

First print



New South Wales

# Co-operatives Amendment Bill 1997

## Explanatory note

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

### Overview of Bill

The objects of this Bill are:

- (a) to enact certain core consistent provisions for the regulation of co-operatives found in the *Co-operatives Act 1996* of Victoria that all States and Territories in Australia have agreed, in principle, to adopt, and
- (b) to re-enact certain provisions, renumber certain provisions and repeal other provisions currently contained in the *Co-operatives Act 1992* to eliminate inconsistencies with other core consistent provisions.

This Bill also makes other miscellaneous and consequential amendments.

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## 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 proclaimed.

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

## Schedule 1 Amendments

The *Co-operatives Act 1992* (*the 1992 Act*) regulates, among other things, the formation, operation, administration and supervision of co-operatives in New South Wales. The 1992 Act was enacted after an extensive review of the previous legislation governing co-operatives in this State, and has been the basis for legislative reform elsewhere in Australia. In particular, the 1992 Act was drawn on extensively by the *Co-operatives Act 1996* of Victoria (*the Victorian Act*) with modifications being made in the light of experience with the operation of the 1992 Act as well as comments from other jurisdictions and detailed input from the co-operative sector. The Victorian Act has, in turn, become the base document for the core consistent provisions that all Australian States and Territories have agreed, in principle, to adopt.

The adoption of a uniform national approach to legislation in this area is necessary and important for at least 2 reasons.

Firstly, the lack of consistency between the legislation of the States and Territories covering co-operatives has been recognised as a problem, particularly in respect of co-operatives that wish to carry on business outside the jurisdiction in which they are initially registered. To address this problem, a working party of the Standing Committee of Attorneys-General recommended that the co-operatives legislation in each State and Territory should:

- make provision for the interstate registration of co-operatives outside their own State or Territory, and
- contain uniform regulatory provisions for those co-operatives, and
- include core consistent provisions.

It was also recommended that each State and Territory should enter into an agreement by which each jurisdiction would agree to enact legislation containing the core consistent provisions. Each jurisdiction would also be free to enact additional provisions in the legislation to cover their particular local circumstances and matters not dealt with by the core consistent principles. This Bill makes provision for the matters referred to above. Notes are to be inserted at the beginning of each Part of and each Schedule to the 1992 Act to identify the core consistent provisions.

A second major problem with existing legislation is that co-operatives are subject to the *Corporations Law* if they wish to have members or issue securities across State or Territory borders. This has been recognised as a major impediment to the ability of co-operatives to carry on business outside the State.

To resolve this difficulty, it has been agreed, in principle, by the Standing Committee of Attorneys-General and the Ministerial Council for Corporations that the provisions of the *Corporations Law* that previously regulated these matters should be "rolled back". The Commonwealth is to introduce amendments to the *Corporations Law* to enable this to be done.

As a result, it is proposed, in conformity with the core consistent provisions, that fund raising by co-operatives from members or prospective members will be governed by the 1992 Act as amended by this Bill. Fund raising from non-members in the form of debentures and subordinated debt will be governed by the proposed legislation by applying relevant provisions of the *Corporations Law* and will also be regulated by relevant State and Territory Registrars of Co-operatives. However, prescribed interests will continue to be governed by the *Corporations Law* and regulated by the Australian Securities Commission.

Other notable features of the legislation include:

- the introduction of the concept, as contained in the Victorian Act, of trading and non-trading co-operatives. The separation relates mainly to fund raising and takeovers and requires that trading co-operatives comply with higher disclosure and reporting standards than those normally applying to non-trading co-operatives, and
- again as in the Victorian Act, the making of provision for different classes of shares for members of co-operatives. This will enable co-operatives to offer a range of equity forms to active members.

The New South Wales co-operatives legislation will continue to make provision for certain matters that are not covered by the core consistent provisions (or the Victorian Act). The 2 most important of these matters involve retention of provisions relating to certain advisory functions of the Co-operatives Council and to co-operative capital units (*CCUs*) (instruments that enable co-operatives to access funds from outside their membership base).

The Bill also contains a number of non-core provisions. These include:

- (a) amendments relating to and consequential on the operation and enforcement of the national scheme concerning such matters as the curing of procedural irregularities, double jeopardy, civil liability arising under the co-operatives laws of this and other jurisdictions, offences committed partly in and partly outside the jurisdiction and reciprocity in relation to offences, and



- (b) minor amendments by way of statute law revision, and
- (c) various savings and transitional regulations to be inserted in Schedule 6 to the 1992 Act relating to such matters as:
  - (i) the saving of the registration of foreign co-operatives registered before the commencement of the new provisions, and
  - (ii) pending amalgamations, transfers of engagements and applications of certain kinds, and
  - (iii) saving of rules for an interim period while they are brought into conformity with the 1992 Act and the regulations (as proposed to be amended by this Bill), and
  - (iv) applications to the Supreme Court for the resolution of transitional difficulties, and
  - (v) enabling (if necessary) the adoption of regulations made under the Victorian Act with respect to the core consistent provisions (with appropriate modifications) on an interim basis so that the State will be in the position to commence the proposed Act on the same date as legislation for the operation of the national scheme is commenced in other jurisdictions.

First print



New South Wales

# Co-operatives Amendment Bill 1997

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New South Wales

## Co-operatives Amendment Bill 1997

No , 1997

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### A Bill for

An Act to amend the *Co-operatives Act 1992* by enacting core consistent provisions to give effect to a national scheme for the regulation of co-operatives with respect to interstate operations, fund raising, mergers and other matters; and for other purposes.

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

**1 Name of Act**

This Act is the *Co-operatives Amendment Act 1997*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation. 5

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

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

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## Schedule 1 Amendments

(Section 3)

### [1] Part 1 Preliminary, note

Insert before section 1:

**Note.** Sections 3, 5 (other than the definitions of **CCU**, **Council**, **Court** and **holding co-operative**), 5A and 6–12 (other than sections 7 (2) and (3) and 8 (2) (n)) are core consistent provisions. 5

### Division 1 Introduction

### [2] Section 3

Omit section 3. Insert instead: 10

#### 3 Objects of this Act (cf Vic Act s 3)

The objects of this Act are:

- (a) to enable the formation, registration and operation of co-operatives, and
- (b) to promote co-operative philosophy, principles, practices and objectives, and 15
- (c) to protect the interests of co-operatives, their members and the public in the operations and activities of co-operatives, and
- (d) to ensure that the directors of co-operatives are accountable for their actions and decisions to the members of co-operatives, and 20
- (e) to encourage and facilitate self-management by co-operatives at all levels, and
- (f) to encourage the development, integration and strengthening of co-operatives at local, regional, national and international levels by supporting and fostering State and National peak organisations and co-operative instrumentalities. 25

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**Division 2 Interpretation**

**[3] Section 5 Definitions** (cf Vic Act s 4)

Omit the definition of *accounting records* from section 5 (1).

Insert instead:

*accounting records* include: 5

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry, and
- (b) documents and records that record those entries, and 10
- (c) any working papers and other documents that are necessary to explain the methods and calculations by which accounts are made up.

**[4] Section 5 (1), definitions of "alter", "association", "component co-operative", "deposit taking co-operative", "federation", "model rules", "non-trading co-operative", "Register", "seal", "subordinated debt", "surplus" and "trading co-operative"** 15

Insert in alphabetical order:

*alter*, in relation to the rules of a co-operative, includes add to, substitute and rescind. 20

*association* means an association registered under this Act.

