

NORTHERN TERRITORY OF AUSTRALIA

CO-OPERATIVES BILL 1996

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NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to provide for the formation, registration and management of co-operatives, and to repeal the *Co-operative Societies Act* and the *Co-operative Trading Societies (Loans Guarantee) Act*

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, 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 that enables flexibility in the operation of co-operatives and promotes the development of co-operatives; and
- (b) to repeal the *Co-operative Societies Act* and the *Co-operative Trading Societies (Loans Guarantee) Act*.

2. COMMENCEMENT

This Act comes into operation on the date or dates fixed by the Administrator by notice in the *Gazette*.

Co-operatives

"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 an association registered under this Act;

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

"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;

"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;
- (b) a promissory note having a face value of not less than \$50,000; or
- (c) any other document of a class that is prescribed as exempt from this definition;

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

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- (b) a person who is concerned, or takes part, in the management of the co-operative, whether or not as a director;
- (c) a receiver and manager, appointed under a power contained in an instrument, of property of the co-operative;
- (d) an administrator of a deed of arrangement executed by the co-operative;
- (e) a liquidator or provisional liquidator appointed in a voluntary winding up of the co-operative;
- (f) an administrator of the co-operative appointed under –
 - (i) Part 5.3A of the Corporations Law as adopted and applying under this Act; or
 - (ii) Division 5 of Part 12 of this Act; or
- (g) a trustee or other person administering a compromise or arrangement made between the co-operative and another person;

"primary activity" has the meaning given by section 114;

"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 from time to time, by whatever name called, and whether or not that officer is a director or the secretary;

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

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

"Registrar" means the person from time to time 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;

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Division 3 - 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.

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- (g) provisions that relate to securities of a co-operative, other than shares in, debentures of or deposits with a co-operative;
- (h) provisions relating to the futures industry;
- (j) provisions relating to participants in the securities industry;
- (k) provisions relating to the conduct of securities business;
- (m) provisions relating to dealers' accounts and audit;
- (n) provisions relating to money and scrip of dealers' clients;
- (p) 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 Parts 1.2A, 7.11 and 7.12 of the Corporations Law except in relation to shares in debentures of, or deposits with, a co-operative.

(4) This section does not operate to give rise to any operation of the Corporations Law, and does not confer any function under that Law that that Law would not otherwise have or confer of its own force.

(5) This section has effect despite any provision of the *Corporations (Northern Territory) Act* or the applicable provisions of the Territory within the meaning of that Act.

9. CORPORATIONS LAW ADOPTED BY THIS ACT OR THE REGULATIONS

(1) The Regulations may adopt, with or without specified modifications, a provision of the Corporations Law for application in relation to co-operatives.

(2) Any provision of this Act or any regulation that adopts provisions of the Corporations Law for application in relation to co-operatives operates to apply those provisions as part of this Act and the adopted provisions are to be read as forming part of this Act.

(3) If a provision of the Corporations Law is adopted by any provision of this Act or the regulations, neither the adopted provision nor the adopting provision gives power to the Australian Securities Commission to administer the adopted provision for this Act.

11. IMPLIED ADOPTION OF REGULATIONS AND OTHER PROVISIONS OF CORPORATIONS LAW

(1) When a provision of this Act or the Regulations adopts a provision ("the adopted provision") of the Corporations Law for application in relation to co-operatives, the following provisions are also adopted by force of this section and are to be read as forming part of this Act:

- (a) the provisions of any regulation (an "adopted regulation") from time to time in force under the adopted provision;
- (b) any provision of the Corporations Law that creates an offence in relation to a contravention of the adopted provision;
- (c) the provisions of Part 9.4B of the Corporations Law for the purposes of any provision of the Corporations Law adopted by this Act that is a civil penalty provision within the meaning of that Part.

(2) The Regulations may prescribe modifications to any of the provisions adopted by subsection (1) for the purposes of their application under this section, and those provisions apply subject to any such prescribed modifications.

(3) If a provision of the Corporations Law or the regulations under that Law adopted under this Act (including under this section) creates an offence and the penalty for that offence is specified in another provision ("the penalty provision") of the Corporations Law or those regulations, the penalty provision is to be read as forming part of this Act for the purpose of determining the maximum penalty applicable to that offence.

12. EFFECT OF AMENDMENTS TO ADOPTED PROVISIONS OF CORPORATIONS LAW

(1) A provision of the Corporations Law that is adopted by or under a provision of this Act so applies as in force from time to time.

(2) If a group of provisions of the Corporations Law is adopted by or under a provision of this Act (whether by application of a Part or other Division of the Corporations Law or otherwise), and the Corporations Law is amended so as to insert new provisions in that group of provisions, the new provisions form part of the group of provisions so adopted.

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;
 - (c) the proposed members of the proposed co-operative must sign the application for membership that must be in a form approved by the Registrar;
 - (d) the proposed members must elect the first directors of the proposed co-operative in accordance with the proposed rules;
 - (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;
 - (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;

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- (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;
 - (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;
 - (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 102;
 - (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.

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- (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;
- (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;
- (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;
- (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 on the registration of the co-operative.

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

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(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;
- (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;
- (iii) a copy of the memorandum and articles of association or rules of the body corporate in force at the date of the application;
- (iv) 2 copies of the proposed rules of the co-operative, as provided for by the special resolution;
- (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;
- (vi) a list containing the name, address, occupation and place and date of birth of each director;
- (vii) evidence to the satisfaction of the Registrar of the incorporation of the existing body corporate; and
- (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;

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(3) The change of registration and incorporation does not affect the identity of the body corporate, that 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 - Appeals

29. APPEAL AGAINST REFUSAL TO APPROVE DISCLOSURE STATEMENT

The person who submitted a draft disclosure statement to the Registrar under this Act may appeal to the Supreme Court against -

- (a) a decision of the Registrar to refuse to approve the statement; or
- (b) a failure of the Registrar to approve the statement.

