting.

9. Notification of the result of the ballot

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

10. Retention of ballot papers

The returning officer must retain:

- (a) all ballot papers (whether formal or otherwise);
- (b) all rejected outer envelopes; and
- (c) all rolls,

used in connection with the conduct of the postal ballot, locked in the ballot box until the returning officer has been directed in writing by the board that the items referred to may be destroyed.

FORM 1

POSTAL BALLOT

Ballot of members to determine the following proposal:

.....
.....
.....

Do you support the above proposal?

(Please mark YES or NO)

The ballot will close at noon on

How to Vote

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

.....

Initials of returning officer

FORM 2

MEMBER DETAILS

.....
(Full Name)

.....
.....
(Address)

.....
(Signature)

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

Schedule 4 Prescribed information relating to proposed compromise or arrangement

regulation 28

1. Definitions

In this Schedule:

internal creditor means:

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

Scheme means the proposed compromise or arrangement.

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

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

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

- (1) The prescribed information which must be included in a draft explanatory statement or explanatory statement (as the case may be) in relation to a proposed compromise or arrangement between a co-operative and any of its creditors is:
 - (a) the expected dividend that would be available to scheme creditors if the co-operative were to be wound up within 6 months after the date of the hearing of the application to the Court for an order under section 335(1) of the Act;
 - (b) if a composition of debts is proposed – the expected dividend that would be paid to scheme creditors if the Scheme were put into effect as proposed;
 - (c) a list of the names of all known scheme creditors and the debts owed to those creditors;
 - (d) if a scheme creditor is known to be a guaranteed creditor – the name of the creditor and the amount of the debt owed; and

- (e) if a scheme creditor is known to be an internal creditor – the name of the creditor and the amount of the debt owed.
- (2) The statement referred to in subclause (1) must contain a statement that an order under section 335(1) of the Act is not an endorsement of, or any other expression of opinion on, the Scheme.
- (3) The statement referred to in subclause (1) must contain or include:
- (a) a report on the affairs of the co-operative in or to the effect of the form approved by the Registrar, showing the financial position of the co-operative as at a day within one month of the date on which it is intended to apply to the Court for an order under section 340(1) of the Act;
 - (b) a copy, certified by a director or by the principal executive officer or a secretary of the co-operative to be a true copy, of all accounts and group accounts (if any) required to be laid before the co-operative at the annual general meeting, together with a copy of every document required by law to be annexed to the accounts;
 - (c) if the co-operative the subject of the Scheme is a trustee, a statement:
 - (i) of the number of trusts administered by the trustee;
 - (ii) whether the trustee carries on any business separate from that of the trust; and
 - (iii) how the scheme creditors may obtain a copy of the relevant trust deed, free of charge, prior to the date of the meeting; and
 - (d) if the person (if any) who would be appointed to manage the Scheme proposes to charge for his or her services and for the services of his or her staff in accordance with a particular scale of charges, that scale of charges.

3. Prescribed information relating to proposed compromise or arrangement with members or a class of members

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

(a) unless the co-operative the subject of the Scheme is in the course of being wound up or is under official management, in relation to each director of the co-operative:

(i) whether the director recommends the acceptance of the Scheme or recommends against acceptance and, in either case, his or her reasons for so recommending;

(ii) if the director is not available to consider the Scheme – that the director is not so available and the cause of his or her not being available; or

(iii) in any other case – that the director does not desire to make, or does not consider himself or herself justified in making, a recommendation and, if the director so requires, his or her reasons for not wishing to do so; or

(b) if the co-operative is in the course of being wound up or is under official management, in relation to each liquidator or each official manager:

(i) whether he or she recommends acceptance of the Scheme or recommends against acceptance and, in either case his or her reasons for so recommending; or

(ii) in any other case – that the liquidator or official manager does not wish to make a recommendation and his or her reasons for not wishing to do so.