*component co-operative* means a member of an association. 25

*deposit taking co-operative* means a co-operative which is permitted under section 263A to accept money on deposit.

*federation* means a federation registered under this Act.



*model rules* means the model rules approved by the Registrar under Part 5.

*non-trading co-operative* means a non-trading co-operative within the meaning of section 15.

*Register* means the Register of Co-operatives established under Part 15. 5

*seal*, in relation to a co-operative, means common seal or official seal.

*subordinated debt* has the meaning given by section 265.

*surplus*, in relation to a co-operative, means the excess of income over expenditure after making proper allowance for taxation expense, depreciation in value of the property of the co-operative and for future contingencies. 10

*trading co-operative* means a trading co-operative within the meaning of section 14. 15

[5] Section 5 (1), definition of "business document"

Omit the definition.

[6] Section 5 (1), definition of "co-operative"

Omit the definition. Insert instead: 20

*co-operative* means a body registered under this Act as a co-operative and includes an association or federation.

[7] Section 5 (1), note, meaning of "core consistent provisions"

Insert after the definition of *co-operative*:

**Note.** For the purposes of the national scheme for the regulation of the operation of co-operatives, *core consistent provisions* means those provisions contained in this Act that are equivalent or comparable (though not necessarily identical) to provisions of the *Co-operatives Act 1996* of Victoria. These provisions are highlighted by notes at the beginning of each Part of and each Schedule to this Act. 25  
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**[8] Section 5 (1), definition of "foreign co-operative"**

Omit the definition. Insert instead:

*foreign co-operative* means a body corporate that is registered, incorporated or formed under, or subject to, a law in force outside New South Wales (including outside Australia), that regulates co-operatives or organisations having attributes the same as or similar to co-operatives but does not include:

- (a) a body registered under the *Corporations Law*, or
- (b) a financial institution or foreign society registered under financial institutions legislation within the meaning of the *Financial Institutions (NSW) Code*.

**[9] Section 5 (1), definition of "Registrar"**

Omit the definition. Insert instead:

*Registrar* means the person for the time being holding the office of Registrar of Co-operatives under this Act.

**[10] Section 5 (4), note**

Insert after the subsection:

**Note.** For the purposes of comparison, a number of provisions of this Act contain bracketed notes in headings, drawing attention ("cf") to equivalent or comparable (though not necessarily identical) provisions of the *Co-operatives Act 1996* of Victoria, abbreviated in the notes as "Vic Act".

**[11] Section 5A**

Insert after section 5:

**5A Qualified privilege** (cf Vic Act s 5)

- (1) If this Act provides that a person has qualified privilege in respect of an act, matter or thing, the person, in respect of that act, matter or thing:
  - (a) has qualified privilege in proceedings for defamation, or

- 
- (b) is not, in the absence of malice on the person's part, liable to an action for defamation at the suit of a person.
- (2) In subsection (1):
- malice* includes ill-will to the person concerned or any other improper motive. 5
- (3) Neither this section nor a provision of this Act that provides as mentioned in subsection (1) limits or affects any right, privilege or immunity that a person has, apart from this section or such a provision, as defendant in proceedings, or an action, for defamation. 10

**[12] Section 6 and Part 2 (sections 8–28)**

Omit the section and the Part. Insert instead:

**Division 3 The co-operative principles**

**6 Co-operative principles** (cf Vic Act s 6) 15

In this Act, a reference to *co-operative principles* is a reference to the principles adopted by the International Co-operative Alliance, being the following principles:

**Voluntary and open membership**

Co-operatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination. 20

**Democratic member control**

Co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary co-operatives members have equal voting rights (one member, one vote) and co-operatives at other levels are organised in a democratic manner. 25 30

**Member economic participation**

Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of that capital is usually the common property of the co-operative. They usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing the co-operative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the co-operative; and supporting other activities approved by the membership.

**Autonomy and independence**

Co-operatives are autonomous, self help organisations controlled by their members. If they enter into agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.

**Education, training and information**

Co-operatives provide education and training for their members, elected representatives, managers and employees so they can contribute effectively to the development of their co-operatives. They inform the general public, particularly young people and opinion leaders, about the nature and benefits of co-operation.

**Co-operation among co-operatives**

Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures.

**Concern for the community**

While focusing on member needs, co-operatives work for the sustainable development of their communities through policies accepted by their members.



**7 Interpretation to promote co-operative principles**

(cf Vic Act s 7)

- (1) In the interpretation of a provision of this Act or the regulations, a construction that would promote co-operative principles is to be preferred to a construction that would not promote co-operative principles. 5
- (2) Any requirement in this Act that a co-operative function in accordance with co-operative principles is not to be construed: 10
  - (a) as requiring the co-operative to function in accordance with all of the principles set out in section 6, or
  - (b) as authorising the co-operative to contravene any other provision of this Act or of its rules. 15
- (3) The Governor may, by order published in the Gazette, amend the principles set out in section 6 so as to cause those principles to be the co-operative principles adopted from time to time by the International Co-operative Alliance. 20

**Division 4 Application of Corporations Law to co-operatives****8 Corporations Law applying under its own force**

(cf Vic Act s 8)

- (1) The provisions of the *Corporations Law* (other than the provisions of the *Corporations Law* mentioned in subsection (2)) are excluded from applying under their own force to co-operatives. 25
- (2) However, the following provisions of the *Corporations Law* are not excluded from applying under their own force to a co-operative: 30
  - (a) provisions that relate to any matter that the regulations provide is not to be excluded from the operation of the *Corporations Law*, or

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|-----|---|--------------|
| (b) | provisions that relate to the role of a co-operative in the formation of a company, or  |              |
| (c) | provisions that relate to substantial share holdings, by or involving a co-operative, in a company, or  |              |
| (d) | provisions that confer or impose functions on a co-operative as a member, or former member, of a corporation, or  | 5            |
| (e) | provisions that relate to dealings by a co-operative in securities of a body corporate, other than securities of the co-operative itself, or  | 10           |
| (f) | provisions that confer or impose functions on a co-operative in its dealings with a corporation, not being dealings in securities of the co-operative, or   |              |
| (g) | provisions that relate to securities of a co-operative, other than shares in, debentures of or deposits with a co-operative, or   | 15           |
| (h) | provisions relating to the futures industry, or   |              |
| (i) | provisions relating to participants in the securities industry, or  |              |
| (j) | provisions relating to the conduct of securities business, or   | 20           |
| (k) | provisions relating to dealers' accounts and audit, or  |              |
| (l) | provisions relating to money and scrip of dealers' clients, or  | 25           |
| (m) | provisions relating to registers of interests in securities, or   |              |
| (n) | provisions relating to powers of Court to cure procedural irregularities and to make other orders.  |              |
| (3) | To remove doubt it is declared that subsection (1) does not operate to exclude the operation of Parts 1.2A (Disclosing entities), 7.11 (Conduct in relation to securities) and 7.12 (Offering securities for subscription or purchase) of the <i>Corporations Law</i> , except in relation to shares in, debentures of or deposits with a co-operative. | 30<br><br>35 |



