



New South Wales

Co-operatives Legislation Amendment Bill 2001

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Co-operatives Act 1992* so as:

- (a) to repeal a provision allowing anti-competitive conduct by co-operatives, and
- (b) to provide that a member under 18 years of age is not entitled to the vote attached to membership of a co-operative, and
- (c) to enact core consistent provisions to give effect to a national scheme for the regulation of co-operatives with respect to:
 - (i) the procedure for the approval of disclosure statements, and
 - (ii) the provision of information to members, and
 - (iii) the setting of member subscriptions, and
 - (iv) the repayment of money paid up on share capital and amounts due in respect of cancelled membership, and

- (v) the adoption of certain provisions of the *Corporations Act 2001* of the Commonwealth, and
 - (vi) annual general meetings and other meetings of co-operatives, and
 - (vii) annual reports of co-operatives, and
 - (viii) the qualifications of directors of co-operatives, and
- (d) to make it clear that a co-operative authorised by its rules to accept money before the commencement of a 1997 amendment to the *Co-operatives Act 1992* is not prohibited from accepting the money on deposit by that amendment.

The Bill also amends the *Co-operative Housing and Starr-Bowkett Societies Act 1998* in relation to the lodgment of certain statements and accounts and repeals certain redundant uncommenced amendments to the *Co-operatives Act 1992*.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Co-operatives Act 1992* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Co-operative Housing and Starr-Bowkett Societies Act 1998* set out in Schedule 2.

Clause 5 repeals most of a 1997 Act that contains amendments that are either commenced and incorporated in the *Co-operatives Act 1992* or that are uncommenced and have become redundant.

Schedule 1 Amendment of Co-operatives Act 1992

Approval of disclosure statements

The *Co-operatives Act 1992* (*the Act*) requires a disclosure statement to be prepared in relation to a proposed trading co-operative containing the information necessary to ensure that prospective members are adequately informed of the nature

and extent of a person's financial involvement and liability as a member of a co-operative. Section 17 of the Act requires a draft disclosure statement for a co-operative to be submitted to the Registrar who may approve the draft statement as submitted, approve a different statement to that submitted or refuse to approve the statement.

Schedule 1 [2] gives the Registrar more flexibility in dealing with and approving disclosure statements. The Registrar can amend or require amendments to a statement or require additional information. The Registrar can also demand further information before approving a disclosure statement.

Schedule 1 [3] makes a consequential amendment.

Exclusive dealing

Schedule 1 [4] omits a provision authorising co-operatives to engage in exclusive dealing, which would otherwise be prohibited under the *Trade Practices Act 1974* of the Commonwealth.

Entitlement to vote

Section 65 of the Act deals with members of a co-operative who are under 18 years of age.

Schedule 1 [5] provides that such a member is not entitled to the vote attached to membership.

Information to persons intending to become members

Section 76A of the Act requires the board of a co-operative to provide each person intending to become a member of the co-operative with certain documents. In the case of a non-trading co-operative, or of a trading co-operative that has the Registrar's consent, it is sufficient that prospective members be given a chance to inspect the information at the registered office of the co-operative.

Schedule 1 [7] requires documents to be made available not only at the registered office of the co-operative but at each other office (if any) of the co-operative, whether in or outside New South Wales or Australia.

Schedule 1 [8] provides for the Registrar's consent to a trading co-operative under section 76A (to allow information to be inspected at the registered office of the co-operative) to be given subject to conditions.

Regular subscriptions payable by members

Section 77 of the Act provides that the rules of a co-operative may require the payment by members of entry fees and regular subscriptions.

Schedule 1 [9] empowers a co-operative to set a member's regular subscriptions based on the business that the member does with the co-operative, or otherwise in accordance with the rules of the co-operative.

Repayment of shares on expulsion

Section 81 of the Act provides for the repayment of the amount paid up on shares held by a member on expulsion of the member. At present, the section requires any amount due to a member in those circumstances to be paid no later than 12 months after the date of expulsion.

Schedule 1 [10] will enable the board of a co-operative to defer a repayment of money paid up on share capital where the board is of the view that repayment would adversely affect the financial position of the co-operative or where the former member agrees to the deferment. The amendment also provides for the application of the relevant money.

Schedule 1 [12] and **[13]** make consequential amendments.

Repayment of amounts due in respect of cancelled membership

Section 134 of the Act requires a co-operative to pay to a former member whose membership has been cancelled the amount due to the member in respect of that cancellation or to apply that amount in a specified way.

