

## CO-OPERATIVES (AMENDMENT) BILL 1992

### SECOND READING SPEECH

Mr President,

The Co-operatives (Amendment) Bill 1992, amends Section 206(3) of the Co-operatives Act 1992, in regard to the composition of the board of directors of a Co-operative by non-active member directors.

This provision effectively replaces the current provisions of Section 84(7) of the Co-operative Act 1923, which enables the Advisory Council to grant approval to a co-operative to have non-member directors on its board.

It also replaces the provision that enables the Minister of Co-operatives to make an order enabling a person to qualify as a non member director who holds a qualification as specified in the rules of the society.

The object of this Bill is to amend the provisions of Section 206(3) of the Co-operatives Act and to insert other provisions to enable a co-operative to have, in certain circumstances, more than one in four non active member directors on its board.

As presently drafted, Section 206(3) provides a formula of one in four non-active member directors for determining the maximum number of non active member directors which a co-operative may have elected to its board.

Mr President

Since the passing of the Co-operatives Act is has come to my attention that the provisions of Section 206(3) are restrictive in that they do not permit co-operatives with existing Advisory Council approval, or Ministerial approval, to continue to have more than one in four non-active member directors after the Act is proclaimed.

The requirement to continue existing approvals was overlooked during the consideration of the provisions of Section 206 at the Bill stage.

It was never intended for the section to restrict existing board arrangements approved of under the 1923 Act.

The Sub Section was included to recognise the need for co-operatives to have non active member directors on their boards, and to provide a mechanism to permit them without the requirement for outside approval.

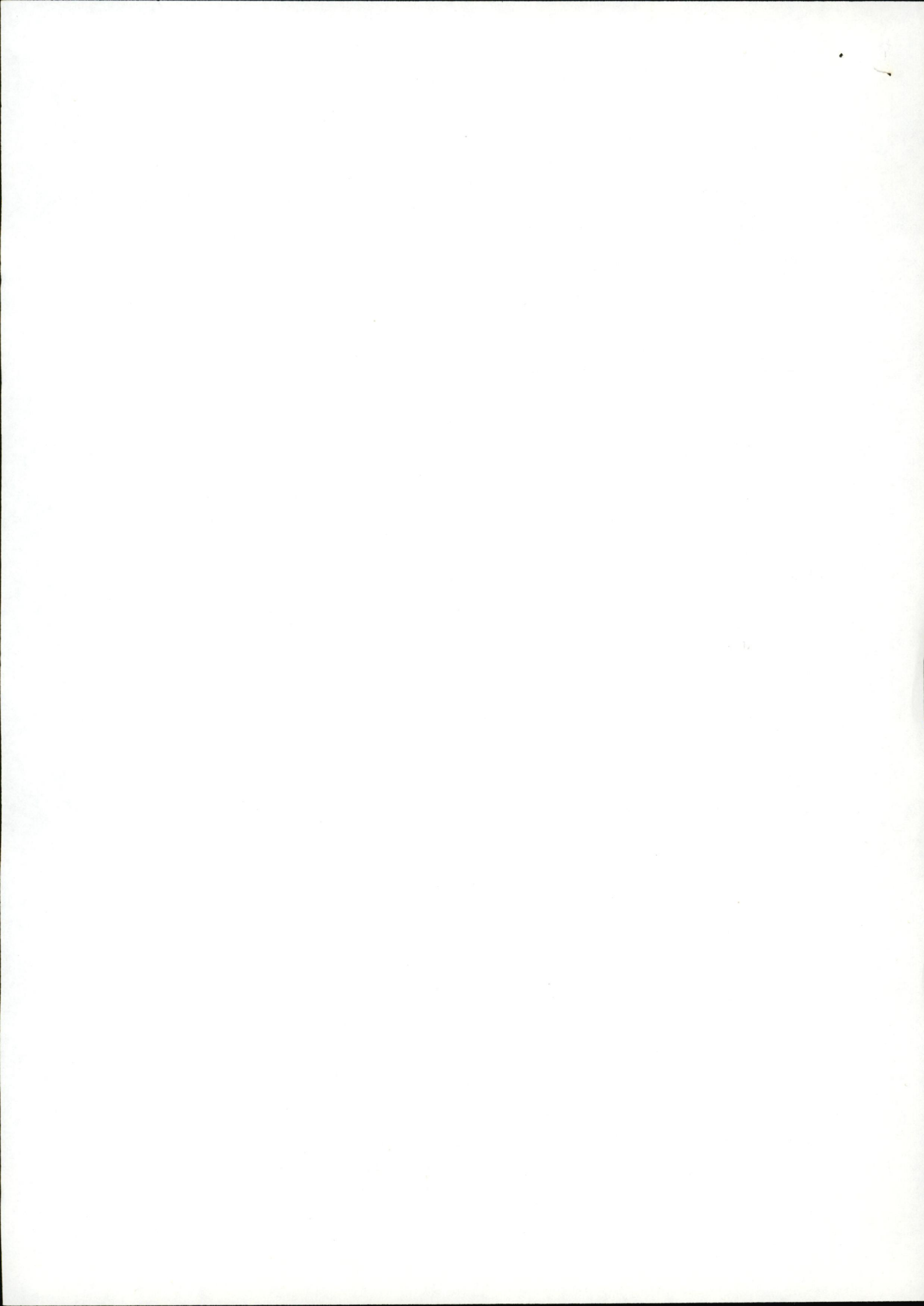
This Bill will exclude the operation of Section 206(3) to co-operatives which have Advisory Council approvals and Ministerial orders in force immediately before the commencement of the Co-operatives Act.

