



New South Wales

# Co-operatives (Adoption of National Law) Bill 2012

## Explanatory note

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

### Overview of Bill

The object of this Bill is to enact co-operatives legislation applying in this State. It does so as part of a proposed substantively uniform scheme of legislation applying the Co-operatives National Law in the States and Territories (*jurisdictions*).

The Bill contains the Co-operatives National Law, set out in the Appendix, which operates as a template for all jurisdictions. Each jurisdiction has agreed to enact legislation applying the National Law in its jurisdiction or to enact consistent legislation. The intention is that there will be a substantively uniform scheme of legislation for co-operatives applying in all jurisdictions, based on the National Law. Some features of the National Law are set out below.

In addition to applying the Co-operatives National Law, this Bill and the application legislation of other jurisdictions would specify local administration details such as the appointment of a Registrar of Co-operatives, specifying which courts deal with various matters, and stating how official notices are published.

National Regulations supporting the Co-operatives National Law would be made by the Governor of New South Wales. Each jurisdiction has agreed to adopt, or make regulations consistent with, the National Regulations.

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Existing co-operatives legislation in all jurisdictions is based on Core Consistent Provisions developed by the Standing Committee of Attorneys-General. The proposed Co-operatives National Law continues the major features of the existing legislation, while also removing variations between jurisdictions and updating some provisions—particularly provisions that apply parts of the *Corporations Act 2001* of the Commonwealth (the *Corporations Act*).

## Outline of provisions

### Part 1 Preliminary

**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 by proclamation.

**Clause 3** defines certain words and expressions used in the proposed Act.

### Part 2 Application of Co-operatives National Law and Co-operatives National Regulations

**Clause 4** applies the Co-operatives National Law as a law of this jurisdiction called the *Co-operatives National Law (NSW)*. The clause applies the Co-operatives National Regulations as regulations called the *Co-operatives National Regulations (NSW)*.

**Clause 5** defines certain words and expressions used in the *Co-operatives National Law (NSW)*.

**Clause 6** excludes the operation of the *Interpretation Act 1987* and *Subordinate Legislation Act 1989* from applying to the applied provisions and the Co-operatives National Regulations and other instruments made under the Co-operatives National Law. The clause makes it clear that it does not affect local regulations made under the proposed Act.

### Part 3 Some matters referred to in the Co-operatives National Law (NSW)

**Clause 7** specifies for this jurisdiction the meaning of certain terms used in the Co-operatives National Law. These terms are *designated authority*, *designated instrument*, and *designated tribunal*. It is intended that each jurisdiction will make appropriate provision for these terms in jurisdictional legislation applying the National Law.

**Clause 8** provides that a reference to a particular date in provisions of the Corporations Act as applied in this jurisdiction is to be read as a reference to a specified different date. The specified different date relates to changes to the liability of directors under insolvent trading provisions in the Corporations Act that were not adopted by the *Co-operatives Act 1992* until a later time.

**Clause 9** provides that unclaimed money from the disposal of shares compulsorily acquired is to be dealt with under the *Unclaimed Money Act 1995*.

**Clause 10** results in certain property of a deregistered co-operative vesting in the State of New South Wales. The clause achieves this by providing that the specified entity referred to in section 453 (d) of the *Co-operatives National Law (NSW)* is the State of New South Wales. By way of explanation, section 453 of the Co-operatives National Law applies provisions of the Corporations Act that refer to the Commonwealth, and clause 10 (1) has the effect of substituting the State of New South Wales for this purpose. Clause 10 (2) replaces references to a Special Account under Commonwealth legislation with references to the Special Deposits Account under State legislation.

**Clause 11** provides for the application of legislation of this jurisdiction to warrants issued under the Co-operatives National Law.

**Clause 12** provides that the costs of an inquiry under Part 6.5 of the *Co-operatives National Law (NSW)* may be directed to be paid to the State.

**Clause 13** provides that information obtained in the course of administering the *Co-operatives National Law (NSW)* or the *Co-operatives Act 1992* may be divulged to certain specified persons.

**Clause 14** provides that a pecuniary penalty ordered to be paid in the State is a civil debt payable to the Registrar of Co-operatives on behalf of the State, and is recoverable accordingly.

**Clause 15** provides that stamp duty is not payable on certain instruments associated with co-operatives, and stamp duty already paid is to be taken into account in respect of certain other instruments associated with co-operatives.

**Clause 16** provides that registration fees are not chargeable under any Act in respect of certain instruments associated with co-operatives.