Schedule 1 [11] provides that money up to a certain amount may be retained by the co-operative if, after diligent enquiry, the member cannot be found.

Disclosure of information relating to share issues

Section 146A of the Act requires the board of a trading co-operative to provide a member of the co-operative with a disclosure statement before shares are issued to the member.

Schedule 1 [16] removes the obligation to make full disclosure to current shareholders who are provided with annual reports and other information under the Act. The new provision also requires a co-operative to notify the Registrar of significant changes occurring after release of the disclosure statement and to file a new document that reflects the current situation. A provision is also inserted to

allow the Registrar to exempt a co-operative or class of co-operatives from the disclosure requirements where they would impose an unreasonable burden or be inappropriate for other reasons.

Adoption of certain Corporations Act provisions about shares

Schedule 1 [17] applies provisions of the *Corporations Act 2001* of the Commonwealth in relation to offers of shares in a trading co-operative to persons who are not already shareholders. The provisions relate to advertising securities, misleading statements, experts' consents, holding money on trust and the return of money where minimum subscriptions are not fulfilled.

Members not required to take up additional bonus shares

Section 155 of the Act provides that, if authorised by its rules, the board of a trading co-operative may require a member to take up or subscribe for additional shares. The section makes provision for a disclosure statement in relation to the share issue.

Schedule 1 [18] makes it clear that the section does not operate so as to require the normal disclosures relating to a bonus share issue under section 151 (4) (a), 156 or 282 (1) (b) of the Act.

Meetings

At present, the first annual general meeting of a co-operative must be held within 19 months after incorporation of the co-operative.

Schedule 1 [19] provides that the first annual general meeting of a co-operative must be held within 18 months after incorporation.

Section 203 of the Act requires the minutes of each general meeting, board meeting and sub-committee to be recorded, confirmed and signed and to be made available for inspection.

Schedule 1 [20] imposes an obligation that the minutes be recorded within 28 days of the meeting to which they relate.

Qualification of directors

At present, section 206 (3) of the Act provides that for each director of a co-operative who is an independent director of the co-operative there must be at least 3 directors who are active member directors.

Schedule 1 [21] removes that requirement and instead requires that there must be a simple majority of active member directors, or such greater majority as the rules may provide.

At present, section 206A of the Act empowers the Minister to exempt co-operatives from the requirements of section 206 (3), which is proposed to be amended by Schedule 1 [21]. **Schedule 1 [22]** omits section 206A as a consequence of that amendment.

Schedule 1 [48] provides for the continued operation, on a temporary basis, of orders made under the repealed section.

Meetings of board

Section 209 (4) of the Act provides that at any meeting of the board of directors of a co-operative a quorum is achieved when 50% of the total number of directors are present, or such greater number of directors as is specified in the rules are present.

Schedule 1 [23] imposes the additional quorum requirement that active member directors must outnumber independent directors by at least one, or by such greater number as is specified in the rules.

Section 210 of the Act provides for the transaction of business of the board of a co-operative outside of meetings and requires any resolution approved in writing by a majority of the directors of the board to be taken as being a decision of the board. The section requires such a resolution to be recorded in the minutes of the meetings of the board.

Schedule 1 [24] requires such a resolution to be recorded within 28 days after the last director required for the majority signs the resolution.

Secretary of the board

Schedule 1 [25] creates a requirement for a co-operative to have a secretary appointed by the board who is an adult ordinarily resident in Australia.

Power of Registrar to grant exemptions

Section 244 of the Act permits the Registrar to grant exemptions to co-operatives from compliance with any or all of the requirements of regulations made under Part 9 of the Act relating to accounts and the auditing of co-operatives.

Schedule 1 [26] allows for exemptions to be granted to any person or firm proposed to be appointed as an auditor or to any other person (such as a director or proposed director).

Schedule 1 [27] makes a consequential amendment.

Annual report

Section 252 of the Act requires a co-operative to send a copy of its annual report to the Registrar within the required period in each year. That report is required to include a copy of the accounts of the co-operative.

Schedule 1 [28] amends the list of matters required to be included in an annual report and provides that financial reports of subsidiaries do not need to be included unless the legislation under which the subsidiary is incorporated requires an annual report.

Limits on deposit taking

Section 263A of the Act imposes limits on the ability of a co-operative to accept money on deposit. A co-operative may accept money on deposit if it was authorised by its rules to do so immediately before the commencement of the *Co-operatives Act 1992*. Section 263A was inserted in the Act on 1 December 1997.