Mr. President,

The Amendment will also permit exemption from the statutory formula to enable a co-operative to have a greater number of non-active member directors after the Act is proclaimed.

This provision is required to take account of those exceptional circumstances where additional non-active member directors are required to supplement existing board expertise.

Clause 1 of Schedule 1 of the Bill will amend Section 206(3) of the Co-operatives Act to exclude the restriction of one in four non-active member directors where an exemption is granted pursuant to Section 206A, and where the conditions, if any, attached to the exemption are complied with.



Clause 2 of Schedule 2 of the Bill will insert Section 206A which will permit the Minister, by order in writing, to exempt a co-operative from operation of Section 206(3).

Before an order is made pursuant to Section 206A the Minister of the day will need to be satisfied that the exemption complies with the following three tests:

1. It is in the interests of the co-operative generally, including the long term viability of the co-operative;
2. It will not result in the board of the co-operative being controlled by a person who is not a member of the co-operative or persons together who are not members of the co-operative;
3. It is in the public interest.

The three tests must be considered by the Minister of Co-operatives before an order can be made pursuant to the Section.

The tests are drafted in wide terms to ensure that the overall interests of the members and the community are protected, and that the control of the board remains with the active member directors.

The proposed amendment is more restrictive than the current provisions under Section 84(7) of the 1923 Act, which remain silent as to those matters which must be considered by the Advisory Council, or the Minister, before approval is granted or an order is made, as the case may be.

Mr. President,

This clearly has to be the case as the proposed provisions are intended to extend the statutory formula thereby increasing the risk that control will be removed from the members of the co-operative. The tests included in the Bill enable a balance to be achieved.

The onus will lie on a co-operative seeking an exemption to satisfy the Minister that the particular circumstances of the co-operative will satisfy the three tests and are such as to call for an exemption to the one in four formula as found in Section 206.

It is anticipated that an order will only be made where the circumstances are of an exceptional nature.

Where an exemption is granted, the Section will preclude a majority of the directors being non-active member directors.