30. APPEAL AGAINST REFUSAL TO APPROVE DRAFT RULES

The person who submitted draft rules to the Registrar under this Act may appeal to the Supreme Court against -

- (a) a decision of the Registrar to refuse to approve the rules; or
- (b) a failure of the Registrar to approve the rules.

31. APPEAL AGAINST REFUSAL TO REGISTER

The applicants for registration of a proposed co-operative under this Part may appeal to the Supreme Court against -

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;
- (b) has a common seal;
- (c) may sue and be sued in its corporate name;
- (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 that 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; and
- (c) to form or enter into a partnership, joint venture or other association with other persons or bodies.

Division 2 — Doctrine of Ultra Vires Abolished

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.

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- (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;

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- (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 2 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.

49. OFFICIAL SEAL

(1) A co-operative may, if authorised by its rules, have, for use in place of its common seal outside the Territory, 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 2 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.

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- (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; and
- (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.

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60. MEMBERS OF ASSOCIATIONS

- (1) The members of an association are —
 - (a) the component co-operatives by which the association is formed;
 - (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 the Territory;
 - (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.

61. MEMBERS OF FEDERATIONS

- (1) The members of a federation of associations are —
 - (a) the associations by which the federation is formed;
 - (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.

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(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 Law) unless the person is an officer, member or employee of the company.

66. NOTIFICATION OF SHAREHOLDERS AND SHAREHOLDINGS

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

- (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: \$2,000.

67. 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.

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(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

70. RIGHTS OF MEMBERSHIP NOT EXERCISABLE UNTIL REGISTERED, &c.

(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: \$2,000.

71. 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.

72. 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 —

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74. MEMBERS, &c., 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;
- (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 76 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.

75. 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 102.

(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

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(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

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

79. TRANSFER OF SHARE OR INTEREST ON DEATH OF MEMBER

Subject to section 168, 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.

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

84. 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;

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

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

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

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

Division 5 — Oppressive Conduct of Affairs

85. 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.

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- (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;
- (j) an order directing a co-operative to become registered as a company under the Corporations Law;
- (k) an order requiring a person to do a specified act or thing;
- (m) an order as to costs.

89. 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;
 - (ii) contrary to the interests of the members as a whole;
- (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.

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(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;
- (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 95.

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

95. APPLYING FOR AND GRANTING LEAVE

(1) A person referred to in section 94(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;
- (b) the applicant is acting in good faith;
- (c) it is in the best interests of the co-operative that the applicant be granted leave;
- (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.

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(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 95 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.

98. 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.

99. GENERAL POWERS OF 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;
- (b) directions about the conduct of the proceedings, including requiring mediation;
- (c) an order directing the co-operative, or an officer of the co-operative, to do, or not to do, any act;
- (d) an order appointing an independent person to investigate and report to the Supreme Court, on —
 - (i) the financial affairs of the co-operative;
 - (ii) the facts or circumstances that 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.

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(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.

103. PURCHASE AND INSPECTION OF COPY OF RULES

(1) A 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) A person is entitled to obtain from the Registrar a copy of the rules of a co-operative on payment of the prescribed fee.

104. 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 that 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 \$1,000.

(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 \$1,000.

105. MODEL RULES

(1) The Registrar may, by notice published in the 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.

108. ALTERATION BY SPECIAL RESOLUTION

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

109. 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.

110. 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;
- (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.

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116. WHAT ARE ACTIVE MEMBERSHIP PROVISIONS AND RESOLUTIONS

(1) Active membership provisions in the rules of a co-operative are provisions in the rules that 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 that 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

117. NUMBER OF PRIMARY ACTIVITIES REQUIRED

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

118. 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.

119. FACTORS AND CONSIDERATIONS FOR DETERMINING PRIMARY ACTIVITIES, &c.

(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; and
- (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.

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121. 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

122. 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;
- (b) specify the full text of the proposed resolution; and
- (c) contain a copy of section 126.

(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.

123. 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.

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(5) A person may apply to the Supreme Court for an order under section 132 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.

127. 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 126.

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

(3) Nothing in this section affects the operation of section 133.

128. 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 \$2,000.

129. 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 that 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.

132. 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 126 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.

133. 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 134 as to interest on the deposit);
- (b) the co-operative may allot or issue debentures of the co-operative to the former member in satisfaction of the amount;

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

(4) The provisions of Part 7.12 of the Corporations Law adopted under section 258 do not apply to an allotment or issue of debentures under this section.

135. REPAYMENT OF DEPOSITS AND DEBENTURES

(1) A deposit or debenture 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.

(2) The deposit or debenture 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.

136. 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

137. APPLICATION OF DIVISION

This Division only applies to trading co-operatives.

138. 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 285(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;

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(2) A person referred to in subsection (1) is, for the purposes of the operation of section 138 (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).

140. SET-OFF OF AMOUNTS REPAID, &c., ON FORFEITED SHARES

(1) If a person has an entitlement because of the operation of section 139, the entitlement operates to extinguish any liability of the co-operative —

- (a) to repay to the person under section 133 any amount in respect of the forfeited shares concerned; or

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- (b) is transferable or transmissible as provided by this Act and the rules of the co-operative; and
 - (c) is, subject to the rules of the co-operative, capable of devolution by will or by operation of law.
- (2) Subject to subsection (1) -
- (a) the laws 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

144. 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;
 - (b) a copy of the last annual report of the co-operative under section 244;
 - (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

145. SHARES - GENERAL

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

(2) Shares are to be of a fixed amount that is to be specified in the rules of the co-operative.