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- (4) This section does not operate to give rise to any operation of the *Corporations Law*, and does not confer any function under that Law, which that Law would not otherwise have or confer of its own force.
- (5) This section has effect despite any provision of the *Corporations (New South Wales) Act 1990* or the applicable provisions within the meaning of that Act. 5

**9 Corporations Law adopted by this Act or the regulations** (cf Vic Act s 9)

- (1) The regulations may adopt, with or without specified modifications, a provision of the *Corporations Law* for application in relation to co-operatives. 10
- (2) Any provision of this Act or any regulation which adopts provisions of the *Corporations Law* for application in relation to co-operatives operates to apply those provisions as part of this Act and the adopted provisions are to be read as forming part of this Act. 15
- (3) If a provision of the *Corporations Law* is adopted by any provision of this Act or the regulations, neither the adopted provision nor the adopting provision gives power to the Australian Securities Commission to administer the adopted provision for this Act. 20

**Part 2 Formation**

**Note.** Each provision of Divisions 1–5 and 8 (other than sections 14 (3) (c), 15 (3) (c), 16 (3) (c) and 19 (1) (c) (ii) (in so far as they may allow a co-operative to have fewer than 5 members), 16 (2) (a), 17 (1), (4), (10) and (11), 19 (1) (d) (ii), 20 (3)–(6) and 23 (2) (b)) is a core consistent provision. 25

**Division 1 Types of co-operatives**

**13 Types of co-operatives** (cf Vic Act s 13) 30

- (1) A body may be registered under this Act as a co-operative.
- (2) A co-operative may be either:
- (a) a trading co-operative, or
- (b) a non-trading co-operative. 35

**14 Trading co-operatives** (cf Vic Act s 14)

- (1) A trading co-operative must have a share capital.
- (2) A trading co-operative is a co-operative that gives returns or distributions on surplus or share capital.
- (3) A trading co-operative must have a membership of: 5
  - (a) 2 or more co-operatives, in the case of an association, and
  - (b) 2 or more associations, in the case of a federation, and
  - (c) 5 or more active members, in the case of any other trading co-operative, or such lesser number as the Registrar may approve in a particular case. 10

**15 Non-trading co-operatives** (cf Vic Act s 15)

- (1) A non-trading co-operative must not give returns or distributions on surplus or share capital to members other than the nominal value of shares (if any) at winding up. 15
- (2) A non-trading co-operative may or may not have a share capital.
- (3) A non-trading co-operative must have a membership of: 20
  - (a) 2 or more co-operatives, in the case of an association, and
  - (b) 2 or more associations, in the case of a federation, and
  - (c) 5 or more active members, in the case of any other non-trading co-operative, or such lesser number as the Registrar may approve in a particular case. 25

**Division 2 Formation meeting**

**16 Formation meeting** (cf Vic Act s 16)

- (1) Before a proposed co-operative (other than an existing body corporate) can be registered, a formation meeting must be held in accordance with this section. 30

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- (2) At the formation meeting:
- (a) a disclosure statement approved under section 17 must be presented to the meeting, and
  - (b) the proposed rules of the co-operative approved under section 18 in respect of the proposed co-operative, and including active membership provisions in accordance with Part 6, must be passed by two-thirds of the proposed members of the proposed co-operative attending the meeting, and 5
  - (c) the proposed members of the proposed co-operative must sign the application for membership which must be in a form approved by the Registrar, and 10
  - (d) the proposed members must elect the first directors of the proposed co-operative in accordance with the proposed rules, and 15
  - (e) the proposed members must authorise a person:
    - (i) to apply to the Registrar for registration of the proposed co-operative, and 20
    - (ii) to do any act or thing necessary to have the proposed co-operative registered.
- (3) The formation meeting must be held by:
- (a) not less than 2 suitably qualified co-operatives, in the case of an association, and 25
  - (b) not less than 2 suitably qualified associations, in the case of a federation, and
  - (c) not less than 5 persons suitably qualified to be members of the proposed co-operative in the case of any other co-operative, or such lesser number as the Registrar may have approved under section 14 or 15. 30
- (4) For the purposes of subsection (3), a person is suitably qualified to be a member if:
- (a) there are reasonable grounds to believe the person will be an active member of the proposed co-operative, and 35
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- (b) in the case of a natural person, the person has attained the age of 18, and
- (c) the person satisfies any other requirements for membership set out in the proposed rules.
- (5) Each co-operative forming a proposed association and each association forming a proposed federation may be represented at the formation meeting by one person. 5

### Division 3 Approval of disclosure statement and rules

#### 17 Approval of disclosure statement (cf Vic Act s 17)

- (1) A draft disclosure statement of a proposed co-operative must be submitted to the Registrar at least 28 days (or such shorter period as the Registrar may allow in a particular case) before the formation meeting is due to be held. 10
- (2) The disclosure statement of a proposed trading co-operative must contain the information necessary to ensure that prospective members are adequately informed of the nature and extent of a person's financial involvement or liability as a member of the co-operative including so far as applicable: 15
  - (a) the estimated costs of formation, and
  - (b) the nature of the proposed membership of the co-operative, and
  - (c) the rights and liabilities attaching to shares in the proposed co-operative (including the capital required for the co-operative), and 20
  - (d) the projected income and expenditure of the co-operative for its first year of operation, and
  - (e) information about any contracts required to be entered into by the co-operative, and 25
  - (f) any other information that the Registrar directs. 30
- (3) The disclosure statement of a proposed trading co-operative must not include a statement purporting to be made by an expert or to be based on a statement made by an expert unless: 35

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- (a) the expert has given, and has not withdrawn, the expert's written consent to the submission of the disclosure statement with the statement included in the form and context in which it is included, and
    - (b) there appears in the disclosure statement a statement that the expert has given, and has not withdrawn, the expert's consent. 5
  - (4) The disclosure statement of a proposed non-trading co-operative must be in a form approved by the Registrar and contain such information as is required by the Registrar. 10
  - (5) The Registrar may:
    - (a) approve the draft statement as submitted, or
    - (b) approve a different statement to that submitted, or
    - (c) refuse to approve the statement. 15
  - (6) Approval may be given at any time before the formation meeting is held.
  - (7) Subject to subsection (8), the Registrar approves of a disclosure statement by giving notice of the approval of the statement to the person who submitted the draft statement to the Registrar. 20
  - (8) The Registrar is to be considered to have approved the disclosure statement as submitted to the Registrar unless at least 5 days before the formation meeting is due to be held: 25
    - (a) the Registrar gives notice of approval of a different disclosure statement, or
    - (b) the Registrar gives notice to the person who submitted the draft statement that the Registrar is still considering the matter, or 30
    - (c) the Registrar gives notice of refusal to approve the disclosure statement.
  - (9) A notice under this section must be in writing.
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- (10) The Registrar may approve a disclosure statement with or without conditions.
- (11) In the case of a proposed non-trading co-operative, the Registrar may, in a particular case and either unconditionally or subject to conditions, dispense with the requirement that a disclosure statement be presented to the formation meeting. 5

**Note.** This section draws a distinction between requirements for disclosure statements for proposed trading and non-trading co-operatives. While the requirements for non-trading co-operatives are less onerous than those for trading co-operatives, the Registrar may require a non-trading co-operative to comply with requirements that are comparable to those for trading co-operatives. 10