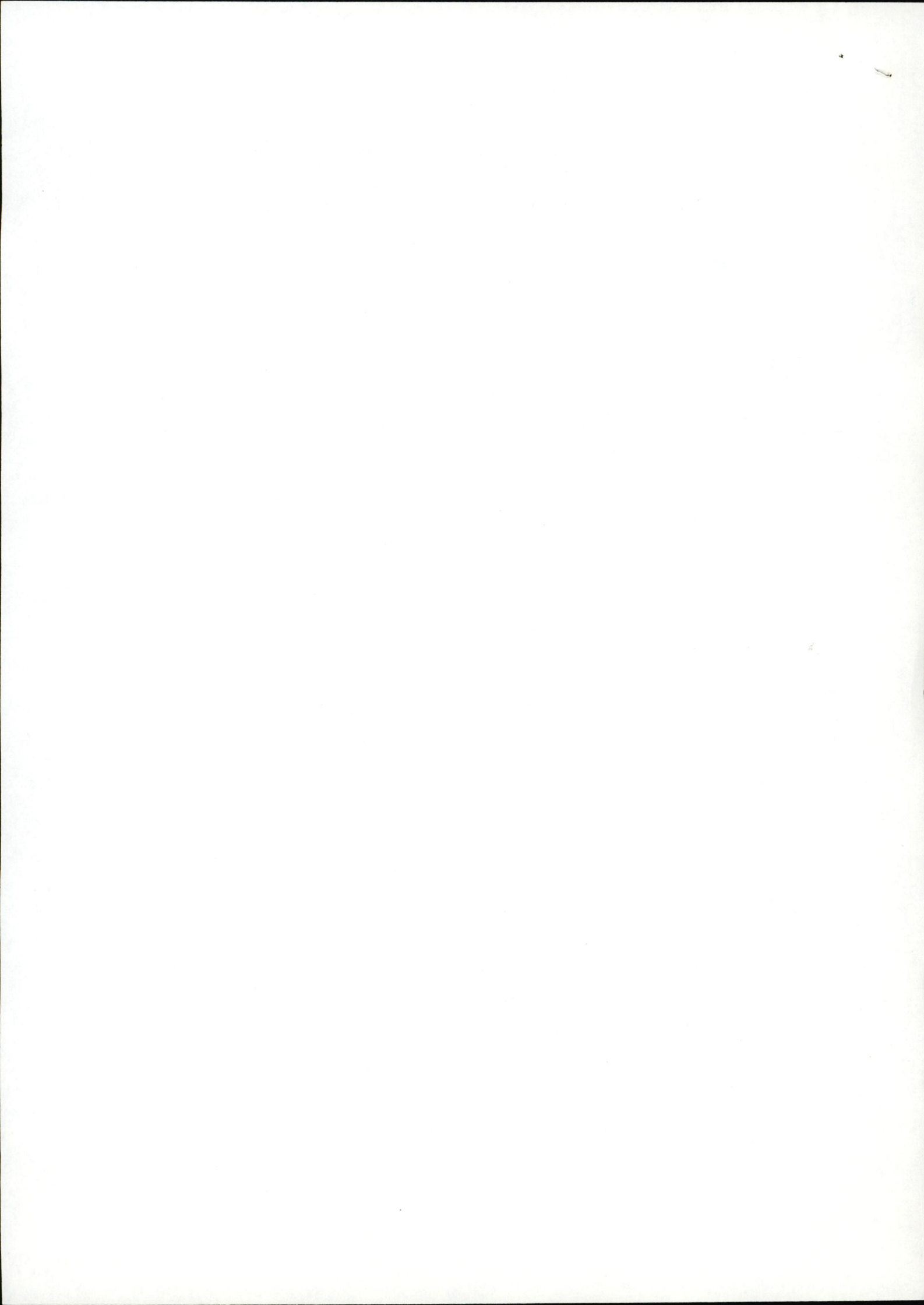
In addition, a quorum is not to be constituted at a meeting of the board unless a majority of the directors present at the meeting are active members of the co-operative.

Section 206A will permit the Minister of Co-operatives to grant an exemption, with or without conditions and to limit the operation of the exemption to a set period of time.

The Minister for Co-operatives will also be permitted to revoke an exemption at any time by giving notice in writing to the co-operative of the intention to do so.

An exemption may be revoked even though it is granted for a particular period and that period has not, at the time of revocation, expired.

The effect of this provision is to enable the Minister to tailor an exemption to the particular circumstances involved so as to effectively monitor the management requirements of a co-operative.



This provision is wide enough to enable further action to be taken in the future to vary the conditions of the exemption, or to enable an exemption to lapse where the Minister for Co-operatives is satisfied that the requirement for additional non-active member directors is no longer required.

Mr. President,

Where an application is made to the Minister for Co-operatives to consider an extension of an exemption, the three tests will be required to be satisfied on the basis of facts as they exist at the time that consideration of a further order is made.

Clause 3 of Schedule 1 will introduce Clause 13 to Schedule 6 of the Co-operatives Act.

The clause is a savings and transitional provision to enable co-operatives which have Advisory Council approvals and Ministerial orders in force, immediately before the commencement of Co-operatives Act, to be exempted from Section 206(3).

This provision will also provide for the exemption to continue to apply to a co-operative until the Minister for Co-operatives revokes the application of the Clause by notice in writing.