149. JOINT OWNERSHIP OF SHARES

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

150. 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;

(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

153. 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;
- (b) if the issue arises from, or partly from, a sale of assets, a statement of the price for which the assets were sold;
- (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;
- (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*

154. 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;

(2) The notice must —

- (a) set out the name and address of the transferee;
- (b) contain a statement to the effect that, as from registration of the transfer, the transferee holds the relevant shares beneficially;
- (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: \$1,000 or imprisonment for 3 months.

157. 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: \$1,000 or imprisonment for 3 months.

(2) The notice must —

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

161. REGISTRATION AS TRUSTEE, &c., ON DEATH OF OWNER OF SHARES

(1) A trustee, executor or administrator of the estate of a dead person who was the registered holder of a share in a 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.

162. 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.

163. 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.

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

168. 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.

169. RESTRICTION ON TOTAL SHAREHOLDING

The board of a co-operative must not consent under section 167 or 168 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.

170. 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

171. 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.

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

(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;
- (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;

(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 or debenture must be repaid to the member as soon as repayment would not, in the opinion of the board, adversely affect the financial position of the co-operative.

(5) The deposit or debenture 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.

173. 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

174. APPLICATION OF PART

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

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(6) Subsection (5) does not apply if the proxy acts under an instrument of proxy referred to in subsection (2).

177. 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.

178. 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.

179. 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.

180. CONTROL OF RIGHT TO VOTE

(1) A person must not directly or indirectly control the exercise of the right to vote of a member.

Penalty: \$6,000 or imprisonment for 6 months.

(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.

181. 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.

(2) A member who is not entitled to vote because of this section may apply to the Registrar to review the matter.

187. SPECIAL RESOLUTIONS

(1) A special resolution is a resolution of a co-operative that is passed –

- (a) by a two-thirds majority at a general meeting of members;
- (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;
- (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: \$2,000.

(5) A failure to give notice to the Registrar under subsection (4) does not affect the validity of the resolution.

188. 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.

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(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 that, and any officer of the co-operative who, knowingly fails to lodge the required copies in accordance with this section is guilty of an offence and liable to a penalty not exceeding \$2,000.

(4) This section and section 193 do not apply to a special resolution altering the rules of a co-operative.

193. 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 191(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

194. 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.

196. WHEN 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 270;
- (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.

197. 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;

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- (b) any further time that may be allowed by the Registrar or is prescribed.

200. SPECIAL GENERAL MEETINGS

A special general meeting of a co-operative may be convened at any time by the board.

201. NOTICE OF MEETINGS

The board must give each member at least 14 days notice of each general meeting.

202. 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.

203. 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.

204. 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.

205. 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 — Board

206. BOARD OF DIRECTORS

(1) Subject to this Act and the rules of the co-operative, the business of a co-operative is to be managed by a board of directors.

(2) The board 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.

207. 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 that 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.

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(b) has been convicted, whether before or after the commencement of this section, within or outside the Territory —

- (i) on indictment of an offence in connection with the promotion, formation or management of a body corporate;
- (ii) of an offence involving fraud or dishonesty punishable on conviction by imprisonment for a period of not less than 3 months;
- (iii) of any offence under section 232, 590, 591, 592, 704, 705 or 996 of the Corporations Law or under any provision of a law in force in a State or another Territory of the Commonwealth that corresponds with any of those sections; or
- (iv) of any offence under any provision of a previous law of the Territory or of a State or another Territory of the Commonwealth, 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: \$24,000 or imprisonment for 2 years.

(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;
- (b) is prohibited from being a director of a company under section 599 of the Corporations Law;
- (c) is an insolvent under administration (as defined in the Corporations Law); or
- (d) is prohibited from managing a co-operative by an order under section 1317EA of the Corporations Law, as adopted under this Act.

Penalty: \$24,000 or imprisonment for 2 years.

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(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.

212. 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.

213. 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;
- (b) to a committee of 2 or more directors;
- (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.

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- (b) a person who is concerned, or takes part, in the management of the co-operative, whether or not as a director;
- (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;
- (d) an administrator of a deed of arrangement executed by the co-operative;
- (e) a liquidator or provisional liquidator appointed in a voluntary winding up of the co-operative;
- (f) an administrator of the co-operative appointed under Part 5.3A of the Corporations Law as adopted and 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.

216. 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 Territory 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 \$24,000 or imprisonment for 2 years; or
- (b) in any other case, a penalty not exceeding \$6,000.

217. 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: \$2,000.

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(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.

221. 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.

222. 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.

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Division 3 - Restrictions on Directors and Officers

224. 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.

225. 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 \$24,000 or imprisonment for 2 years.

(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;
- (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: \$50,000.

226. FINANCIAL ACCOMMODATION TO DIRECTORS AND ASSOCIATES

(1) In this section, "associate" of a director means -

- (a) the director's spouse;

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- (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: \$50,000.

- (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 \$24,000 or 2 years imprisonment.

(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;
- (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.

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- (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 that may, after the giving of the notice, be made with the entity,

is a sufficient declaration.

(5) A director of a co-operative who holds an office or has an interest in property whereby, whether directly or indirectly, duties or interests might be created that could conflict with the director's duties or interests as director must, under subsection (6) declare at a meeting of the board the fact and the nature, character and extent of the conflict.

Penalty: \$24,000 or imprisonment for 2 years.

(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.

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- (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 - Accounts and Audit

233. REQUIREMENTS FOR ACCOUNTS AND ACCOUNTING RECORDS

- (1) A co-operative must -

- (a) keep accounting records and prepare accounts and consolidated accounts as required by the Regulations; and
- (b) ensure that those accounts are audited in accordance with the Regulations.