**18 Approval of rules** (cf Vic Act s 18) 15

- (1) A draft of the rules proposed for the co-operative (including active membership provisions in accordance with Part 6) must be submitted to the Registrar at least 28 days (or such shorter period as the Registrar may allow in a particular case) before the formation meeting is due to be held. 20
- (2) The proposed rules must:
- (a) be in accordance with section 107, and
  - (b) be in a form that may reasonably be approved, and
  - (c) if the rules contain any alterations of the model rules, be accompanied by a statement setting out the alterations and the reasons for the alterations. 25
- (3) If the rules do not make provision for any matter included in the model rules, the Registrar may approve the relevant provisions of the model rules as rules of the co-operative. 30
- (4) The Registrar may:
- (a) approve the rules as submitted, or
  - (b) approve different rules to those submitted, or
  - (c) refuse to approve the rules. 35

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- (5) The Registrar approves of the rules by giving written notice of the approval of the rules to the person who submitted the draft alterations to the Registrar.
  - (6) The Registrar must give written notice of the refusal to approve the rules to the person who submitted the rules to the Registrar. 5

#### **Division 4 Registration of proposed co-operative**

##### **19 Application for registration of proposed co-operative**

(cf Vic Act s 19)

- (1) An application for registration of a proposed co-operative (other than an existing body corporate) must: 10
  - (a) be made in the form approved by the Registrar, and
  - (b) be accompanied by the fee prescribed by the regulations, and 15
  - (c) be signed by:
    - (i) at least 2 directors in the case of an association or federation, and
    - (ii) at least 5 suitably qualified members, including 2 directors elected at the formation meeting, in the case of any other proposed co-operative, or such lesser number of qualified members as the Registrar may have approved under section 14 or 15, and 20 25
  - (d) be accompanied by:
    - (i) 2 copies of the proposed rules signed and certified by the persons who acted as chairperson and secretary at the formation meeting, and 30
    - (ii) a copy of the disclosure statement presented to the formation meeting signed and certified by the persons who acted as chairperson and secretary at the formation meeting, and 35

- (iii) a statement listing the name, address, occupation and place and date of birth of each director, and
    - (iv) any other particulars that the Registrar may require in a particular case. 5
  - (2) The application must be lodged with the Registrar within 2 months after closure of the formation meeting for the proposed co-operative or within such extended period as the Registrar may allow.
- 20 Registration of co-operative** (cf Vic Act s 20) 10
- (1) When an application is made under this Division for registration of a proposed co-operative, the Registrar must register the co-operative and its rules if satisfied that the requirements for registration of the co-operative have been met. 15
  - (2) The requirements for registration of a co-operative under this Division are as follows:
    - (a) the proposed rules of the proposed co-operative must be the rules approved by the Registrar under section 18, and 20
    - (b) the requirements of this Act and the regulations must have been complied with in respect of the proposed co-operative and compliance must be likely to continue, and
    - (c) the proposed co-operative must be designed to function in accordance with the co-operative principles or, if it is not designed to function entirely in accordance with the co-operative principles, the Registrar must be satisfied that there are special reasons why the co-operative should be registered under this Act, and 25 30
    - (d) there must be no reasonable cause for refusing registration of the proposed co-operative.



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- (3) If the Registrar is not satisfied that the requirements for registration of the co-operative have been met, the Registrar is to:
- (a) refuse registration of the co-operative, or
  - (b) refer the application to the Council for its recommendation. 5
- (4) If the Registrar refuses registration of the co-operative, the applicants for registration may request the Registrar to refer the application to the Council and the Registrar must comply with such a request. A request made by or on behalf of a majority of the persons elected as referred to in section 16 (2) (d) (the persons to be proposed as the first directors of the co-operative) is taken to have been made by the applicants for registration. 10
- (5) If the application is referred to the Council, the Council must either recommend registration or recommend refusal of registration but may only recommend refusal if of the opinion that: 15
- (a) the requirements for registration of the co-operative have not been met, or 20
  - (b) the proposed co-operative would not be a genuine co-operative, or
  - (c) the proposed co-operative is not designed or intended to serve fairly the interests of its members and prospective members. 25
- (6) The Registrar is required to comply with the Council's recommendation.

## **21 Incorporation and certificate of registration**

(cf Vic Act s 21)

- (1) The incorporation of the co-operative takes effect on the registration of the co-operative. 30
- (2) On the registration of the co-operative, the Registrar must issue a certificate of registration.



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**Division 5 Registration of existing body corporate**

**22 Existing body corporate can be registered**

(cf Vic Act s 22)

A body corporate (other than a co-operative deemed to be registered under this Act) may apply to the Registrar to be registered as a co-operative under this Act, if before or after the commencement of this Act, the body corporate was: 5

- (a) incorporated or registered or deemed to be registered under the *Corporations Law*, or 10
- (b) incorporated or registered under any other Act relating to the incorporation or registration of bodies corporate.

**23 Formation meeting** (cf Vic Act s 23)

- (1) Before applying for registration as a co-operative, the body corporate must pass a special resolution in accordance with its articles of association or rules approving of: 15

- (a) the proposed registration, and
  - (b) any alterations of its existing memorandum and articles of association or rules necessary to enable the body corporate to comply with this Act. 20

- (2) At the meeting to pass the special resolution:

- (a) the proposed rules of the proposed co-operative approved under section 18, and including active membership provisions in accordance with Part 6, must also be passed by special resolution, and 25
  - (b) in the case of a proposed trading co-operative, a disclosure statement approved under section 17 must be presented to the meeting. 30

**24 Application for registration** (cf Vic Act s 24)

An application for registration must be:

- (a) in the form approved by the Registrar, and
- (b) accompanied by the fee prescribed by the regulations, and 35

- 
- (c) accompanied by:
- (i) a declaration in writing signed by the directors or the committee of management of the body corporate stating that at a meeting of the directors or committee they formed the opinion that the body corporate will be able to pay its debts as they fall due, and 5
  - (ii) a report in the form approved by the Registrar as to the affairs of the body corporate and showing its assets and liabilities, made up to the latest practicable date before the application, and 10
  - (iii) a copy of the memorandum and articles of association or rules of the body corporate in force at the date of the application, and 15
  - (iv) 2 copies of the proposed rules of the co-operative, as provided for by the special resolution, and
  - (v) a copy of the disclosure statement presented to the meeting held under section 23 and signed and certified by the directors or committee of management of the body corporate, and 20
  - (vi) a list containing the name, address, occupation and place and date of birth of each director, and 25
  - (vii) evidence to the satisfaction of the Registrar of the incorporation of the existing body corporate, and 30
  - (viii) any other particulars that the Registrar may require in a particular case.

## 25 Requirements for registration (cf Vic Act s 25)

- (1) When an application is made for registration of a co-operative under this Division, the Registrar must register the body corporate as a co-operative under this 35

Act and register its rules under this Act if the Registrar is satisfied that the requirements for registration of the co-operative have been met.