(2) The statement referred to in subclause (1) must set out:

(a) the number, description and amount of marketable securities of the co-operative the subject of the Scheme held by or on behalf of each director of the co-operative or, if none are held by or on behalf of a director, a statement to that effect;

(b) for each director of the co-operative by whom or on whose behalf shares in that co-operative are held, whether:

(i) the director intends to vote in favour of, or against, the Scheme; or

- (ii) the director has not decided whether he or she will vote in favour of, or against, the Scheme;
- (c) if the other party to the proposed reconstruction or amalgamation is, or includes, a corporation – whether any marketable securities of the corporation are held by, or on behalf of, any director of the co-operative the subject of the Scheme and, if so, the number, description and amount of those marketable securities;
- (d) particulars of any payment or other benefit that is proposed to:
 - (i) be made or given to any director, secretary or executive officer of the co-operative the subject of the Scheme as compensation for loss of, or as consideration for or in connection with his or her retirement from, office in that co-operative or in a related body corporate; or
 - (ii) be made or given to any director, secretary or executive officer of any related body corporate as compensation for the loss of, or as consideration for or in connection with his or her retirement from, office in that body corporate or in the co-operative the subject of the Scheme;
- (e) if there is any other agreement or arrangement made between a director of the co-operative the subject of the Scheme and another person in connection with or conditional on the outcome of the Scheme – particulars of the agreement or arrangement;
- (f) if the object of the Scheme is for a co-operative to acquire control of another corporation that is a company – particulars of the nature and extent of any interest of a director of that company in any contract entered into by the co-operative;
- (g) whether, within the knowledge of the directors of the co-operative the subject of the Scheme, or, if the co-operative is in liquidation or under official management, the knowledge of the liquidator or the official manager, the financial position of the co-operative has materially changed since the date of the last balance sheet laid before the co-operative in general meeting and, if so, full particulars of any change; and
- (h) any other information material to the making of a decision in relation to the Scheme, being information that is within the knowledge of any director, liquidator or official manager of a co-operative the subject of the Scheme or of a related company and that has not previously been disclosed to the

Scheme members.

- (3) If:
- (a) the other party to the proposed reconstruction or amalgamation of the co-operative the subject of the Scheme has a prescribed shareholding in the co-operative; or
 - (b) a director of any corporation that is the other party to the proposed reconstruction or amalgamation is a director of a co-operative the subject of the Scheme,

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

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

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

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

- (6) For the purposes of subclause (3):
- (a) a person has a prescribed shareholding in a co-operative if he or she is entitled to not less than 30% of the voting shares in the co-operative; and

- (b) a person has a prescribed shareholding in a co-operative in which the voting shares are divided into 2 or more classes of shares, if he or she is entitled to not less than 30% of the shares in one of those classes.
- (7) If the consideration to be offered to scheme members consists, in whole or in part, of marketable securities issued, or to be issued, by a corporation, the statement must set out the formula to be applied to find out the number of marketable securities to be issued to each scheme member, and the basis on which that formula was developed.
- (8) If marketable securities of the same class as those referred to in subclause (7) are granted official quotation on a securities exchange, the statement must state the fact, specify the securities exchange concerned, and set out:
 - (a) the latest recorded sale price before the date on which the statement is sent to the Registrar;
 - (b) the highest and lowest recorded sale prices during the 3 months immediately before that date and the dates of the relevant sales; and
 - (c) if the Scheme has been the subject of a public announcement in newspapers or by any other means before the statement has been sent the Registrar – the latest recorded sale price immediately before the public announcement.
- (9) If the marketable securities referred to in subclause (8) are granted official quotation on more than one securities exchange, it is sufficient compliance with subclause (8)(a) and (c) if information on the marketable securities is given for the securities exchange at which there has been the greatest number of recorded dealings in the securities in the 3 months immediately before the date on which the statement is sent to the Registrar.
- (10) If the securities referred to in subclause (8) have not been granted official quotation on a securities exchange, the statement must set out all the information that a director, liquidator or official manager of the co-operative the subject of the Scheme or of a related body corporate has about the number of securities that have been sold in the 3 months immediately before the date on which the explanatory statement was prepared and the price of those securities or, if that information or any part of that information cannot be ascertained, must include a statement to that effect.