Penalty: \$2,000.

(2) Without limiting the matters for which Regulations under this section may make provision, the Regulations may make provision for or with respect to the following:

- (a) any matter for which provision is made by or under Parts 3.6 and 3.7 of the Corporations Law (including the conferring of jurisdiction on a court);
- (b) requiring accounts and consolidated accounts to be prepared in accordance with any accounting standards in force for the purposes of Parts 3.6 and 3.7 of the Corporations Law (with or without modifications specified in the Regulations);
- (c) requiring the submission of accounts or consolidated accounts to the Australian Accounting Standards Board;
- (d) requiring the adoption by a co-operative of the same financial year for each entity that the co-operative controls;
- (e) prescribing the qualifications and the functions of auditors of the accounts of a co-operative and providing for the appointment, the holding of office by, the remuneration of, and the removal of, auditors;

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237. PROTECTION OF AUDITORS, &c.

(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
- (b) the giving of any notice, or the sending of any copy of accounts, consolidated accounts 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.

238. 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

239. 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);

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241. INSPECTION OF REGISTERS, &c.

(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 244;
- (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 may inspect the register itself.

(3) If the register is kept on a computer, the person may inspect 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: \$2,000.

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- (c) specify the prescribed particulars of the appointment or cessation of appointment.

Penalty: \$2,000.

244. 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;
- (b) a copy of the accounts of the co-operative in respect of its financial year then last past;
- (c) a copy of the accounts of each subsidiary of the co-operative in respect of the financial year of the subsidiary then last past;
- (d) a copy of any report by the auditors or directors of the co-operative or subsidiary on the accounts referred to in paragraphs (b) and (c);
- (e) such other particulars as may be prescribed.

Penalty: \$2,000.

(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 199(2)(a), 28 days after the end of that period.

245. 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: \$2,000.

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- (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.

249. NAME TO APPEAR ON BUSINESS DOCUMENTS, &c.

(1) The name of a co-operative must appear in legible characters -

- (a) on its seal;
- (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 \$2,000.

(3) An officer of a co-operative or a person on its behalf must not -

- (a) use any seal of the co-operative;
- (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: \$2,000.

(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 \$2,000.

(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;

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(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: \$2,000.

(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: \$2,000.

PART 10 — FUNDS AND PROPERTY

Division 1 — Power to Raise Money

252. 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.

253. 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.

254. 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;
- (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.

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(3) An agreement referred to in subsection (1) has effect despite the provisions of Division 6 of Part 5.6 of the Corporations Law (as adopted under Division 3 of Part 12 of this Act).

258. APPLICATION OF CORPORATIONS LAW TO ISSUES OF DEBENTURES

(1) The provisions of Parts 1.2A, 7.11 and 7.12 of the Corporations Law are adopted by this section and apply to and in respect of debentures of a co-operative.

(2) Those provisions apply with any modifications that are prescribed and as if —

- (a) a co-operative were a company;
- (b) a reference in those provisions to a corporation included a co-operative; and
- (c) a reference in those provisions to the Commission were a reference to the Registrar.

(3) The provisions of the Corporations Law adopted by this section do not apply to a loan to which section 262 applies.

(4) The provisions of the Corporations Law adopted by this section do not apply to an issue of debentures of a co-operative that is made —

- (a) solely to members;
- (b) solely to members and employees of the co-operative; or
- (c) to a person who on becoming an inactive member of the co-operative has had his or her share capital converted to debt.

(5) Expressions used in this section that are not defined in this Act have the same meaning as in the Corporations Law.

(6) The Registrar may exempt a co-operative from any of the requirements of the Corporations Law adopted by this section.

259. 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.

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- (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;
 - (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.

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Division 3 — Receivers and Other Controllers of Property of Co-Operatives

265. RECEIVERS AND OTHER CONTROLLERS OF PROPERTY OF CO-OPERATIVES

Schedule 4 has effect.

Division 4 — Disposal of Surplus from Activities

266. 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.

267. 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).

268. 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;
- (b) the issue of bonus shares to members; or
- (c) the issue to members of a limited dividend.

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- (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 195 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 \$6,000 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 ACQUISITION OF INTERESTS IN CO-OPERATIVES

Division 1 — Restrictions on Share and Voting Interests

271. APPLICATION OF PART

This Part applies to trading co-operatives.

272. 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: \$2,000.

(2) A person (whether or not a member of the co-operative) who has ceased to have a relevant interest in the right to vote of a member of a co-operative must give notice to the co-operative within 5 business days after becoming aware of that fact.

Penalty: \$2,000.

(3) Section 181 provides for the effect of a person having a relevant interest in the right to vote of a member of a co-operative.

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(2) The Registrar, by order published in the Gazette, may specify a maximum greater than 20% as the maximum for the purposes of subsection (1) in respect of a particular 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.

276. 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 133 to 135 apply to and in respect of shares forfeited under this section as if the shares had been forfeited under Part 6.

277. 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 272 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;

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279. 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.

280. 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.

281. UNLISTED COMPANIES TO PROVIDE LIST OF SHAREHOLDERS, &c.

(1) This section applies to a company (within the meaning of the Corporations Law) that is not a listed corporation (within the meaning of that Law).

(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;

284. 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

285. 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 Law;
- (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 275 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 273.

286. 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 -

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- (a) the person knows that the announcement is false or is recklessly indifferent as to whether it is true or false; or
- (b) the person has no reasonable grounds for believing that the person, or the person and the other person or persons, will be able to perform obligations arising under the scheme or announcement or under the Corporations Law in connection with the scheme or announcement if a substantial proportion of the offers or the offers made under the announcement are accepted.

Penalty: \$20,000 or imprisonment for 5 years.