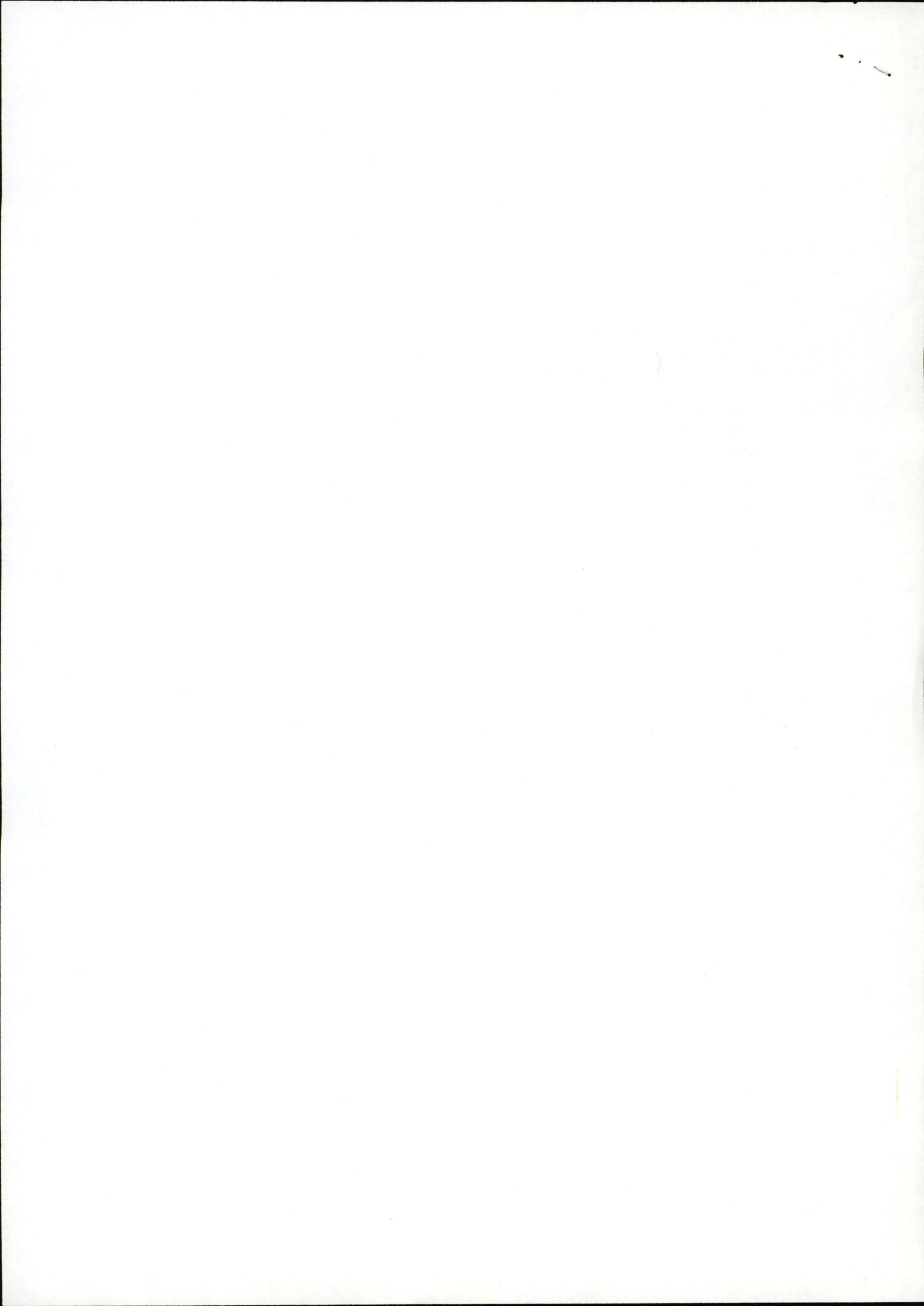
Where a co-operative has the benefit of the savings provision a majority of its directors must, at all times, be active members of the co-operative.

In addition, a quorum will not be constituted unless a majority of the directors present at a meeting are active members of the co-operative.

Honourable Members, the amendments contained in this Bill are consistent with the Government's policy to provide flexibility to the operations of co-operatives.