- (2) The requirements for registration of a co-operative under this Division are as follows: 5
  - (a) the proposed rules of the proposed co-operative must be the rules approved by the Registrar under section 18, and
  - (b) the requirements of this Act and the regulations must have been complied with in respect of the proposed co-operative and compliance must be likely to continue, and 10
  - (c) there must be no reasonable cause for refusing registration of the proposed co-operative.
- (3) If the Registrar is not satisfied that the requirements for registration of the co-operative have been met the Registrar may refuse to register the co-operative and its rules. 15
- (4) If the Registrar has determined under this section to register a body corporate under this Act, the body corporate must notify the authority responsible for registering the body corporate under the law under which it was previously registered of that determination. 20
- (5) Despite anything to the contrary in this Division, the registration of a body corporate as a co-operative does not take effect until the body corporate ceases to be registered under the law under which it was previously registered. 25
- (6) The body corporate must notify the Registrar in writing within 7 days after ceasing to be registered under that other law. 30

## 26 Certificate of registration (cf Vic Act s 26)

- (1) On the registration of the body corporate as a co-operative the Registrar must:
  - (a) issue a certificate of registration, and 35



(b) publish notice of the issue of the certificate in the Gazette.

- (2) The corporate name of a body corporate registered as a co-operative is the name approved by the Registrar, as specified in the certificate of registration issued by the Registrar. 5

## **27 Effect of registration** (cf Vic Act s 27)

- (1) The body corporate is to be taken to be incorporated under this Act on its registration.
- (2) Except as expressly provided in this Act or the regulations, the registration and incorporation of the body corporate as a co-operative does not prejudice any right of a member in respect of any shares held at the time of registration and incorporation. 10
- (3) The change of registration and incorporation does not affect the identity of the body corporate which is deemed to be the same body after registration as a co-operative as it was before and no act, matter or thing is affected by the change. 15

## **Division 6 Conversion of co-operative** 20

### **28 Conversion of co-operative** (cf Vic Act s 28)

- (1) A co-operative may, by alteration of its rules, convert from a trading co-operative to a non-trading co-operative or vice versa.
- (2) An alteration of the rules for the conversion of a co-operative must be approved by special resolution passed by means of a special postal ballot. 25

## **Division 7 Appeals**

### **28A Appeal against refusal to approve draft disclosure statement** (cf Vic Act s 29) 30

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

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

**28B Appeal against refusal to approve draft rules**

(cf Vic Act s 30)

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

- (a) a decision of the Registrar to refuse to approve the rules, or
- (b) a failure of the Registrar to approve the rules. 10

**28C Appeal against refusal to register** (cf Vic Act s 31)

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

- (a) a decision of the Council to recommend the refusal of the registration of a co-operative, or 15
- (b) in the case of a body corporate converting to a co-operative, against a failure of the Registrar to register the co-operative.

**28D Registrar to comply with Court order** (cf Vic Act s 32) 20

The Registrar must comply with an order of the Court on an appeal under this Division.

**Division 8 General**

**28E Stamp duty exemption for certain co-operatives**

(cf Vic Act s 33)

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- (1) This section applies to a co-operative that:
  - (a) has as its primary activity the providing of any community service or benefit, and
  - (b) was, before it was incorporated under this Act, an unincorporated club, association or body operating to provide sporting or recreational facilities for its members and not carried on for the pecuniary profit of its members. 30

- 
- (2) An instrument or document transferring to such a co-operative any property which was, immediately before the co-operative was so incorporated, held by or on behalf of the unincorporated club, association or body is not chargeable with stamp duty. 5

**28F Acceptance of money by proposed co-operative**  
(cf Vic Act s 34)

- (1) A proposed co-operative or any person on its behalf or otherwise which accepts any money for the proposed co-operative before the proposed co-operative is registered must hold that money on trust until the co-operative is registered. 10
- (2) If a co-operative is not registered within the period of 3 months after the acceptance of any money under subsection (1), the proposed co-operative or the person who accepted the money on its behalf must refund the money to the person who paid it. 15

Maximum penalty: 60 penalty units.

**28G Issue of duplicate certificate** (cf Vic Act s 35)

The Registrar must issue a duplicate certificate of registration: 20

- (a) if the Registrar is satisfied that the original certificate is lost or destroyed, and
- (b) on payment of the fee prescribed by the regulations. 25

**[13] Part 3 Legal capacity, powers etc, note**

Insert before Division 1:

**Note.** Each provision of Divisions 1–3, 6 and 7 is a core consistent provision.



**[14] Section 29**

Omit the section. Insert instead:

**29 Effect of incorporation** (cf Vic Act s 36)

As a body corporate, a co-operative:

- (a) has perpetual succession, and 5
- (b) has a common seal, and
- (c) may sue and be sued in its corporate name, and
- (d) subject to this Act, is capable of taking, purchasing, leasing, holding, selling and disposing of real and personal property, and 10
- (e) may do and suffer all acts and things that bodies corporate may by law do and suffer and which are necessary or expedient.

**[15] Section 33**

Omit the section. Insert instead: 15

**33 Legal capacity** (cf Vic Act s 40)

- (1) A co-operative has, both within and outside the State, the legal capacity of a natural person.
- (2) Without limiting subsection (1), a co-operative has, both within and outside the State, power: 20
  - (a) to issue and allot fully or partly paid shares in the co-operative, and
  - (b) to issue debentures of the co-operative, and
  - (c) to distribute any of the property of the co-operative among the members, in kind or otherwise, and 25
  - (d) to give security by charging uncalled capital, and
  - (e) to grant a charge on property of the co-operative, and
  - (f) to procure the co-operative to be registered or recognised as a body corporate in any place outside the State, and 30

- 
- (g) to do any other act that it is authorised to do by any other law (including a law of a place outside the State).
  - (3) Subsections (1) and (2) have effect in relation to a co-operative: 5
    - (a) subject to this Act and the regulations but despite section 34 (2), and
    - (b) if the co-operative's rules contain an express or implied restriction on, or an express or implied prohibition of, the exercise by the co-operative of any of its powers, despite that restriction or prohibition, and 10
    - (c) if the rules of the co-operative contain a provision stating the objects of the co-operative, despite that fact. 15
  - (4) The fact that the doing of an act by a co-operative would not be, or is not, in its best interests does not affect its legal capacity to do the act.

**[16] Sections 36–39**

Omit the sections. Insert instead: 20

**36 Assumptions entitled to be made** (cf Vic Act s 43)

- (1) A person is entitled to make the assumptions in section 37 in relation to:
  - (a) dealings with a co-operative, and
  - (b) dealings with a person who has, or purports to have, directly or indirectly acquired title to property from a co-operative. 25
- (2) If a person is entitled to assume a matter, the co-operative or anyone referred to in subsection (1) is not entitled to assert in proceedings in relation to the dealings that the matter is incorrect. 30

**37 Assumptions** (cf Vic Act s 44)

- (1) **Rules complied with**  
A person may assume that the co-operative's rules have been complied with.
- (2) **Director or officer** 5  
A person may assume that anyone who appears, from information provided by the co-operative that is available to the public from the Registrar, to be a director or officer of the co-operative:
- (a) has been duly appointed, and 10
- (b) has authority to exercise the powers and perform the duties customarily exercised or performed by a director or officer of a similar co-operative.
- (3) **Officer or agent** 15  
A person may assume that anyone who is held out by the co-operative to be an officer or agent of the co-operative:
- (a) has been duly appointed, and
- (b) has authority to exercise the powers and perform the duties customarily exercised or performed by that kind of officer or agent of a similar co-operative. 20
- (4) **Officer or agent with authority to warrant that document is genuine or true copy** 25  
A person may assume that anyone who is, or may be assumed to be, an officer or agent of the co-operative who has the authority to issue a document or a certified copy of a document on its behalf also has authority to warrant that the document is genuine or is a true copy.
- (5) **Document duly executed** 30  
A person may assume that a document has been duly executed by the co-operative if it is signed by 2 people, one of whom is, or may be assumed to be, a director of the co-operative, and the other a director or officer of the co-operative.