(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: \$10,000 or imprisonment for 2 years.

(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 found guilty 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

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PART 12 — MERGER, TRANSFER OF
ENGAGEMENTS, WINDING UP

*Division 1 — Mergers and Transfers
of Engagements*

293. APPLICATION OF DIVISION

This Division does not apply to a merger or transfer of engagements to which Part 14 applies.

294. 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.

295. 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.

296. 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 —

- (a) the financial position of the 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;
- (b) any interest that any officer of each co-operative has in the proposed merger or transfer of engagements;

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- (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;
 - (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.

299. 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;
 - (b) the rules or proposed rules of the transferee co-operative are adequate;
 - (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.

300. 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

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- (a) a company under the Corporations Law;
- (b) an incorporated association under the *Associations Incorporation Act*;
- (c) a building society under the Financial Institutions (NT) Code;
- (d) a credit union under the Financial Institutions (NT) Code;
- (e) any body corporate that is incorporated, registered or otherwise established under a law that is a law of a place outside the Territory and that is prescribed for the purposes of this section.

302. REQUIREMENTS BEFORE APPLICATION CAN BE MADE

(1) Before an application is made under section 301, the co-operative must by special resolution passed by means of a special postal ballot –

- (a) approve the proposed application;
- (b) determine under what name the co-operative is to apply to be incorporated or registered;
- (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 195 in relation to any matter to which this section applies.

(4) An exemption under subsection (3) may be granted unconditionally or subject to conditions.

303. 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".

304. 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.

Territory 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

309. 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.

(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 Law may be so wound up.

310. 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 331.

(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 Law.

(5) The liquidator must within 10 days after appointment give notice of his or her appointment in the *Gazette*.

(6) The liquidator must give such security as may be prescribed and is entitled to receive such fees as are fixed by the Registrar.

(7) Any vacancy occurring in the office of liquidator is to be filled by a person appointed by the Registrar.

312. 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 195.

(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.

313. 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.

314. 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.

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Division 4 – Administration of Co-Operative – Adoption of Corporations Law

318. ADOPTION OF PART 5.3A OF CORPORATIONS LAW

(1) The provisions of Part 5.3A and Division 3 of Part 5.9 of the Corporations Law are adopted by this section and apply to and in respect of a co-operative as if it were a company.

(2) Those provisions apply with any modifications that are prescribed and as if –

- (a) references in those provisions to sections 164 and 166 of the Corporations Law were references to sections 43 to 45 and 47 of this Act; and
- (b) references in those provisions to the Commission were references to the Registrar.

Division 5 – Appointment of Administrator

319. 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;
- (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 331.

320. 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;
- (b) all contracts of employment with the co-operative are terminated;
- (c) all contracts for the provision of secretarial or administrative services for the co-operative are terminated; and

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(6) — (7) Directors elected or appointed under subsection

- (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.

322. EXPENSES OF ADMINISTRATION

(1) The expenses of and incidental to the conduct of a co-operative's affairs by an administrator are payable from the co-operative's funds.

(2) The expenses of conducting a co-operative's affairs include —

- (a) if the administrator is not an employee within the meaning of the *Public Sector Employment and Management Act*, remuneration of the administrator at a rate approved by the Registrar; or
- (b) if the administrator is an employee within the meaning of the *Public Sector Employment and Management Act*, 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.

323. 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 321.

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(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.

326. 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, &c., on Property, Liabilities, &c.

327. 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.

328. HOW THIS DIVISION APPLIES TO 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.

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- (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;
 - (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 stamp duty or to any fee chargeable under any Act for registration.

Division 7 – Miscellaneous

331. 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 300;
 - (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 310.
- (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 69;

332. ADOPTION OF CORPORATIONS LAW CONCERNING RECIPROCITY
WITH OTHER JURISDICTIONS

(1) The provisions of Part 5.7A of the Corporations Law 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;

(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 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.

333. ADOPTION OF CORPORATIONS LAW CONCERNING INSOLVENT
CO-OPERATIVES

(1) The provisions of Part 5.7B (except section 588G) of the Corporations Law 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 a reference in those provisions to any provision of section 289 of the Corporations Law were a reference to the equivalent provisions of the Regulations under section 233 of this Act.

PART 13 — ARRANGEMENTS AND RECONSTRUCTIONS

Division 1 — General Requirements

334. 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

336. 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.

337. 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;

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(2) Section 536 of the Corporations Law is adopted by this subsection and applies to a person appointed to administer a compromise or arrangement as if the appointment were an appointment as a liquidator of the co-operative and as if a reference to a liquidator were a reference to that person.

340. 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: \$2,000.

(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.

341. 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 —

(a) if a meeting of the members of the co-operative by resolution so directs, instruct the accountants or solicitors 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 \$2,000.

342. 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

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(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.

345. 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

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- (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 Law.

(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.

350. 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.

351. 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 350 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

353. 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 share.

(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.

354. DISPOSAL OF CONSIDERATION FOR SHARES COMPULSORILY ACQUIRED

(1) All sums received by the transferor under this Division must be paid into a separate bank account and those sums, and any other consideration so received, are to be held by the transferor in trust for the several persons entitled to the shares in respect of which they were respectively received.

(2) If a sum or other property received by the transferor under this Division has been held in trust by the transferor for a person for at least 2 years, the transferor must pay the sum or transfer the consideration, and any accretions to it and any property that may become substituted for it or for part of it, to the Registrar.

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(2) If the Supreme Court of a State or another Territory of the Commonwealth 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 the Territory under that corresponding provision of this Act and has effect and may be enforced accordingly.