Mr President,

I commend the Bill to the House and table the explanatory notes relating to this Bill for the information of Honourable Members.



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## CO-OPERATIVES (AMENDMENT) BILL 1992

NEW SOUTH WALES



### EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Co-operation Act 1923 ("the existing Act") requires directors of a co-operative society to be members who are or have been active members within the last 12 months, but with power for the Advisory Council and the Minister to approve of other persons being directors.

The Co-operatives Act 1992 ("the new Act") generally requires that directors be active members of the co-operative or be otherwise qualified to be a director under the rules of the co-operative. The new Act imposes an additional restriction on the composition of the board of directors by requiring that at least 3 out of 4 directors must be persons who are active members of the co-operative. The new Act has not yet commenced.

The object of this Bill is to amend the new Act in the following respects:

- A new provision is to be inserted which will allow the Minister to exempt a co-operative from the restriction referred to above on the proportion of directors who must be active members. The Minister will have to be satisfied as to certain matters before granting an exemption (including that control of the Board will not thereby pass to persons who are not members and that it is in the interest of the co-operative and in the public interest that the exemption be given). A co-operative which receives such an exemption will be subject to a requirement that a majority of its directors must be active members of the co-operative and that a majority of the directors present at a directors' meeting must be active members.
- A savings provision is to be inserted whereby an existing co-operative which has the benefit of an Advisory Council or Minister's approval resulting in it not complying with the requirement that at least 3/4 of its directors be active members will not be subject to that requirement. Such a co-operative will however be subject to a requirement that a majority of its directors must be

*Co-operatives (Amendment) 1992*

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active members of the co-operative and that a majority of the directors at a directors' meeting must be active members. The Minister is given power to revoke the application of this new savings provision to any particular co-operative.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Clause 3 is a formal provision to give effect to the amendments to the Co-operatives Act 1992 specified in Schedule 1.

Schedule 1 contains the amendments to the Co-operatives Act 1992 described above.

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**CO-OPERATIVES (AMENDMENT) BILL 1992**