Schedule 1 [29] provides that a co-operative may accept money on deposit if it was authorised by its rules to do so immediately before the commencement of the amendment made by the *Co-operatives Amendment Act 1997* to insert section 263A, that is, immediately before 1 December 1997.

Schedule 1 [48] validates any such acceptance of money on deposit.

Distribution of surplus or reserves to members

Section 282 provides for a 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 distribution to members as a rebate (on the basis of business done with the co-operative, the issue of bonus shares to members or the issue of a limited dividend to members).

Schedule 1 [31] and **[32]** provide for share holding to be taken into account on the issue of bonus shares or dividends.

Maximum permissible level of share interest

Section 289 of the Act provides that the maximum permissible level of share interest in a co-operative is 20% of the nominal value of the issued share capital of the co-operative. That maximum may be varied by an order of the Co-operatives Council. In the case of a particular person, the maximum can also be increased by a special resolution of the co-operative, approved by the Council.

Schedule 1 [33] removes the ability of the Council to specify a maximum permissible level of share interest for a particular person.

Schedule 1 [34] provides for the approval of the Council to an increase in relation to a particular person to be given on conditions.

Transfer of incorporation

Section 316 of the Act allows a co-operative to apply for a transfer of incorporation and requires the co-operative, before doing so, to adopt any memorandum or articles of association or rules that may be necessary or considered desirable.

Schedule 1 [35] includes in that requirement a requirement to adopt any constitution or replaceable rules that may be necessary or considered desirable.

Schedule 1 [36] makes a consequential amendment.

Winding up on Registrar's certificate

Section 324 of the Act provides for a co-operative to be wound up on a certificate of the Registrar. The liquidator is required to give any security that may be prescribed by the regulations.

Schedule 1 [37] provides that the Registrar may exempt the liquidator from the requirement to provide that security, either unconditionally or subject to conditions.

Registrar to be notified of certain changes relating to foreign co-operatives

Section 369K of the Act requires the Registrar to be notified of certain changes affecting foreign co-operatives.

Schedule 1 [39] provides for a non-participating foreign co-operative to give notice of any change of the registered office or registered name of the co-operative in its State of incorporation or registration. (At present, only foreign co-operatives established under Australian law are required to notify such changes.)

Mergers and transfers of engagements

Section 369Q of the Act sets out the requirements to be met before an application can be made for consolidation of all or any of the assets, liabilities and undertakings of a NSW co-operative and a non-participating co-operative by a merger or transfer of engagements. The section requires the proposed merger or transfer to be approved by a special resolution passed by special postal ballot or, in some circumstances, by a resolution of the board of the co-operative unless the Registrars in both States permit consent to the merger or transfer by board resolution.

Schedule 1 [40] provides for the requisite approval for making an application for approval of a proposed merger or transfer to be given by special resolution passed at an annual general meeting, or by ordinary resolution of the board. The amended section also provides for consent to such an arrangement to be granted with or without conditions, including conditions requiring members to receive a disclosure statement.

Phasing-in of 1997 amendments

Schedule 1 [44] gives co-operatives an additional 2 years to bring their rules into conformity with the Act and the regulations. (When the Act was amended in 1997 a 2-year phasing-in period, or any longer period approved by the Registrar, was provided for.)

Schedule 1 [45] allows the Registrar to approve a longer phasing-in period in relation to a class of co-operatives and not just a particular co-operative.

Schedule 1 [46] validates rules of certain co-operatives for the duration of the longer phasing-in period.

Savings and transitional provisions

Schedule 1 [43] empowers the Governor to make savings and transitional regulations consequent on the enactment of the proposed Act.

Schedule 1 [47] inserts a savings and transitional provision relating to loans made by members under section 268 of the Act before the Act was amended in 1997. Section 268 of the Act empowers a co-operative to require its members to loan money to the co-operative. Prior to the insertion of section 268A in 1997, members determined the rate of interest on those loans when approving the loan proposal. Section 268A provides for the fixing of the rate of interest at the rate of dividend payable in respect of that period on share capital of the co-operative. Rates approved by members under section 268 loan proposals made before the commencement of section 268A (in December 1997) may differ from the rate now fixed by section 268A. The proposed amendment provides for loans made by members to the co-operative before the commencement of section 268A to continue on the terms in which they were made.

Schedule 1 [48] makes savings and transitional provisions consequent on the enactment of the proposed Act.

Other amendments

Schedule 1 [1] clarifies two definitions.

Schedule 1 [6] and [38] update the use of a term.

Schedule 1 [14] removes a requirement for a register relating to particulars of members whose membership has been cancelled to be in an approved form.

