

Passed by both Houses



New South Wales

# Co-operatives Legislation Amendment Bill 2001

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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2001*



New South Wales

## **Co-operatives Legislation Amendment Bill 2001**

Act No , 2001

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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.

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*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

*Chairman of Committees of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Co-operatives Legislation Amendment Act 2001*.

**2 Commencement**

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

**3 Amendment of Co-operatives Act 1992 No 18**

The *Co-operatives Act 1992* is amended as set out in Schedule 1.

**4 Amendment of Co-operative Housing and Starr-Bowkett Societies Act 1998 No 11**

The *Co-operative Housing and Starr-Bowkett Societies Act 1998* is amended as set out in Schedule 2.

**5 Amendment of Co-operatives Amendment Act 1997 No 39**

The *Co-operatives Amendment Act 1997* is amended by omitting the whole of Schedule 1, except Schedule 1 [144], [212] and [218] and the heading to Schedule 1.

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## Schedule 1 Amendment of Co-operatives Act 1992

(Section 3)

### [1] Section 5 Definitions

Omit the definitions of *non-trading co-operative* and *trading co-operative* from section 5 (1).

Insert instead in alphabetical order:

*non-trading co-operative* means a non-trading co-operative that complies with section 15.

*trading co-operative* means a trading co-operative that complies with section 14.

### [2] Section 17 Approval of disclosure statement

Omit section 17 (5). Insert instead:

(5) The Registrar may:

- (a) approve the draft statement as submitted, or
- (b) approve the draft statement with specified amendments, or
- (c) approve a different statement to that submitted, or
- (d) refuse to approve the statement.

(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).

### [3] Section 17 (8) (b)

Insert “or requires additional information” after “matter”.

### [4] Section 43 Co-operatives may engage in exclusive dealing

Omit the section.

**[5] Section 65 Members under 18 years of age**

Omit section 65 (3). Insert instead:

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

**[6] Sections 70 (1) (f), 371 (d), 413 (d) and 439 (1) and (2)**

Omit “dissolved” wherever occurring. Insert instead “deregistered”.

**[7] Section 76A Co-operative to provide information to person intending to become member**

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).

**[8] Section 76A (3)**

Insert after section 76A (2):

- (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).

**[9] Section 77 Entry fees and regular subscriptions**

Insert after section 77 (1):

- (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.

**[10] Section 81 Repayment of shares on expulsion**

Insert after section 81 (4):

- (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:
  - (a) the board may defer payment until a later time determined by the board, or

- 
- (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.
  - (4B) If payment is deferred, the amount owing to the former member must 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 135 as to interest on the deposit and to the requirements of section 136),
    - (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] Section 134 Repayment of amounts due in respect of cancelled membership**

Insert after section 134 (4):

- (5) If:
  - (a) a former member cannot be found, after the use of all due diligence by the co-operative to find the former member, and
  - (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),the co-operative may retain that amount.

**[12] Section 135 Interest on deposits, debentures and CCUs**

Omit “section 134” from section 135 (1). Insert instead “section 81 or 134”.

**[13] Section 136 Repayment of deposits, debentures and CCUs**

Insert “section 81 or” after “under” in section 136 (1).

**[14] Section 137 Register of cancelled memberships**

Omit “, in a form approved by the Registrar,”.

**[15] Section 143 Minister may exempt co-operatives from provisions**

Insert at the end of the section:

- (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.

**[16] Sections 146A, 146B and 146C**

Omit section 146A. Insert instead:

**146A Disclosure to intending members in trading co-operative**

- (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:
  - (a) has been approved by the Registrar under section 17 (Approval of disclosure statement), or
  - (b) complies with section 146B and has been filed by the co-operative with the Registrar.
- (2) The disclosure statement must be given before the person becomes bound to acquire the shares.
- (3) The disclosure statement is in addition to any information required to be provided to the person under Part 4 (Membership).
- (4) A disclosure statement is current until whichever of the following happens first after the statement is prepared:
  - (a) there is a change in the rights or liabilities attaching to any class of share in the co-operative,
  - (b) there is a significant change in the financial position or prospects of the co-operative,
  - (c) any of the next financial, directors' or auditors' reports required to be prepared under section 243 (1) become available.