NEW SOUTH WALES

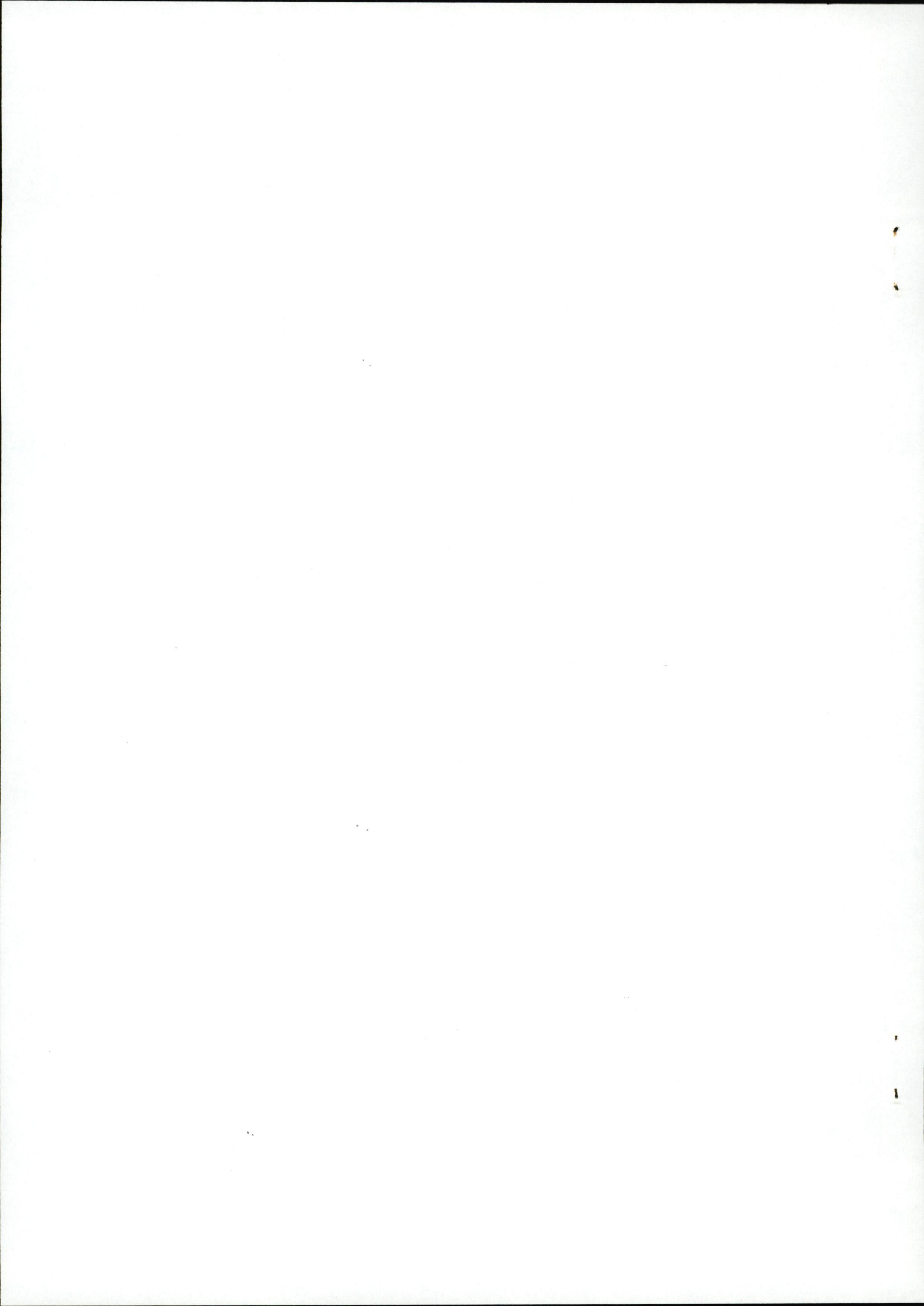


**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Co-operatives Act 1992 No. 18

**SCHEDULE 1—AMENDMENTS**

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**CO-OPERATIVES (AMENDMENT) BILL 1992**

NEW SOUTH WALES



No. , 1992

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**A BILL FOR**

An Act to amend the Co-operatives Act 1992 to make further provision with respect to the composition of the board of directors of a co-operative.

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*Co-operatives (Amendment) 1992***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Co-operatives (Amendment) Act 1992.

**Commencement**

- 5 2. This Act commences on the date of assent.

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

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

**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

- 10 (1) Section 206 (**Qualifications for directors (other than associations and federations)**):
  - (a) At the end of section 206 (3), insert:
 

15 This subsection does not apply to a co-operative while an exemption applying to the co-operative is in force under section 206A and any conditions to which that exemption is subject are complied with.
  - (b) From section 206 (4), omit “for the purposes of subsection (3)”, insert instead “as an active member for the purposes of determining how many directors are active members of the co-operative”.
 

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- (2) Section 206A:
 

After section 206, insert:

**Exemptions concerning composition of board**

25 206A. (1) The Minister may exempt a co-operative by order in writing from the operation of section 206 (3), but only if the Minister is satisfied that the exemption:

  - (a) is in the interests of the co-operative generally, including the long term viability of the co-operative; and
  - 30 (b) will not result in the board of the co-operative being controlled by a person who is not a member of the co-operative or by persons together who are not members of the co-operative; and

*Co-operatives (Amendment) 1992*

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SCHEDULE 1—AMENDMENTS—*continued*

- (c) is in the public interest.
- (2) While such an exemption is in force:
- (a) a majority of the directors of the co-operative must be active members of the co-operative; and 5
- (b) a meeting of the board of the co-operative is not competent to transact any business of the board unless a majority of the directors present at the meeting are active members of the co-operative.
- (3) An exemption may be granted unconditionally or subject to conditions and may be granted to apply for a specified period or without limitation as to the time for which it applies. Any conditions must be set out in the exemption. 10
- (4) An exemption may be revoked at any time by the Minister by notice in writing to the co-operative (even if it was granted to apply for a particular period and that period has not expired). 15
- (5) For the purposes of this section, the board of a co-operative is taken to be controlled by a person, or by persons together, if the person or persons are able to dominate (either directly or indirectly) decision making by the board in relation to the management, financial and operating policies of the co-operative. 20
- (6) Section 206 (4) and (5) apply for the purposes of this section as well as for the purposes of section 206. 25
- (3) Schedule 6 (**Savings and transitional provisions**):
- At the end of Schedule 6, insert:
- Composition of the board—continuation of approvals**
13. (1) This clause applies to a co-operative in respect of which an approval of the Advisory Council or an order of the Minister under section 84 (7) of the 1923 Act was in force immediately before the commencement of this clause. 30
- (2) If the composition of the board of a co-operative does not comply with section 206 (3) as a consequence of the approval or order, that subsection does not apply in respect of the co-operative. 35