Schedule 1 [15] and [30] provide for certain exemptions to be granted unconditionally or subject to conditions.

Schedule 1 [41] updates a reference to a statutory body.

Schedule 1 [42] clarifies the manner in which documents may be served on a foreign co-operative.

Schedule 2 Amendment of Co-operative Housing and Starr-Bowkett Societies Act 1998

Division 4 of Part 4 of the *Co-operative Housing and Starr-Bowkett Societies Act 1998* sets out accounting requirements for co-operative housing societies and Starr-Bowkett societies. In particular, section 128 requires that societies prepare a statement of financial performance and statement of financial position following the end of each financial year and section 129 provides for the preparation of group accounts. Those sections require that the statements and accounts generally be prepared before the time at which notice of the society's annual general meeting is required to be given, that is, before a day that is 14 days before the end of the period of 5 months after the close of the society's financial year and also set out what is to happen if there is no annual general meeting held. Section 148 of the Act requires that societies must lodge returns in accordance with the regulations, which presently require lodgment within 3 months of the close of the society's financial year (see *Co-operative Housing and Starr-Bowkett Societies Regulation 2000*, clause 27).

Schedule 2 [1] and [2] synchronise the lodgment of statements, accounts and returns by providing that the statements and accounts referred to in sections 128 and 129 must be prepared before the date on which returns are required to be lodged with the Registrar under section 148.



New South Wales

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New South Wales

Co-operatives Legislation Amendment Bill 2001

No. , 2001

A Bill for

An Act to amend the *Co-operatives Act 1992* in relation to exclusive dealing, the formation of co-operatives, membership of co-operatives and disclosure requirements, to amend the *Co-operative Housing and Starr-Bowkett Societies Act 1998* in relation to lodgment of certain statements and accounts; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Co-operatives Legislation Amendment Act 2001</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5 6
3 Amendment of Co-operatives Act 1992 No 18	7
The <i>Co-operatives Act 1992</i> is amended as set out in Schedule 1.	8
4 Amendment of Co-operative Housing and Starr-Bowkett Societies Act 1998 No 11	9 10
The <i>Co-operative Housing and Starr-Bowkett Societies Act 1998</i> is amended as set out in Schedule 2.	11 12
5 Amendment of Co-operatives Amendment Act 1997 No 39	13
The <i>Co-operatives Amendment Act 1997</i> is amended by omitting the whole of Schedule 1, except Schedule 1 [144], [212] and [218] and the heading to Schedule 1.	14 15 16

Schedule 1	Amendment of Co-operatives Act 1992	1
	(Section 3)	2
[1]	Section 5 Definitions	3
	Omit the definitions of <i>non-trading co-operative</i> and <i>trading co-operative</i> from section 5 (1).	4
	Insert instead in alphabetical order:	5
	<i>non-trading co-operative</i> means a non-trading co-operative that complies with section 15.	6
	<i>trading co-operative</i> means a trading co-operative that complies with section 14.	7
[2]	Section 17 Approval of disclosure statement	8
	Omit section 17 (5). Insert instead:	9
	(5) The Registrar may:	10
	(a) approve the draft statement as submitted, or	11
	(b) approve the draft statement with specified amendments, or	12
	(c) approve a different statement to that submitted, or	13
	(d) refuse to approve the statement.	14
	(5A) The Registrar may require the person who submitted the draft statement to give the Registrar any additional information that the Registrar reasonably requires. When the information has been provided the Registrar may then act under subsection (5).	15
[3]	Section 17 (8) (b)	16
	Insert “or requires additional information” after “matter”.	17
[4]	Section 43 Co-operatives may engage in exclusive dealing	18
	Omit the section.	19

[5] Section 65 Members under 18 years of age	1
Omit section 65 (3). Insert instead:	2
(3) A member of a co-operative who is under 18 years of age is not entitled to the vote attached to membership.	3 4
[6] Sections 70 (1) (f), 371 (d), 413 (d) and 439 (1) and (2)	5
Omit “dissolved” wherever occurring. Insert instead “deregistered”.	6
[7] Section 76A Co-operative to provide information to person intending to become member	7 8
Insert “and at each other office of the co-operative in or outside New South Wales (including outside Australia)” after “co-operative” in section 76A (2) (a).	9 10 11
[8] Section 76A (3)	12
Insert after section 76A (2):	13
(3) The Registrar’s consent under subsection (2) may be given unconditionally or subject to conditions. The board of a co-operative to which consent has been granted subject to conditions must comply with those conditions in order to comply with subsection (2).	14 15 16 17 18
[9] Section 77 Entry fees and regular subscriptions	19
Insert after section 77 (1):	20
(1A) A member’s regular subscription may be based on the dealings between the member and the co-operative or may be otherwise determined in accordance with the rules of the co-operative.	21 22 23
[10] Section 81 Repayment of shares on expulsion	24
Insert after section 81 (4):	25
(4A) However, if the board considers that repayment within 12 months would adversely affect the financial position of the co-operative, or the former member consents in writing:	26 27 28
(a) the board may defer payment until a later time determined by the board, or	29 30