- (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:
- (a) give the Registrar written notice:
    - (i) that the disclosure statement is no longer current because of a change mentioned in subsection (4) (a), or
    - (ii) that the disclosure statement is no longer current because of a change mentioned in subsection (4) (b), and
  - (b) file a current disclosure statement with the Registrar that complies with section 146B.

**146B Content of disclosure statement to intending members**

A disclosure statement given to a person because of section 146A (1) (b) must contain:

- (a) a statement of the rights and liabilities attaching to shares in the co-operative concerned, and
- (b) a copy of the last annual report of the co-operative required under section 252, unless a copy of the report:
  - (i) has already been given to the person under this Act, or
  - (ii) has been made available for inspection under a notice given to the person under section 76A, and
- (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
- (d) any other information that the Registrar directs.

**146C Exemptions from disclosure requirements**

- (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.



- (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.
- (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.

**[17] Section 146D**

Insert before section 147:

**146D Adoption of certain Corporations Act provisions about shares**

- (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:
  - (a) a reference in those sections to a company is to be read as a reference to a co-operative, and
  - (b) a reference in those sections to ASIC is to be read as a reference to the Registrar, and
  - (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
  - (d) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.
- (2) However, subsection (1) applies only if:
  - (a) the shares are offered to persons who are not members of the co-operative, or
  - (b) the invitation is made to persons who are not members of the co-operative.

**[18] Section 155 Members may be required to take up additional shares**

Insert after section 155 (6):

- (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).

**[19] Section 198 Annual general meetings**

Omit “19 months” from section 198 (1). Insert instead “18 months”.

**[20] Section 203 Minutes**

Insert “within 28 days after the meeting” after “records” in section 203 (1).

**[21] Section 206 Qualification of directors**

Omit section 206 (3). Insert instead:

- (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.

**[22] Section 206A Exemptions concerning composition of board**

Omit the section.

**[23] Section 209 Meeting of the board of directors**

Insert after section 209 (4):

- (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.

**[24] Section 210 Transaction of business outside meetings**

Insert “within 28 days after the resolution is approved” after “board” in section 210 (6).

**[25] Section 219**

Insert after section 218:

**Division 1A      Secretary of a co-operative**

**219 Secretary**

- (1) A co-operative must have a secretary, who is to be appointed by the board.
- (2) The board may appoint a person to act as the secretary during the absence or incapacity of the secretary.
- (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.
- (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.

**[26] Section 244 Power of Registrar to grant exemptions**

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).

**[27] Section 244 (3) (c)**

Insert after section 244 (3) (b):

- , or
- (c) if it applies to a person or firm—when the order is served on the person or firm.

**[28] Section 252 Annual report**

Omit section 252 (1) (a)–(d). Insert instead:

- (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,

- (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,
- (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),
- (d) a copy of any report by the auditor or the directors of the co-operative or subsidiary:
  - (i) prepared under section 243, or
  - (ii) on a financial report mentioned in paragraph (b) or (c),

**[29] Section 263A Limits on deposit taking**

Omit section 263A (a). Insert instead:

- (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

**[30] Section 266 Application of Corporations Act to issues of debentures**

Insert after section 266 (4):

- (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.

**[31] Section 282 Distribution of surplus or reserves to members**

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).

**[32] Section 282 (1) (c)**

Insert “for shares held by the members” after “dividend”.

**[33] Section 289 Maximum permissible level of share interest**

Omit “a particular person,” from section 289 (2).

**[34] Section 289 (4)**

Insert after section 289 (3):

- (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.

**[35] Section 316 Application for transfer**

Insert “constitution, replaceable rules or other” after “association or” in section 316 (2) (c).

**[36] Section 319 Transfer not to impose greater liability etc**

Insert “constitution, replaceable rules or other” after “association or” in section 319 (1).

**[37] Section 324 Winding up on Registrar’s certificate**

Insert after section 324 (4):

- (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.

**[38] Sections 325, 357 (3) (d), 420 (2) and 439 (1)**

Omit “dissolution” wherever occurring. Insert instead “deregistration”.