**(6) Document duly sealed**

A person may assume that a document has been duly sealed by the co-operative if it bears what appears to be an impression of the co-operative's seal and the sealing of the document appears to be witnessed by 2 people, one of whom is, or may be assumed to be, a director of the co-operative, and the other a director or officer of the co-operative.

5

**(7) Proper performance of duties**

A person may assume that the officers and agents of the co-operative properly perform their duties to the co-operative.

10

**38 Person who knows or ought to know is not entitled to make assumptions** (cf Vic Act s 45)

This Division does not entitle a person to make an assumption, and does not prevent an assertion being made in relation to an assumption, if:

15

- (a) the person has actual knowledge that the assumption is not correct, or
- (b) the person's connection or relationship with the co-operative is such that the person ought to know that the assumption is not correct.

20

**[17] Part 3, Division 5 (section 44)**

Omit the Division.

**[18] Section 47**

25

Omit the section. Insert instead:

**47 Authentication need not be under seal** (cf Vic Act s 50)

A document or proceeding requiring authentication by a co-operative may be authenticated by the signature of 2 people, one of whom is a director of the co-operative and one of whom is a director or an officer of the co-operative and need not be authenticated under the seal of the co-operative.

30

**[19] Section 48A**

Insert after section 48:

**48A Common seal** (cf Vic Act s 48)

A document or proceeding requiring authentication by a co-operative may be authenticated under the common seal of the co-operative. 5

**[20] Part 3, Division 7 (sections 52–61)**

Omit the Division. Insert instead:

**Division 7 Pre-registration contracts**

**52 Contracts before registration** (cf Vic Act s 56) 10

- (1) If a person enters into, or purports to enter into, a contract on behalf of, or for the benefit of, a proposed co-operative, the co-operative becomes bound by the contract and entitled to its benefit if the co-operative, or a co-operative that is reasonably identifiable with it, is registered and ratifies the contract: 15
  - (a) within a reasonable period after the contract is entered into, or
  - (b) within any period agreed to by the parties to the contract. 20
- (2) The person is released from any liability under the pre-registration contract if the co-operative enters into another contract in substitution for it: 25
  - (a) within a reasonable period after the pre-registration contract is entered into, or
  - (b) within any period agreed to by the parties to the pre-registration contract.
- (3) The person is liable to pay damages to each other party to the pre-registration contract if a co-operative is not registered, or a co-operative is registered but does not ratify the contract or enter into a substitute for it: 30

- 
- (a) within a reasonable period after the contract is entered into, or
- (b) within any period agreed to by the parties to the contract.
- (4) The maximum amount of damages the person is liable to pay to a party is the amount the co-operative would be liable to pay to the party if the co-operative had been registered and had ratified the contract and then completely failed to perform it. 5
- (5) If proceedings are brought to recover damages under subsection (3) because the co-operative is registered but does not ratify the pre-registration contract or enter into a substitute for it, the Court may do anything that it thinks just in the circumstances, including ordering the co-operative: 10
- (a) to pay all or part of the damages that the person is liable to pay, or 15
- (b) to transfer property that the co-operative received because of the contract to a party to the contract, or 20
- (c) to pay an amount to a party to the contract.
- (6) If the co-operative ratifies the pre-registration contract but fails to perform all or part of it, the Court may order the person to pay all or part of the damages that the co-operative is ordered to pay. 25
- 53 Person may be released from liability but is not entitled to indemnity** (cf Vic Act s 57)
- (1) Any of the parties to the pre-registration contract may release the person who entered into, or purported to enter into, the contract from any liability in relation to the contract. 30
- (2) The release must be in writing.
- (3) The party giving the release is not entitled to recover damages under section 52 from the person.



- (4) Despite any rule of law or equity, the person does not have any right of indemnity against the co-operative in respect of the person's liability under this Division. This is so even if the person was acting, or purporting to act, as trustee for the co-operative. 5

**54 Division replaces other rights and liabilities**  
(cf Vic Act s 58)

This Division replaces any rights or liabilities anyone would otherwise have in relation to the pre-registration contract. 10

**[21] Part 4 Membership, note**

Insert before Division 1:

**Note.** Each provision of Divisions 1–3 and 5 (other than sections 64 (2), 68 (5), 70 (1) (b), 73 (in so far as it applies to a co-operative with fewer than 5 members), 75, 79 (1) and (5), 87 and 104) is a core consistent provision. 15

**[22] Section 62 Becoming a member** (cf Vic Act s 64)

Insert after section 62 (2):

- (2A) A person under the age of 18 years may be admitted as a member of the co-operative unless the rules of the co-operative otherwise provide. 20

**[23] Sections 62 (4) and 339 (2)**

Omit “amalgamated” wherever occurring. Insert instead “merged”.

**[24] Section 62 (4) (a)**

Omit “amalgamating”. Insert instead “merging”. 25

**[25] Sections 65–69**

Omit the sections. Insert instead:

**65 Members under 18 years of age** (cf Vic Act s 69)

- (1) A member of a co-operative is not entitled to avoid any obligation or liability as a member under any contract, deed or other document entered into as a member on any ground relating to minority. 5
- (2) A person under the age of 18 years is not competent to hold any office in a co-operative.
- (3) A member of a co-operative who is under 18 years of age is entitled to vote. 10
- (4) This section applies only to natural persons.

**66 Members of associations** (cf Vic Act s 65)

- (1) The members of an association are:
  - (a) the component co-operatives by which the association is formed, and 15
  - (b) any other co-operative, admitted to membership in accordance with the rules of the association, and
  - (c) any other body corporate or other body admitted to membership in accordance with subsection (2). 20
- (2) A body corporate or other body (not being a co-operative) may be admitted to membership of the association as a component co-operative if:
  - (a) it is incorporated or registered under any other law, whether or not a law of New South Wales, and 25
  - (b) in the opinion of the board of the association, it is designed to function in accordance with co-operative principles, and
  - (c) it is eligible to be admitted to membership in accordance with the rules of the association. 30

**67 Members of federations** (cf Vic Act s 66)

- (1) The members of a federation of associations are:
  - (a) the associations by which the federation is formed, and
  - (b) any other associations admitted to membership in accordance with the rules of the federation, and 5
  - (c) any other bodies corporate admitted to membership in accordance with subsection (2).
- (2) If the Registrar certifies that there is no association to which a particular body corporate could conveniently or appropriately be admitted to membership, the body corporate may be admitted to membership of a federation. 10

**68 Representatives of bodies corporate** (cf Vic Act s 70)

- (1) If a body corporate is a member of a co-operative, it may by instrument served on the co-operative appoint a person to represent it in respect of its membership. 15
  - (2) A body corporate must not appoint a person to represent the body corporate as a member of a co-operative, if he or she is currently a member of the co-operative or a representative of another body corporate member. 20
- Maximum penalty: 10 penalty units.
- (3) The power to appoint a representative is subject to any restriction imposed by the rules of the co-operative as to the entitlement of a person to represent a body corporate. 25
  - (4) A person is not qualified to be appointed as the representative of a company that is not a listed corporation (within the meaning of the *Corporations Law*) unless the person is an officer, member or employee of the company. 30
  - (5) A person appointed in accordance with this section to represent a member who is a body corporate is to be considered to be that member for the purpose of voting at meetings of a co-operative.