358. JURISDICTION TO BE EXERCISED IN HARMONY WITH CORPORATIONS LAW JURISDICTION

The jurisdiction of the Supreme Court under this Part is intended to complement the Supreme Court's jurisdiction under the Corporations Law and should be exercised in harmony with that jurisdiction.

359. REGISTRAR MAY APPEAR, &c.

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

Division 1 — Introductory

360. DEFINITIONS

In this Part —

"co-operatives law" means a law that under an order in force under section 361 is declared 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 State" means any State in which a co-operatives law is in force;

"State" includes the Australian Capital Territory and the Territory.

361. CO-OPERATIVES LAW

(1) Subject to subsection (2), the Administrator may, by order published in the Gazette, declare that a law of a State other than the Territory is a co-operatives law for the purposes of this Part.

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- (g) secures or collects any of its debts or enforces its rights in regard to any securities relating to the debts; or
- (h) conducts an isolated transaction that is completed within a period of 31 days not being one of a number of similar transactions repeated from time to time.

364. APPLICATION FOR REGISTRATION OF PARTICIPATING CO-OPERATIVE

(1) A participating co-operative that proposes to carry on business as a co-operative in the Territory may apply to the Registrar in the prescribed manner to be registered as a foreign co-operative.

(2) An application by a participating co-operative must be accompanied by -

- (a) a certificate, not more than 2 months old, from the Registrar of the participating State, in which the participating co-operative is registered, incorporated or formed stating that the co-operative is complying with the provisions of the co-operatives law of that State prescribed for the purpose of the section of that law that corresponds with section 373;
- (b) the documents prescribed for the purpose of the section of the co-operatives law of that State that corresponds with section 373;
- (c) a copy of the current rules of the co-operative;
- (d) a statement, verified as prescribed, setting out -
 - (i) the full name and address of each person who will act as agent of the co-operative in the Territory;
 - (ii) the address of the proposed registered office of the co-operative in the Territory;
 - (iii) a copy of an instrument appointing a person resident in the Territory (other than a body corporate incorporated outside the Territory) as a person on whom all notices and legal process may be served on behalf of the co-operative;
- (e) any other documents or information that are prescribed; and
- (f) the prescribed fee.

367. NAME OF FOREIGN CO-OPERATIVE

(1) A foreign co-operative is eligible for registration under this Part if the name under which it proposes to carry on business in the Territory is not such as is likely to be confused with the name of a body corporate or a registered business name.

(2) If the Registrar advises the foreign co-operative that the name under which it proposes to carry on business in the Territory is likely to be confused with the name of a body corporate or registered business name, the co-operative may amend its application by substituting another name.

368. REGISTRATION OF FOREIGN CO-OPERATIVE

If, on due application, the Registrar is satisfied that the foreign co-operative is eligible for registration, the Registrar must register the foreign co-operative as a foreign co-operative and issue a certificate of registration in accordance with the Regulations.

369. APPLICATION OF ACT AND REGULATIONS TO FOREIGN CO-OPERATIVES

The prescribed provisions of this Act and the Regulations apply, with all necessary modifications and any prescribed modifications, to a foreign co-operative that is registered under this Part as if the foreign co-operative were a co-operative.

370. REGISTRAR TO BE NOTIFIED OF CERTAIN CHANGES

Within 28 days of any alteration affecting -

- (a) the rules or constitution of a foreign co-operative registered under this Part;
- (b) the directors of the foreign co-operative;
- (c) the agents (or their addresses) of the foreign co-operative;
- (d) the person appointed as the person on whom notices and legal process may be served on behalf of the foreign co-operative;
- (e) the address of the registered office in the Territory of the foreign co-operative;
- (f) the address of the registered office in the participating State of a participating co-operative registered under this Part; or

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(3) Unless the Registrar has been notified in writing that the foreign co-operative has resumed carrying on business as a co-operative in the Territory, the Registrar must, one year after receiving a notification under subsection (1), cancel the registration of the foreign co-operative.

373. CO-OPERATIVE PROPOSING TO REGISTER AS FOREIGN CO-OPERATIVE

(1) A co-operative that proposes to apply to be registered as a foreign co-operative in another participating State may apply to the Registrar for a certificate that it is complying with all prescribed provisions of this Act including, if the Registrar has varied a requirement in relation to that co-operative, the provision as varied.

(2) The Registrar must issue the certificate to the co-operative unless he or she is of the opinion that the co-operative is not complying with the prescribed provisions.

(3) If the Registrar issues the certificate, he or she must also give to the co-operative the prescribed documents.

Division 3 - Mergers and Transfers of Engagements

374. WHO IS APPROPRIATE REGISTRAR

In this Division, "appropriate Registrar" in relation to a proposed merger or transfer of engagements means -

- (a) the Territory Registrar, if the merger is to result in a Territory co-operative or the transfer is to a Territory co-operative; or
- (b) the Registrar for the participating State concerned, if the merger is to result in a co-operative under the co-operatives law of that participating State or the transfer is to such a co-operative.

375. AUTHORITY FOR MERGER OR TRANSFER OF ENGAGEMENTS

(1) A Territory 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 Territory 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 Territory co-operative; or

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(2) Each co-operative must send to each of its members a disclosure statement approved by the appropriate Registrar specifying -

- (a) the financial position of the Territory 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;
- (b) any interest that any officer of the Territory co-operative or the foreign co-operative has in the proposed merger or transfer of engagements;
- (c) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to any officer or member of the Territory co-operative or foreign co-operative in relation to the proposed merger or transfer of engagements;
- (d) whether the proposal is a merger or transfer of engagements and the reason for the merger or transfer or engagements;
- (e) in the case of a transfer of engagements, whether it is a total or partial transfer of engagement;
- (f) in the case of a merger, whether the merged co-operative will result in a Territory 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 Territory 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) where the resolution is to be decided at a meeting, 21 days before the date of the meeting; or
- (b) where the resolution is to be decided by a postal ballot, 21 days before the day on or before which the ballot papers must be returned by members voting in the ballot.