(b)	the co-operative may appropriate the amount as a donation to the co-operative, but only if the former member consents in writing to the donation.	1 2 3
(4B)	If payment is deferred, the amount owing to the former member must be applied as follows:	4 5
(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 135 as to interest on the deposit and to the requirements of section 136),	6 7 8 9 10
(b)	the co-operative may allot or issue debentures or CCUs of the co-operative to the former member in satisfaction of the amount.	11 12 13
[11]	Section 134 Repayment of amounts due in respect of cancelled membership	14 15
	Insert after section 134 (4):	16
(5)	If:	17
(a)	a former member cannot be found, after the use of all due diligence by the co-operative to find the former member, and	18 19 20
(b)	the amount otherwise required to be paid under this section is less than \$50 (or any other amount that may be prescribed by the regulations),	21 22 23
	the co-operative may retain that amount.	24
[12]	Section 135 Interest on deposits, debentures and CCUs	25
	Omit “section 134” from section 135 (1). Insert instead “section 81 or 134”.	26
[13]	Section 136 Repayment of deposits, debentures and CCUs	27
	Insert “section 81 or” after “under” in section 136 (1).	28
[14]	Section 137 Register of cancelled memberships	29
	Omit “, in a form approved by the Registrar,”.	30

[15] Section 143 Minister may exempt co-operatives from provisions	1
Insert at the end of the section:	2
(2) An exemption may be granted unconditionally or subject to conditions. A co-operative that contravenes a condition of an exemption is taken not to be exempt from the relevant provision or provisions of this Division.	3 4 5 6
[16] Sections 146A, 146B and 146C	7
Omit section 146A. Insert instead:	8
146A Disclosure to intending members in trading co-operative	9
(1) The board of a trading co-operative must give a person who intends to acquire shares in the co-operative and is not already a member of the co-operative a current disclosure statement that:	10 11 12 13
(a) has been approved by the Registrar under section 17 (Approval of disclosure statement), or	14 15
(b) complies with section 146B and has been filed by the co-operative with the Registrar.	16 17
(2) The disclosure statement must be given before the person becomes bound to acquire the shares.	18 19
(3) The disclosure statement is in addition to any information required to be provided to the person under Part 4 (Membership).	20 21 22
(4) A disclosure statement is current until whichever of the following happens first after the statement is prepared:	23 24
(a) there is a change in the rights or liabilities attaching to any class of share in the co-operative,	25 26
(b) there is a significant change in the financial position or prospects of the co-operative,	27 28
(c) any of the next financial, directors' or auditors' reports required to be prepared under section 243 (1) become available.	29 30 31

(5) If a disclosure statement stops being a current disclosure statement because of a change mentioned in subsection (4) (a) or (b), the co-operative must, within 14 days after the change:	1
(a) give the Registrar written notice:	2
(i) that the disclosure statement is no longer current because of a change mentioned in subsection (4) (a), or	3
(ii) that the disclosure statement is no longer current because of a change mentioned in subsection (4) (b), and	4
(b) file a current disclosure statement with the Registrar that complies with section 146B.	5
146B Content of disclosure statement to intending members	6
A disclosure statement given to a person because of section 146A (1) (b) must contain:	7
(a) a statement of the rights and liabilities attaching to shares in the co-operative concerned, and	8
(b) a copy of the last annual report of the co-operative required under section 252, unless a copy of the report:	9
(i) has already been given to the person under this Act, or	10
(ii) has been made available for inspection under a notice given to the person under section 76A, and	11
(c) any other relevant information about 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	12
(d) any other information that the Registrar directs.	13
146C Exemptions from disclosure requirements	14
(1) The Registrar may, by notice in the Gazette, exempt the board or boards of a trading co-operative or a class of trading co-operatives from a requirement under section 146A or 146B.	15