**69 Notification of shareholders and share holdings**

(cf Vic Act s 71)

On the request of the board of directors of the co-operative, a body corporate which is a member of the co-operative must make available for inspection by the board of directors of the co-operative: 5

- (a) a list of the names of all the shareholders of that body corporate and the number of shares held by each shareholder, or
- (b) in the case of a body corporate without share capital, a list of the members of the body corporate. 10

Maximum penalty: 20 penalty units.

**[26] Section 70 Circumstances in which membership ceases—all co-operatives** (cf Vic Act s 72) 15

Omit section 70 (1) (c). Insert instead:

- (c) if:
  - (i) the member becomes bankrupt, or
  - (ii) the member's property becomes subject to control under the law relating to bankruptcy, 20
 unless provision is made to the contrary in the rules of the co-operative,

**[27] Section 72**

Omit the section.

**[28] Section 73** 25

Omit the section. Insert instead:

**73 Carrying on business with too few members**

(cf Vic Act s 74)

- (1) If a co-operative continues to carry on business for more than 28 days after the number of members is reduced below the minimum number of members allowed, every person who is a director of the co-operative during the time when it so continues to carry on business and who 30

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knows it is carrying on business with fewer than the minimum number of members allowed is guilty of an offence.

Maximum penalty: 20 penalty units.

- |     |   |    |
|-----|---|----|
| (2) | Each person who is guilty of an offence under subsection (1) is also liable to satisfy all obligations of the co-operative incurred after the 28 days referred to in subsection (1), and may be sued without any other member being joined in the action. | 5  |
| (3) | The minimum number of members allowed is:   | 10 |
|     | (a) for an association or federation—2 members, or  |    |
|     | (b) for any other co-operative—5 members, or such lesser number as the Registrar may have approved on the formation of the co-operative.  |    |
| (4) | The Registrar may, by order, extend and further extend in a particular case the period of 28 days referred to in subsection (1).  | 15 |
| (5) | An application for an extension must be made:   |    |
|     | (a) in a form approved by the Registrar, and  |    |
|     | (b) before the period to be extended expires.   | 20 |

**[29] Section 74 Rights of membership not exercisable until registered etc** (cf Vic Act s 75)

Insert at the end of the section:

- |     |  |    |
|-----|--|----|
| (2) | The board of a co-operative must ensure that the name of a person admitted to membership is recorded in the register of members within 28 days after the person is admitted to membership. | 25 |
|-----|--|----|

Maximum penalty: 20 penalty units.

**[30] Section 76A**

Insert after section 76:

**76A Co-operative to provide information to person intending to become member** (cf Vic Act s 77)

- (1) The board of a co-operative must provide each person intending to become a member of the co-operative with: 5
  - (a) a consolidated copy of the rules of the co-operative, and
  - (b) a copy of all special resolutions applicable to the member passed by the members of the co-operative, except special resolutions providing for an alteration of the rules of the co-operative, and 10
  - (c) a copy of the last annual report of the co-operative under section 252. 15
- (2) The board of a non-trading co-operative or, with the consent of the Registrar, the board of a trading co-operative may comply with subsection (1) by:
  - (a) giving the person intending to become a member notice that the documents referred to in that subsection may be inspected by the person at the registered office of the co-operative, and 20
  - (b) making those documents available for inspection.

**[31] Section 77**

Omit the section. Insert instead: 25

**77 Entry fees and regular subscriptions** (cf Vic Act s 78)

- (1) The rules of a co-operative may:
  - (a) require the payment by members of entry fees and regular subscriptions, and



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- (b) provide for the repayment of those fees and subscriptions on a person ceasing to be a member.
  - (2) A co-operative must give to any person intending to become a member written notice of any entry fees or regular subscriptions payable by a member to the co-operative. 5
  - (3) A person who becomes a member of the co-operative is not liable to pay any entry fees or regular subscriptions except:
    - (a) those fees or subscriptions of which the person was given written notice before becoming a member, and 10
    - (b) any regular subscriptions which may be imposed by any subsequent alteration of the rules and of which the member has been given notice. 15
- [32] Section 80 Charge and set-off of co-operative** (cf Vic Act s 81)
- Omit "and periodic fees" from section 80 (1) (c).  
Insert instead "fees and regular subscriptions".
- [33] Section 82 Transfer of share or interest on death of member** (cf Vic Act s 84) 20
- Omit "On". Insert instead "Subject to section 170A, on".
- [34] Section 84 Qualification for membership not to apply to transfer of deceased member's share or interest**
- Omit the section.
- [35] Section 85 Meaning of "interest"** 25
- Omit the section, renumber it as section 81A and insert it at the beginning of Division 3 of Part 4.

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**[36] Sections 89–95**

Omit the sections. Insert instead:

**89 Grievance procedure** (cf Vic Act s 88)

- (1) The rules of a co-operative must set out a grievance procedure for dealing with any dispute under the rules between:  
  - (a) a member and another member, or
  - (b) a member and the co-operative.5
- (2) A member may appoint any person to act on behalf of the member in the grievance procedure. 10
- (3) The grievance procedure must allow for natural justice to be applied.
- (4) In this section and section 90, *member* includes any person who was a member not more than 6 months before the dispute occurred. 15

**90 Application to Court** (cf Vic Act s 89)

- (1) The Court may, on the application of a member or the co-operative, make an order declaring and enforcing:  
  - (a) the rights or obligations of members of the co-operative between themselves, or 20
  - (b) the rights or obligations of the co-operative and any member between themselves.
- (2) An order may be made under this section whether or not a right of a proprietary nature is involved and whether or not the applicant has an interest in the property of the co-operative. 25
- (3) The Court may refuse to make an order on the application or may make an order for costs against a party, whether successful or not, if it is of the opinion that: 30

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- (a) the issue raised in the application is trivial, or
- (b) having regard to the importance of the issue, the nature of the co-operative, any other available method of resolving the issue, the costs involved, lapse of time, acquiescence or any other relevant circumstance, it was unreasonable to make the application, or 5
- (c) the unreasonable or improper conduct of a party:
  - (i) has been responsible for the making of the application, or 10
  - (ii) has added to the cost of the proceedings.

**[37] Sections 95A and 95B**

Insert at the beginning of Division 5 of Part 4:

**95A Extended meaning of "member"** (cf Vic Act s 90)

In this Division, a reference to a *member* of a co-operative includes, in the case of a co-operative that has a share capital, a reference to a person to whom a share in the co-operative has been transmitted by will or by operation of law. 15

**95B Application of Division** (cf Vic Act s 91) 20

This Division does not apply in respect of anything done under or for the purposes of Part 6.

**[38] Section 97 Active membership requirements not oppressive conduct**

Omit the section. 25

**[39] Section 98 Orders that Court may make** (cf Vic Act s 93)

Insert at the end of the section:

- (j) an order directing a co-operative to become registered as a company under the *Corporations Law*, 30
- (k) an order as to costs.



**[40] Section 101 Application of winding up provisions**  
(cf Vic Act s 96)

Omit "Supreme Court". Insert instead "Court".

**[41] Section 103 Copy of order to be lodged with Registrar**  
(cf Vic Act s 98)

5

Omit "5 penalty units". Insert instead "10 penalty units".