*Co-operatives (Amendment) 1992*

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SCHEDULE 1—AMENDMENTS—*continued*

(3) While this clause operates in respect of a co-operative:

(a) a majority of its directors must be active members of the co-operative; and

5 (b) a meeting of the board of the co-operative is not competent to transact any business of the board unless a majority of the directors present at the meeting are active members of the co-operative.

10 (4) The Minister may, by notice in writing to a co-operative, revoke the application of this clause to the co-operative, in which case this clause ceases to apply to the co-operative.

(5) Section 206 (4) and (5) apply for the purposes of this clause as well as for the purposes of section 206.

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# CO-OPERATIVES (AMENDMENT) ACT 1992 No. 107

NEW SOUTH WALES

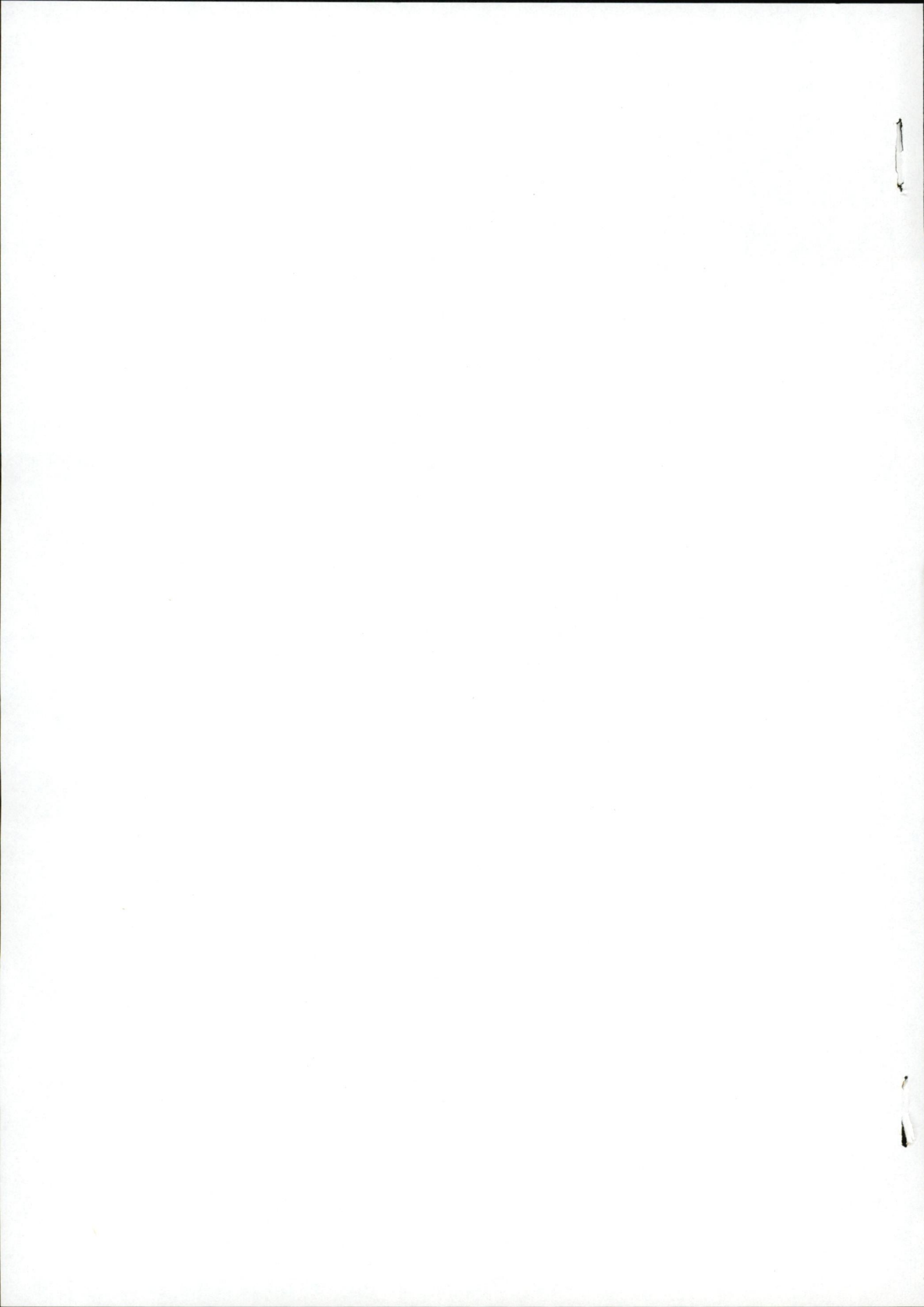


## TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Co-operatives Act 1992 No. 18

## SCHEDULE 1—AMENDMENTS

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**CO-OPERATIVES (AMENDMENT) ACT 1992 No. 107**

**NEW SOUTH WALES**



**Act No. 107, 1992**

An Act to amend the Co-operatives Act 1992 to make further provision with respect to the composition of the board of directors of a co-operative. [Assented to 8 December 1992]

*Co-operatives (Amendment) Act 1992 No. 107*

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

**Short title**

1. This Act may be cited as the Co-operatives (Amendment) Act 1992.

**Commencement**

2. This Act commences on the date of assent.

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

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

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

**(1) Section 206 (Qualifications for directors (other than associations and federations)):**

- (a) At the end of section 206 (3), insert:

This subsection does not apply to a co-operative while an exemption applying to the co-operative is in force under section 206A and any conditions to which that exemption is subject are complied with.

- (b) From section 206 (4), omit “for the purposes of subsection (3)”, insert instead “as an active member for the purposes of determining how many directors are active members of the co-operative”.

**(2) Section 206A:**

After section 206, insert:

**Exemptions concerning composition of board**

206A. (1) The Minister may exempt a co-operative by order in writing from the operation of section 206 (3), but only if the Minister is satisfied that the exemption:

- (a) is in the interests of the co-operative generally, including the long term viability of the co-operative; and
- (b) will not result in the board of the co-operative being controlled by a person who is not a member of the co-operative or by persons together who are not members of the co-operative; and