## **Part 4 Regulations**

**Clause 17** authorises the Governor to make regulations (*National Regulations*) under the power conferred by the Co-operatives National Law as applied in each jurisdiction to make Co-operatives National Regulations. The Co-operatives National Regulations in that form take effect only to the extent they are applied or adopted by individual jurisdictions (see clause 4 in the case of this jurisdiction).

**Clause 18** authorises the Governor to make regulations (*local regulations*) for the purposes of the proposed Act or as contemplated by the Co-operatives National Law as applying in this jurisdiction.

## **Part 5 Miscellaneous**

**Clause 19** provides that the Co-operatives National Law does not apply to certain co-operative housing bodies.

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**Clause 20** contains evidentiary provisions relating to the making of orders, notices, exemptions and other instruments published in the Gazette.

**Clause 21** provides for the procedure for the prosecution of offences under the proposed Act and the *Co-operatives National Law (NSW)*.

**Clause 22** provides for the recovery of fines and penalties imposed by the rules of a co-operative.

**Clause 23** gives protection from civil liability for certain persons.

**Clause 24** specifies the officer who is to exercise functions as the Registrar of Co-operatives under the proposed Act or the *Co-operatives National Law (NSW)*.

**Clause 25** repeals the *Co-operatives Act 1992*, the *Co-operatives Amendment Act 1997*, and the *Co-operatives Regulation 2005*.

## **Schedule 1      Savings and transitional provisions**

This Schedule contains some specific savings and transitional provisions, and also enables local regulations of a savings or transitional nature to be made.

## **Appendix      Co-operatives National Law**

This Appendix sets out the Co-operatives National Law. It is divided into Chapters and Schedules, which are briefly summarised below.

### **Chapter 1 Preliminary**

This Chapter sets out the principles used by a co-operative organisation. The principles are those agreed by the International Co-operative Alliance and incorporated into Recommendation 193 of the International Labour Organization. The Chapter contains interpretation provisions and also sets out the relationship between the Co-operatives National Law and the Corporations Act. The provisions of the Corporations Act that are applied throughout the Co-operatives National Law are collected in a note and cross-referenced in tabular form along with relevant modifications for ease of reference.

### **Chapter 2 Formation, powers and constitution of co-operatives**

This Chapter provides the mechanism for incorporating a co-operative and specifies the legal powers of the incorporated body as well as the legal assumptions that underpin a co-operative's dealings with third parties. It identifies the matters that must be included in the rules of a co-operative and authorises the Registrar of Co-operatives to publish model rules that a co-operative can adopt. The Chapter also sets out the nature of share capital of a co-operative and establishes the legal notions of membership and active membership. Member rights and obligations as well as the circumstances in which membership is cancelled and any rights accompanying cancellation are dealt with in the Chapter.

### **Chapter 3 Management and operation of co-operatives**

This Chapter deals with corporate governance of a co-operative. Matters such as the board as the managing organ, directors and their duties and meetings are included. Matters relating to financial reporting and auditing are contained in the Chapter along with provisions governing fundraising from members and the public.

### **Chapter 4 Structural and other events for co-operatives**

This Chapter deals with corporate structural events such as external administration, mergers, schemes of arrangement and transfers of incorporation. Relevant provisions of the Corporations Act are applied and modified to achieve consistency of treatment in most external administration processes. Special provisions for caretaker-type administration and administrative powers of the Registrar of Co-operatives leading to a winding up are also located here.

### **Chapter 5 Participating co-operatives**

This Chapter replaces the existing system of multiple registration to enable cross-border trade by co-operatives with a mutual recognition scheme for co-operatives from jurisdictions that participate in the Co-operatives National Law scheme.

### **Chapter 6 Supervision and protection of co-operatives**

This Chapter establishes the powers of the Registrar of Co-operatives, inspectors and special investigators and the procedures that must be used when conducting an investigation. The Co-operatives National Law will introduce consistent powers and procedures across jurisdictions. If necessary, however, a particular jurisdiction will be able to modify provisions in this Chapter to account for local circumstances.

### **Chapter 7 Legal proceedings and other matters**

This Chapter establishes nationally consistent provisions for offences, civil penalty provisions, appeals against administrative decisions, and the use of evidence in proceedings.

### **Chapter 8 General**

This Chapter deals with administrative and other miscellaneous matters such as those relating to the office of Registrar of Co-operatives, the service and filing of documents, and the making of National Regulations.

### **Schedules**

**Schedule 1** sets out the matters that must be addressed in the rules of a co-operative.

**Schedule 2** defines terms used in provisions that regulate interests and control in shares of a co-operative.

**Schedule 3** contains savings and transitional provisions.

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**Schedule 4** sets out interpretation provisions that are nationally consistent and are used in place of the interpretation legislation in each jurisdiction.