(4) The appropriate Registrar may exempt the Territory 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.

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(3) On approving an application for merger, the Territory Registrar must -

- (a) cancel the registration of the Territory co-operative involved in the merger; and
- (b) if the merger is to result in a Territory 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).

380. APPROVAL OF TRANSFER OF ENGAGEMENTS

(1) If the Territory 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;
- (b) the rules or proposed rules of the transferee co-operative are adequate;
- (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 Registrar for the participating State concerned;
- (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 Registrar;
- (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 Territory 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 Territory Registrar.

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- (d) all proceedings by or against the original co-operative that are pending immediately before the transfer day are taken to be proceedings pending by or against the successor co-operative;
 - (e) any act, matter or thing done or omitted to be done by, to or in respect of the original co-operative before the transfer day is (to the extent to which that act, matter or thing has any force or effect) to be taken to have been done or omitted by, to or in respect of the successor co-operative;
 - (f) a reference in an instrument or in any document of any kind to the original 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;
 - (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 in respect of a transfer of engagements is not liable to stamp duty or to any fee chargeable under any Act for registration.
- (5) 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 stamp 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.

382. DIVISION APPLIES INSTEAD OF CERTAIN OTHER PROVISIONS OF THIS ACT

- (1) This Division applies instead of Division 1 of Part 12, in respect of the merger of a Territory 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 Territory co-operative and a foreign co-operative.

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386. REGISTRAR AND INVESTIGATORS HAVE FUNCTIONS OF INSPECTORS

The Registrar, and any investigator exercising functions under Division 2, has and may exercise all the functions of an inspector and for that purpose is to be considered to be an inspector.

387. INSPECTOR'S IDENTITY CARD

(1) The Registrar 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.

388. 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;

(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;

(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, solicitor, auditor or other person acting in any capacity for or on behalf of, the co-operative;

(b) is a person who has any relevant documents relating to the co-operative in his or her possession or control; or

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- (d) power to exercise the functions of an inspector under section 391 in relation to any relevant documents found on the premises or produced to the inspector.

391. 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.

392. 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 \$12,000 or imprisonment for 12 months, unless the person establishes that he or she had a reasonable excuse for failing to comply.

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(2) If a justice is satisfied by the evidence on oath, whether oral or by affidavit, that there are reasonable grounds for doing so, the justice 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;
- (b) the premises to be searched;
- (c) any conditions to which the warrant is subject;
- (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 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.

395. 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.

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Division 2 - Inquiries

398. DEFINITIONS

(1) 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;
- (b) loans made to the co-operative;
- (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;
- (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 399;

"involved person", in relation to an inquiry into the affairs of a co-operative, means -

- (a) an officer of the co-operative;
- (b) a person who acts, or has at any time acted, as banker, solicitor, auditor or actuary, or in any other capacity, for the co-operative;

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(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.

401. 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 403 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.

402. 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.

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404. 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;
- (b) sends, or causes to be sent, out of the Territory 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 \$12,000 or 12 months imprisonment, unless it is established that the person charged did not intend to defeat, delay or obstruct the inquiry.

405. RECORD OF EXAMINATION

(1) Except as provided by section 401, 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: \$6,000.

406. 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.

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(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.

408. 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 401.

409. 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 407 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 found guilty 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 finding or not more than 14 days later, order the person to pay to the Crown all or part of the costs of the inquiry.

412. 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: \$6,000 or imprisonment for 6 months.

413. 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: \$6,000 or imprisonment for 6 months.

(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.

414. FALSE STATEMENTS IN LOAN APPLICATION, &c.

(1) A person must not in or in relation to any application, request or demand for money made to or of any co-operative —

- (a) give any information or make 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: \$6,000 or imprisonment for 6 months.

(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.

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- (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.

418. 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.

419. 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 416 and 417 apply to such a meeting.

420. 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.

421. 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.

422. 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.

426. DELEGATION BY REGISTRAR

(1) The Registrar may by instrument delegate to an employee within the meaning of the *Public Sector Employment and Management Act* any of the Registrar's functions including this power of delegation.

(2) A delegate may by instrument sub-delegate to another employee any function delegated under this section if the delegate is authorised by the terms of the delegation to do so.

427. 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 that the Minister requires by order published in the *Gazette* to be recorded in the Register.

428. 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 427, a register must be kept in the form and contain the particulars that the Registrar thinks fit.

(3) Subject to section 429, any document lodged with, furnished to or registered by the Registrar under this Act must be kept in the office of the Registrar.

429. DISPOSAL OF RECORDS BY REGISTRAR

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;

433. METHOD OF LODGMENT

(1) Subject to section 432, 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.

434. 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;
- (b) contains matter that, in a material particular, is false or misleading in the form or context in which it is included;
- (c) by reason of an omission or misdescription, has not been duly completed;
- (d) does not comply with the requirements of this Act; or
- (e) contains any error, alteration or erasure.

(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;
- (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.

438. 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.

439. 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.

440. 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.

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(2) A person may be proceeded against and found guilty of an offence 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.

446. NOTICE TO BE GIVEN OF CONVICTION FOR OFFENCE

If a co-operative or an officer of a co-operative is found guilty of an offence against a provision of this Act or the Regulations, the co-operative must, not later than 28 days after the finding is recorded, give to each member of the co-operative notice of —

- (a) the finding;
- (b) any penalty imposed in respect of the offence to which the finding relates; and
- (c) the nature of the offence to which the finding relates.