- (11) The statement must set out particulars of the intentions of the directors of the co-operative the subject of the Scheme regarding:
- (a) the continuation of the business of the co-operative or, if the undertaking, or any part of the undertaking, of a co-operative is to be transferred, how that undertaking or part is to be conducted in the future;
 - (b) any major changes to be made to the business of the co-operative, including any redeployment of the fixed assets of the co-operative; and
 - (c) the future employment of the present employees of the co-operative.

Schedule 5 Compulsory acquisition notice

regulation 29

1. To
of
 - A. The transferee (*insert name of person giving notice*) on (*insert date*) made an offer to the holders of *shares in (*insert name*) Co-operative Limited/*shares included in a class of shares in (*insert name*) Co-operative Limited for the transfer of those shares to the transferee, not being an offer made under a scheme or contract to which Division 2 of Part 11 of the Co-operatives Act applies;
 - B. the scheme or contract involving the transfer of those shares to the transferee was on or before (*insert date*) approved by the holders of at least 90% in nominal value of all the shares concerned, other than excluded shares; and
 - C. you are a dissenting shareholder.
2. The transferee gives you notice under section 350(1) of the *Co-operatives Act* that the transferee desires to acquire those shares held by you.
3. You are entitled under section 350(2) of the *Co-operatives Act* to ask the transferee, by written notice given to the transferee within one month after the day on which this notice is given, to give you a statement in writing of the names and addresses of all other dissenting shareholders as shown in the register of members.
- *4. You are entitled not later than the expiration of 28 days after the date on which this notice is given or 14 days after the date on which a statement is supplied to you under section 350(2) of the *Co-operatives Act*, whichever is the later, to elect, by notice to the transferee, which of the alternative terms offered to the approving shareholders under the scheme or contract you prefer. The alternative terms are as follows – (*insert details*)
5. Unless, on application made by you within 28 days after the date on which this notice is given or within 14 days after a statement is supplied to you under section 350(2) of the *Co-operatives Act*, the Supreme Court otherwise orders, the transferee will be entitled and bound subject to section 350(2) to acquire your shares:
 - (a) on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee; or

(b) if alternative terms were offered:

- (i) on the terms for which you have elected; or
- (ii) if you have not so elected – on whichever of those terms the transferee determines unless the Supreme Court otherwise orders.

Dated 19

(Signature of transferee)

* Delete if not applicable

Schedule 6 Notice to remaining shareholder

regulation 30

1. To
of
 - A. The transferee (*insert name of person giving notice*) on (*insert date*) offers to the holders of shares *in (*insert name of co-operative*) Limited/*included in a class of shares in (*insert name of co-operative*) Limited for the transfer of those shares to the transferee, not being offers made under a scheme or contract to which Division 2 of Part 11 of the *Co-operatives Act* applies;
 - B. under the scheme or contract the transferee became on (*insert date*) beneficially entitled to shares in that co-operative which together with any other shares in that co-operative to which the transferee, or the transferee and any corporation related to the transferee, is beneficially entitled, comprise or include 90% in nominal value of the shares concerned; and
 - C. you are the holder of remaining shares *in that co-operative/*included in class of shares in that co-operative and have not assented to the scheme or contract or been given notice in respect of those shares by the transferee under section 350(1) of the *Co-operatives Act*.
2. The transferee gives you notice under section 352(1)(a) of the *Co-operatives Act* that under that scheme or contract the transferee on (*insert date*) became beneficially entitled to shares in (*insert name of co-operative*) Limited and those shares together with any other shares in that co-operative to which the transferee, or the transferee and any corporation related to the transferee, is beneficially entitled, comprise or include 90% in nominal value of the shares *in that co-operative/*included in that class of shares in that co-operative.
3. You are entitled under section 352(1)(b) of the *Co-operatives Act*, within 3 months after being given this notice, by notice to the transferee to require the transferee to acquire your shares.
- *4. You are entitled under section 352(1)(b) of the *Co-operatives Act*, within 3 months after being given this notice to elect by notice to the transferee which of the alternative terms offered to the approving shareholders under the scheme or contract you will accept. The alternative terms are as follows – (*insert details*)

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

Dated 19

(Signature of transferee)

* Delete if not applicable

Schedule 7 Notice requiring production of documents or appearance to answer questions

regulation 37

Co-operatives Act

section 388(1)

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

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

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

Please note section 398 of the Act *(relating to self-incrimination)*.