**[39] Section 369K Registrar to be notified of certain changes**

Insert after section 369K (g):

- , or
- (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,
- or

- (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,

**[40] Section 369Q**

Omit section 369Q. Insert instead:

**369Q Requirements before application can be made**

- (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:
  - (a) by a special resolution passed by special postal ballot, or
  - (b) if permitted by subsection (3), by a special resolution, or by a resolution of the board, of the co-operative.
- (2) Before a 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:
  - (a) must be approved:
    - (i) in the case of the non-participating co-operative, by a special resolution of the co-operative, and
    - (ii) in the case of the New South Wales co-operative, by a special resolution passed by special ballot, or
  - (b) if permitted by subsection (3), must have been approved:
    - (i) in the case of the non-participating co-operative, by a resolution of the board of the co-operative, and
    - (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.

- (3) The proposed merger or transfer of engagements may be approved by special resolution, or by resolution of the board, of the co-operative if:
- (a) the New South Wales Registrar consents to that procedure applying in the particular case, and
  - (b) in the case of a merger or transfer affecting a participating co-operative, the Registrar for the participating State concerned also consents to that procedure applying in the particular case.
- (4) A consent referred to in subsection (3) may be granted subject to conditions, including any condition that a disclosure statement be provided to members or directors. A co-operative that contravenes a condition of a consent is taken not to have been given consent.

**[41] Section 431 Secrecy**

Omit “Australian Securities Commission” from section 431 (4) (f).  
Insert instead “Australian Securities and Investments Commission”.

**[42] Section 440 Service of documents on co-operative**

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).

**[43] Schedule 6 Savings and transitional provisions**

Insert in appropriate order in the list of Acts in clause 2 (1):

*Co-operatives Legislation Amendment Act 2001* (to the extent that it amends this Act)

**[44] Schedule 6, clause 23 (1) (a)**

Omit “2 years”. Insert instead “4 years”.

**[45] Schedule 6, clause 23 (1) (b)**

Insert “or co-operatives of a particular class” after “co-operative”.

**[46] Schedule 6, clause 23 (2A)**

Insert after clause 23 (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:

- (a) the co-operative complies with subclause (1), or
- (b) the expiry of the relevant period in subclause (1) as amended by the *Co-operatives Legislation Amendment Act 2001*,

whichever occurs first.

**[47] Schedule 6, clause 31A**

Insert after clause 31:

**31A Loans made by members to co-operative**

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.

**[48] Schedule 6, Part 5**

Insert after clause 33:

**Part 5 Provisions consequent on Co-operatives Legislation Amendment Act 2001**

**34 Disclosure statements**

The amendments made to section 17 by the *Co-operatives Legislation Amendment Act 2001* extend to a disclosure statement submitted before the commencement of the amendments.



**35 Exclusive dealing**

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 *Co-operatives Legislation Amendment Act 2001*.

**36 Money due to expelled member of co-operative**

The amendment made to section 81 by the *Co-operatives Legislation Amendment Act 2001* does not apply in respect of any person expelled from a co-operative before the amendment took effect.

**37 First annual general meeting**

The amendment made to section 198 by the *Co-operatives Legislation Amendment Act 2001* does not apply to a co-operative incorporated between 18 months and 19 months before the commencement of the amendment.

**38 Minutes and certain resolutions**

- (1) The amendment made to section 203 by the *Co-operatives Legislation Amendment Act 2001* does not apply in respect of any meeting of a co-operative held before the amendment took effect.
- (2) The amendment made to section 210 by the *Co-operatives Legislation Amendment Act 2001* does not apply in respect of a resolution approved before the amendment took effect.

**39 Qualifications of directors**

The amendment made to section 206 by the *Co-operatives Legislation Amendment Act 2001* extends to those persons holding office as directors of co-operatives before the amendment took effect.

**40 Exemptions concerning composition of boards**

- (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 *Co-operatives Legislation Amendment Act 2001* continues in force for 5 years after the date of repeal of the section.

- (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).

**41 Annual reports**

The amendment made to section 252 by the *Co-operatives Legislation Amendment Act 2001* extends to the first annual report required to be prepared after the commencement of the amendments.

**42 Validation**

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 *Co-operatives Legislation Amendment Act 2001* 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).

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

(Section 4)

**[1]    Section 128 Statement of financial performance and statement of  
financial position**

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”.

Insert instead “the day on which returns must be lodged by the society under section 148 (1)”.

**[2]    Section 129 Group accounts**

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”.

Insert instead “the day on which returns must be lodged by the society under section 148 (1)”.