447. SECRECY

(1) A person —

- (a) who is, or at any time was, engaged in the administration of this Act or the former Act; or
- (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 \$6,000.

(2) Subsection (1) does not apply to —

- (a) the recording, making use of or divulging of information in the course of the administration of this Act;
- (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;
- (b) for the purposes of any proceedings under this Act or of an inquiry authorised by an Act;

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(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;
- (b) make available a document containing the information;
- (c) make available anything from which, by electronic process or otherwise, the information may be obtained;
- (d) communicate the information in any other manner;

"former Act" means the *Co-operative Societies Act*.

448. 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 \$12,000.

(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 \$12,000.

(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 \$6,000 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 \$6,000 unless it is proved that the person had taken reasonable precautions aimed at avoiding the making or authorising of omissions that would make such a document false or misleading.

451. 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;
- (b) attempting to contravene this Act or the Regulations;
- (c) aiding, abetting, counselling or procuring a person to contravene this Act or the Regulations;
- (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act or the Regulations;
- (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;
- (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;
- (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.

(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.

455. 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;
- (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 the Territory; or
- (c) by leaving it at the registered office in the Territory 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;
- (b) in the case of a foreign co-operative, it is addressed to a place in the Territory 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.

456. 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;
- (b) by post;

459. REGULATIONS

(1) The Administrator in Council may make regulations, not inconsistent with this Act, prescribing matters -

- (a) required or permitted by this Act to be prescribed; or
- (b) 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.

(3) A regulation may create an offence punishable by a penalty not exceeding \$2,000.

(4) Regulations relating to fees -

- (a) may prescribe different fees for different classes of cases; and
- (b) may authorise the Registrar to waive, reduce or refund fees in particular cases or classes of cases.

PART 19 - REPEALS, SAVINGS AND TRANSITIONAL

460. REPEALS

Ordinances specified in Schedule 5 are repealed.

461. SAVINGS AND TRANSITIONAL PROVISIONS

Schedule 6 has effect.

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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;

18. Provision for the accounts 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.

SCHEDULE 2

RELEVANT INTERESTS, ASSOCIATES, RELATED BODIES

Section 4

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 —

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- (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;
- (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;
- (b) is exercisable by a person alone or jointly with any other person or persons;
- (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;

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

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 Law.

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;

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(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; or
- (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.

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- (g) a document that is, or evidences title to, a marketable security;

"marketable security" has the same meaning as in the Corporations Law;

"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 the Territory 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.

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- (j) 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;
- (b) a pledge of a personal chattel or of a marketable security;
- (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;
- (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;
- (b) a chattel interest in land;
- (c) a marketable security;
- (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.

11. Charges 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;
- (j) any other information that is prescribed.

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;

(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 —

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;
- (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;

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(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 20 or 21(1), as the case may be.

(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. 2 or more charges relating 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.

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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;
 - (b) the Registrar gives a certificate under section 310 for the winding up of the co-operative;
 - (c) an administrator of a co-operative is appointed under Part 5.3A of the Corporations Law as adopted and 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;
 - (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

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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");
 - (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;
- (b) the passing of the necessary resolution for the voluntary winding up of the co-operative;

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- (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, a relevant person in relation to the charge.

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(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

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- (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 subclause (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;
 - (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.

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- (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;
- (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;

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- (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 do not affect the priority of the charge in so far as it relates to the other property.

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;
- (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

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- (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;

- (b) a registered charge on property of a co-operative secures a prospective liability of an unspecified amount.

- (5) — (6) In relation to a charge referred to in subclause

- (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; and

- (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

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- (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 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;

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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;

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(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.

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- (r) 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;
 - (s) 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;
 - (t) 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;
 - (u) to enforce payment of any call that is due and unpaid, whether the calls were made by the receiver or otherwise;
 - (w) to make or defend an application for the winding up of the co-operative; and
 - (y) 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

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- (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.

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(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.

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;
 - (ii) otherwise, an instrument under which the controller entered into possession, or took control, of that property;
 - (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 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.

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(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;
- (b) an administrator of the co-operative;
- (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 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 —

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(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;
- (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;
- (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

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(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.

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- (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.

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(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 Law (as adopted and 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 Law (as adopted and applying under this Act) to the relevant date are to be read as references to the date of the appointment of the receiver, or of possession being taken or control being assumed, as the case may be.

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(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;
- (b) the interests of the holder of the charge that the controller is enforcing;
- (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 6

Section 461

SAVINGS AND TRANSITIONAL

1. Definitions

In this Schedule, "transferred co-operative" means a body corporate which is deemed under clause 4, 5 or 6 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-operative Societies Act* or the *Co-operative Trading Societies (Loans Guarantee) Act*, or existing or continuing under those Acts 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 Administrator 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 that was a society within the meaning of the *Co-operative Societies Act* immediately before that commencement is deemed to be a co-operative registered under this Act.

(2) 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. 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 16 of the *Co-operative Societies Act* but the body had not been registered as a society under that Act —

- (a) sections 6, 15, 16, 17, 20(2), 21(1) and (3) and 32 of that Act continue to apply to the formation of the body as a society; and

(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.

8. 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.

9. 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.

10. Special resolutions and majority resolutions

A special resolution passed by a transferred co-operative under the *Co-operative Societies Act* and not registered under that Act before the commencement of this clause may be registered by the Registrar of Co-operatives under this Act.

Co-operatives

(3) If any provision of the *Co-operative Societies Act* 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.

16. Superseded references

On and from the commencement of this clause, any reference in any other Act, or regulation or any other document —

- (a) to the *Co-operative Societies Act* is deemed to be a reference to this Act; and
 - (b) to a society or co-operative society within the meaning of the *Co-operative Societies Act* is deemed to be a reference to a co-operative registered under this Act.
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