- (2) An exemption under this section may be given only if the Registrar is satisfied that compliance with the requirement would be inappropriate in the circumstances or would impose an unreasonable burden. 1
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- (3) An exemption under this section may be given unconditionally or subject to conditions. A board that contravenes a condition of an exemption is taken not to be exempt from a requirement under section 146A or 146B. 5
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[17] Section 146D 9

Insert before section 147: 10

146D Adoption of certain Corporations Act provisions about shares 11

- (1) The shares of a co-operative are declared to be applied Corporations legislation matters for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to sections 716 (2), 722, 723, 724, 725, 728, 729, 730, 733, 734 and 737 of the Corporations Act, subject to the following modifications: 12
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 - (a) a reference in those sections to a company is to be read as a reference to a co-operative, and 18
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 - (b) a reference in those sections to ASIC is to be read as a reference to the Registrar, and 20
21
 - (c) a reference in those sections to a disclosure document is to be read so as to include a reference to a disclosure statement, of any type, under this Act, and 22
23
24
 - (d) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations. 25
26
27
- (2) However, subsection (1) applies only if: 28
 - (a) the shares are offered to persons who are not members of the co-operative, or 29
30
 - (b) the invitation is made to persons who are not members of the co-operative. 31
32

[18] Section 155 Members may be required to take up additional shares	1
Insert after section 155 (6):	2
(7) The requirements in respect of a proposal to take up additional shares under subsection (3) do not apply to the issue of bonus shares under section 151 (4) (a), 156 or 282 (1) (b).	3 4 5
[19] Section 198 Annual general meetings	6
Omit “19 months” from section 198 (1). Insert instead “18 months”.	7
[20] Section 203 Minutes	8
Insert “within 28 days after the meeting” after “records” in section 203 (1).	9
[21] Section 206 Qualification of directors	10
Omit section 206 (3). Insert instead:	11
(3) A simple majority of directors must be active member directors. However, this subsection does not prevent the rules of a co-operative from requiring that a greater number of directors than a simple majority be active member directors.	12 13 14 15
[22] Section 206A Exemptions concerning composition of board	16
Omit the section.	17
[23] Section 209 Meeting of the board of directors	18
Insert after section 209 (4):	19
(4A) However, for a quorum to exist the number of active member directors present must exceed the number of independent directors present by at least one or by any greater number specified in the rules of the co-operative.	20 21 22 23
[24] Section 210 Transaction of business outside meetings	24
Insert “within 28 days after the resolution is approved” after “board” in section 210 (6).	25 26

[25] Section 219	1
Insert after section 218:	2
Division 1A Secretary of a co-operative	3
219 Secretary	4
(1) A co-operative must have a secretary, who is to be appointed by the board.	5 6
(2) The board may appoint a person to act as the secretary during the absence or incapacity of the secretary.	7 8
(3) A person is not qualified to be appointed as, or to act as, a secretary unless the person is an adult who is ordinarily resident in Australia.	9 10 11
(4) A person who was acting as a secretary of a co-operative immediately before the commencement of this section is taken to have been appointed, and to be qualified, in accordance with this section.	12 13 14 15
[26] Section 244 Power of Registrar to grant exemptions	16
Insert “, any person or firm appointed or proposed to be appointed as an auditor or any other person” after “ co-operatives” in section 244 (1).	17 18
[27] Section 244 (3) (c)	19
Insert after section 244 (3) (b):	20
, or	21
(c) if it applies to a person or firm—when the order is served on the person or firm.	22 23
[28] Section 252 Annual report	24
Omit section 252 (1) (a)–(d). Insert instead:	25
(a) a list in the form approved by the Registrar specifying the secretary, directors and the principal executive officers of the co-operative and of each of its subsidiaries, as at the date the annual report is filed with the Registrar,	26 27 28 29 30

(b)	if the co-operative is required under section 243 to prepare a financial report of the co-operative for its most recently ended financial year—a copy of the financial report,	1 2 3 4
(c)	a copy of the financial report of each subsidiary of the co-operative for the most recently ended financial year of the subsidiary (unless the legislation under which the subsidiary is incorporated does not require an annual report to be prepared by that subsidiary),	5 6 7 8 9
(d)	a copy of any report by the auditor or the directors of the co-operative or subsidiary:	10 11
	(i) prepared under section 243, or	12
	(ii) on a financial report mentioned in paragraph (b) or (c),	13 14
[29]	Section 263A Limits on deposit taking	15
	Omit section 263A (a). Insert instead:	16
	(a) the co-operative was authorised by its rules (in whatever terms made or adopted) immediately before 1 December 1997 to accept money on deposit, or	17 18 19
[30]	Section 266 Application of Corporations Act to issues of debentures	20
	Insert after section 266 (4):	21
	(5) An exemption may be granted unconditionally or subject to conditions. A co-operative that contravenes a condition of an exemption is taken not to be exempt from the requirements of the Corporations Act applied by this section.	22 23 24 25
[31]	Section 282 Distribution of surplus or reserves to members	26
	Insert “on the basis of the members’ dealings with the co-operative or on the basis of shares held by the members” after “members” in section 282 (1) (b).	27 28 29
[32]	Section 282 (1) (c)	30
	Insert “for shares held by the members” after “dividend”.	31