SCHEDULE 1—AMENDMENTS—*continued*

(c) is in the public interest.

(2) While such an exemption is in force:

- (a) a majority of the directors of the co-operative must be active members of the co-operative; and
- (b) a meeting of the board of the co-operative is not competent to transact any business of the board unless a majority of the directors present at the meeting are active members of the co-operative.

(3) An exemption may be granted unconditionally or subject to conditions and may be granted to apply for a specified period or without limitation as to the time for which it applies. Any conditions must be set out in the exemption.

(4) An exemption may be revoked at any time by the Minister by notice in writing to the co-operative (even if it was granted to apply for a particular period and that period has not expired).

(5) For the purposes of this section, the board of a co-operative is taken to be controlled by a person, or by persons together, if the person or persons are able to dominate (either directly or indirectly) decision making by the board in relation to the management, financial and operating policies of the co-operative.

(6) Section 206 (4) and (5) apply for the purposes of this section as well as for the purposes of section 206.

(3) Schedule 6 (**Savings and transitional provisions**):

At the end of Schedule 6, insert:

**Composition of the board—continuation of approvals**

13. (1) This clause applies to a co-operative in respect of which an approval of the Advisory Council or an order of the Minister under section 84 (7) of the 1923 Act was in force immediately before the commencement of this clause.

(2) If the composition of the board of a co-operative does not comply with section 206 (3) as a consequence of the approval or order, that subsection does not apply in respect of the co-operative.

*Co-operatives (Amendment) Act 1992 No. 107*

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SCHEDULE 1—AMENDMENTS—*continued*

(3) While this clause operates in respect of a co-operative:

- (a) a majority of its directors must be active members of the co-operative; and
- (b) a meeting of the board of the co-operative is not competent to transact any business of the board unless a majority of the directors present at the meeting are active members of the co-operative.

(4) The Minister may, by notice in writing to a co-operative, revoke the application of this clause to the co-operative, in which case this clause ceases to apply to the co-operative.

(5) Section 206 (4) and (5) apply for the purposes of this clause as well as for the purposes of section 206.

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*[Minister's second reading speech made in—  
Legislative Assembly on 27 November 1992  
Legislative Council on 27 November 1992]*