SCHEDULE

.....

Signature of Inspector

.....

Date

* Delete if not applicable

Schedule 8 Notice to produce documents, give assistance or to appear for examination at inquiry

regulation 38

Co-operatives Act

section 400(1)

To *(name of involved person)*

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

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

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

SCHEDULE

.....

Signature of Investigator

.....

Date

* Delete if not applicable

Schedule 9 Prescribed offices

regulation 42

Commonwealth

1. The Treasurer.
2. A trustee under Part 4, 10 or 11 of the *Bankruptcy Act 1966* of the Commonwealth.
3. The following officers of the Australian Securities Commission under the *Australian Securities Commission Act 1989* of the Commonwealth:
 - (a) the chairperson, deputy chairperson or member of the Commission;
 - (b) the president or a member of the Corporations and Securities Panel.

Australian Capital Territory

1. The Treasurer.
2. The Public Trustee under the *Administration and Probate Ordinance 1929* and the *Public Trustee Act 1985* of the Australian Capital Territory.
3. A Registrar or Master of the Supreme Court of the Australian Capital Territory.

New South Wales

1. The Treasurer.
2. The Public Trustee under the *Public Trustee Act 1913* of New South Wales.
3. A master under Division 1 of Part 8 of the *Supreme Court Act 1970* of New South Wales.
4. The Supervisor of loan fund companies under the *Loan Fund Companies Act 1976* of New South Wales.
5. The Protective Commissioner under the *Protected Estates Act 1983* of New South Wales.

Northern Territory

1. The Treasurer.
2. The Public Trustee under the *Public Trustee Act 1979* of the Northern Territory.
3. A Master of the Supreme Court of the Northern Territory.
4. The Commissioner for Corporate Affairs.

Queensland

1. The Treasurer.
2. The Commissioner for Corporate Affairs.
3. The Public Trustee under the *Public Trustee Act 1978* of Queensland.
4. A Registrar of the Supreme Court of Queensland under the *Supreme Court Act 1995* of Queensland.

South Australia

1. The Treasurer.
2. The Curator of Prisoners' Property under the *Criminal Law Consolidation Act 1935* of South Australia.
3. The Public Trustee under the *Probate and Administration Act 1919* of South Australia.
4. A master or accountant under the *Supreme Court Act 1935* of South Australia.

Tasmania

1. The Treasurer.
2. The Administrator under chapter 49 of the Criminal Code of Tasmania.
3. The Commissioner for Corporate Affairs.
4. The Public Trustee under the *Public Trustee Office Act 1930* of Tasmania.
5. A Registrar of the Supreme Court of Tasmania.

Victoria

1. The Treasurer.
2. The Commissioner for Corporate Affairs.
3. The Public Trustee under the *Public Trustee Act 1958*.
4. A Master of the Supreme Court under the *Supreme Court Act 1958*.

Western Australia

1. The Treasurer.
2. The Commissioner for Corporate Affairs.
3. The Public Trustee under the *Public Trustee Act 1941* of Western Australia.
4. A Master or Registrar of the Supreme Court of Western Australia under the *Supreme Court Act 1935* of Western Australia.

ENDNOTES

1

KEY

Key to abbreviations

amd = amended

app = appendix

bl = by-law

ch = Chapter

cl = clause

div = Division

exp = expires/expired

f = forms

Gaz = Gazette

hdg = heading

ins = inserted

lt = long title

nc = not commenced

od = order

om = omitted

pt = Part

r = regulation/rule

rem = remainder

renum = renumbered

rep = repealed

s = section

sch = Schedule

sdiv = Subdivision

SL = Subordinate Legislation

sub = substituted

2

LIST OF LEGISLATION

Co-operatives Regulations (SL No. 53, 1998)

Notified 24 November 1998

Commenced 24 November 1998