[33]	Section 289 Maximum permissible level of share interest	1
	Omit “a particular person,” from section 289 (2).	2
[34]	Section 289 (4)	3
	Insert after section 289 (3):	4
	(3) The Council’s approval may be given unconditionally or subject to conditions. A person who contravenes a condition of an approval is taken not to have been given approval.	5 6 7
[35]	Section 316 Application for transfer	8
	Insert “constitution, replaceable rules or other” after “association or” in section 316 (2) (c).	9 10
[36]	Section 319 Transfer not to impose greater liability etc	11
	Insert “constitution, replaceable rules or other” after “association or” in section 319 (1).	12 13
[37]	Section 324 Winding up on Registrar’s certificate	14
	Insert after section 324 (4):	15
	(4A) The Registrar may exempt the liquidator from the requirement to provide the security required by subsection (4), either unconditionally or subject to conditions. A liquidator who contravenes a condition of an exemption is taken not to be exempt from the requirement.	16 17 18 19 20
[38]	Sections 325, 357 (3) (d), 420 (2) and 439 (1)	21
	Omit “dissolution” wherever occurring. Insert instead “deregistration”.	22
[39]	Section 369K Registrar to be notified of certain changes	23
	Insert after section 369K (g):	24
	, or	25
	(h) the address of the registered office of a non-participating co-operative registered under this Part in the State or country in which it is registered, incorporated or formed,	26 27 28
	or	29

(i)	the name under which a non-participating co-operative registered under this Part carries on business in the State or country in which it is registered, incorporated or formed,	1 2 3 4
[40]	Section 369Q	5
	Omit section 369Q. Insert instead:	6
369Q	Requirements before application can be made	7
(1)	Before a New South Wales co-operative and a participating co-operative can apply for approval under this Division of a merger or transfer of engagements, the proposed merger or transfer must have been approved by each of the co-operatives:	8 9 10 11
(a)	by a special resolution passed by special postal ballot, or	12
(b)	if permitted by subsection (3), by a special resolution, or by a resolution of the board, of the co-operative.	13 14
(2)	Before a New South Wales co-operative and a non-participating co-operative can apply for approval under this Division of a merger or transfer of engagements, the proposed merger or transfer of engagements:	15 16 17 18
(a)	must be approved:	19
(i)	in the case of the non-participating co-operative, by a special resolution of the co-operative, and	20 21
(ii)	in the case of the New South Wales co-operative, by a special resolution passed by special ballot, or	22 23 24
(b)	if permitted by subsection (3), must have been approved:	25 26
(i)	in the case of the non-participating co-operative, by a resolution of the board of the co-operative, and	27 28 29
(ii)	in the case of the New South Wales co-operative, by a special resolution, or by a resolution of the board, of the co-operative.	30 31 32

(3) The proposed merger or transfer of engagements may be approved by special resolution, or by resolution of the board, of the co-operative if:	1
(a) the New South Wales Registrar consents to that procedure applying in the particular case, and	2
(b) in the case of a merger or transfer affecting a participating co-operative, the Registrar for the participating State concerned also consents to that procedure applying in the particular case.	3
(4) A consent referred to in subsection (3) may be granted subject to conditions, including any condition that a disclosure statement be provided to members or directors. A co-operative that contravenes a condition of a consent is taken not to have been given consent.	4
[41] Section 431 Secrecy	5
Omit “Australian Securities Commission” from section 431 (4) (f).	6
Insert instead “Australian Securities and Investments Commission”.	7
[42] Section 440 Service of documents on co-operative	8
Insert “or to the registered office of the foreign co-operative in its place of registration, incorporation or formation” after “business” in section 440 (3) (b).	9
[43] Schedule 6 Savings and transitional provisions	10
Insert in appropriate order in the list of Acts in clause 2 (1):	11
<i>Co-operatives Legislation Amendment Act 2001</i> (to the extent that it amends this Act)	12
[44] Schedule 6, clause 23 (1) (a)	13
Omit “2 years”. Insert instead “4 years”.	14
[45] Schedule 6, clause 23 (1) (b)	15
Insert “or co-operatives of a particular class” after “co-operative”.	16

[46] Schedule 6, clause 23 (2A)	1
Insert after clause 23 (2):	2
(2A) The rules of a co-operative to which this clause applies are taken to have been valid from the expiry of the relevant period under subclause (1), as it was originally enacted, until:	3
(a) the co-operative complies with subclause (1), or	4
(b) the expiry of the relevant period in subclause (1) as amended by the <i>Co-operatives Legislation Amendment Act 2001</i> ,	5
whichever occurs first.	6
	7
	8
	9
	10
[47] Schedule 6, clause 31A	11
Insert after clause 31:	12
31A Loans made by members to co-operative	13
A loan made by a member to a co-operative before the commencement of section 268A continues to be payable at the same rate of interest as that in relation to which it was made as if section 268A had not been enacted.	14
	15
	16
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[48] Schedule 6, Part 5	18
Insert after clause 33:	19
	20
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35	Exclusive dealing	1
	The repeal of section 43 does not affect the validity of anything done, or of any refusal to do any act or thing, before the date of commencement of Schedule 1 [4] to the <i>Co-operatives Legislation Amendment Act 2001</i> .	2 3 4 5
36	Money due to expelled member of co-operative	6
	The amendment made to section 81 by the <i>Co-operatives Legislation Amendment Act 2001</i> does not apply in respect of any person expelled from a co-operative before the amendment took effect.	7 8 9 10
37	First annual general meeting	11
	The amendment made to section 198 by the <i>Co-operatives Legislation Amendment Act 2001</i> does not apply to a co-operative incorporated between 18 months and 19 months before the commencement of the amendment.	12 13 14 15
38	Minutes and certain resolutions	16
	(1) The amendment made to section 203 by the <i>Co-operatives Legislation Amendment Act 2001</i> does not apply in respect of any meeting of a co-operative held before the amendment took effect.	17 18 19 20
	(2) The amendment made to section 210 by the <i>Co-operatives Legislation Amendment Act 2001</i> does not apply in respect of a resolution approved before the amendment took effect.	21 22 23
39	Qualifications of directors	24
	The amendment made to section 206 by the <i>Co-operatives Legislation Amendment Act 2001</i> extends to those persons holding office as directors of co-operatives before the amendment took effect.	25 26 27 28
40	Exemptions concerning composition of boards	29
	(1) An exemption granted by an order under section 206A (Exemptions concerning composition of board) and in force immediately before the repeal of that section by the <i>Co-operatives Legislation Amendment Act 2001</i> continues in force for 5 years after the date of repeal of the section.	30 31 32 33 34

(2)	The exemption has the effect of exempting the co-operative from the operation of section 206 (3). However, the exemption has no effect on and after the date of registration of any rules of the co-operative that are consistent with the provisions of section 206 (3).	1 2 3 4 5
41	Annual reports	6
	The amendment made to section 252 by the <i>Co-operatives Legislation Amendment Act 2001</i> extends to the first annual report required to be prepared after the commencement of the amendments.	7 8 9 10
42	Validation	11
	The acceptance by a co-operative of any money on deposit between 1 December 1997 (the date of commencement of section 263A) and the date of commencement of the amendment to that section made by the <i>Co-operatives Legislation Amendment Act 2001</i> is validated, to the extent that the co-operative would have been authorised, if the amendment had been in force when the money was accepted, to accept money on deposit (within the meaning of the section as amended).	12 13 14 15 16 17 18 19 20

Schedule 2	Amendment of Co-operative Housing and Starr-Bowkett Societies Act 1998	1
		2
	(Section 4)	3
[1]	Section 128 Statement of financial performance and statement of financial position	4
		5
	Omit “the day on which notice of an annual general meeting of the society is given or, if an annual general meeting is not held within the period within which it is required by section 109 (Annual general meeting) to be held, not less than 3 weeks before the end of the period”.	6
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		9
	Insert instead “the day on which returns must be lodged by the society under section 148 (1)”.	10
		11
[2]	Section 129 Group accounts	12
		13
	Omit “the day on which notice of the next annual general meeting of the society is given or, if an annual general meeting is not held within the period within which it is required by section 109 (Annual general meeting) to be held”.	14
		15
		16
	Insert instead “the day on which returns must be lodged by the society under section 148 (1)”.	17
		18