**[42] Section 105 Extended meaning of "member"**

Omit the section.

**[43] Part 4, Division 6 (sections 105–105F)**

Insert after Division 5:

10

**Division 6 Proceedings on behalf of co-operative by members and others**

**105 Bringing, or intervening in, proceedings on behalf of co-operative** (cf Vic Act s 99)

- (1) A person may bring proceedings on behalf of a co-operative, or intervene in any proceedings to which a co-operative is a party, for the purpose of taking responsibility on behalf of the co-operative for those proceedings, or for a particular step in those proceedings, (for example, compromising or settling them), if: 15
- (a) the person is: 20
- (i) a member, former member, or person entitled to be registered as a member, of the co-operative or of a related body corporate, or 25
  - (ii) an officer or former officer of the co-operative, or
  - (iii) the Registrar, and

- (b) the person is acting with leave granted under section 105A.
- (2) Proceedings brought on behalf of a co-operative may be brought in the co-operative's name.

**105A Applying for and granting leave** (cf Vic Act s 100) 5

- (1) A person referred to in section 105 (1) (a) may apply to the Court for leave to bring, or to intervene in, proceedings.
- (2) The Court may grant the application if it is satisfied that:
  - (a) it is probable that the co-operative will not itself bring the proceedings, or properly take responsibility for them, or for the step in them, and 10
  - (b) the applicant is acting in good faith, and
  - (c) it is in the best interests of the co-operative that the applicant be granted leave, and 15
  - (d) if the applicant is applying for leave to bring proceedings, there is a serious question to be tried, and
  - (e) either:
    - (i) at least 14 days before making the application, the applicant gave written notice to the co-operative of the intention to apply for leave and of the reasons for applying, or 20
    - (ii) it is appropriate to grant leave even if subparagraph (i) is not satisfied. 25

**105B Substitution of another person for person granted leave**  
(cf Vic Act s 101)

- (1) Any of the following persons may apply to the Court for an order that they be substituted for a person to whom leave has been granted under section 105A: 30
  - (a) a member, former member, or person entitled to be registered as a member, of the co-operative or a related body corporate, or

- 
- (b) an officer, or former officer, of the co-operative, or
    - (c) the Registrar.
  - (2) The application may be made whether or not the other person has already brought the proceedings or made the intervention. 5
  - (3) The Court may make the order if it is satisfied that:
    - (a) the applicant is acting in good faith, and
    - (b) in all the circumstances, it is appropriate to make the order.
  - (4) An order substituting one person for another person has the effect that: 10
    - (a) the grant of leave is taken to have been made in favour of the substituted person, and
    - (b) if the other person has already brought the proceedings or intervened, the substituted person is taken to have brought those proceedings or to have made that intervention. 15

**105C Effect of ratification by members** (cf Vic Act s 102)

- (1) A ratification or approval of conduct by members of a co-operative: 20
  - (a) does not prevent a person from bringing or intervening in proceedings with leave under section 105A or from applying for leave under that section, and
  - (b) does not have the effect that proceedings brought or intervened in with leave under section 105A must be determined in favour of the defendant, or that an application for leave under that section must be refused. 25
- (2) The Court may take into account a ratification or an approval of the conduct by members of a co-operative in deciding what order or judgment (including as to damages) to make in proceedings brought or intervened in with leave under section 105A or in relation to an application for leave under that section. 30  
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- (3) In taking a ratification or approval into account under subsection (2), the Court may have regard to:
- (a) how well-informed about the conduct the members were when deciding whether to ratify or approve the conduct, and 5
  - (b) whether the members who ratified or approved the conduct were acting for proper purposes.

**105D Leave to discontinue, compromise or settle proceedings brought, or intervened in, with leave** (cf Vic Act s 103)

Proceedings brought or intervened in with leave must not be discontinued, compromised or settled without the leave of the Court. 10

**105E General powers of the Court** (cf Vic Act s 104)

- (1) The Court may make any orders, and give any directions, that it thinks just in relation to proceedings brought or intervened in with leave, or in relation to an application for leave, including: 15
- (a) interim orders, and
  - (b) directions about the conduct of the proceedings, including requiring mediation, and 20
  - (c) an order directing the co-operative, or an officer of the co-operative, to do, or not to do, any act, and
  - (d) an order appointing an independent person to investigate, and report to the Court, on:
    - (i) the financial affairs of the co-operative, or 25
    - (ii) the facts or circumstances which gave rise to the cause of action the subject of the proceedings, or
    - (iii) the costs incurred in the proceedings and the person granted leave. 30
- (2) A person appointed by the Court under subsection (1) (d) is entitled, on giving reasonable notice to the co-operative, to inspect and make copies of any books of the co-operative for any purpose connected with their appointment. 35

**105F Power of Court to make costs order** (cf Vic Act s 105)

At any time, the Court may, in relation to proceedings brought or intervened in with leave under section 105A or an application for leave under that section, make any orders it thinks just about the costs of the person who applied for or was granted leave, of the co-operative or of any other party to the proceedings or application, including an order requiring indemnification for costs.

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**[44] Part 5 Rules, note**

Insert before Division 1:

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**Note.** Each provision of this Part (other than sections 112 (1) (b) and 113A–113C) is a core consistent provision.

**[45] Sections 107–109**

Omit the sections. Insert instead:

**107 Content of rules** (cf Vic Act s 107)

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- (1) The rules of a co-operative must set out or otherwise make provision for the matters specified in Schedule 1.
- (2) The rules must be divided into paragraphs numbered consecutively.
- (3) The rules may state the objects of the co-operative.
- (4) The rules may incorporate any provision of the model rules approved under section 109A.
- (5) The rules may provide for the imposition of a fine on a member for any infringement of the rules.
- (6) If the rules provide for the imposition of a fine, the rules must specify the maximum fine that may be imposed on a member.
- (7) The maximum fine fixed by the rules must not exceed any amount that may be prescribed as the maximum fine.
- (8) The rules may contain other provisions not inconsistent with this Act or the regulations.

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### 108 Purchase and inspection of copy of rules

(cf Vic Act s 108)

- (1) Any member is entitled to obtain from a co-operative a copy of its rules on payment of the amount required by the rules of the co-operative or, if the rules do not prescribe an amount, on payment of \$5. 5
- (2) The amount required by the rules must not exceed the fee prescribed by the regulations for obtaining a copy of the rules from the Registrar.
- (3) Any person is entitled to obtain from the Registrar a copy of the rules of a co-operative on payment of the fee prescribed by the regulations. 10

### 109 False copies of rules (cf Vic Act s 109)

- (1) A person who gives to a member of a co-operative or to a person intending or applying to become a member of a co-operative a copy of any rules or alterations of rules, other than those which have been duly registered, representing that they are binding on the members of the co-operative is guilty of an offence. 15  
Maximum penalty: 10 penalty units. 20
- (2) A person who alters any of the rules of a co-operative after they have been registered and circulates them representing that they have been duly registered when they have not been is guilty of an offence. 25  
Maximum penalty: 10 penalty units.

### 109A Model rules (cf Vic Act s 110)

- (1) The Registrar may by notice published in the Government Gazette approve model rules for co-operatives or for any class of co-operatives and alter or repeal the model rules from time to time. 30
- (2) The model rules may make provision for anything for which the rules of a co-operative may make provision.
- (3) If the model rules provide for a matter and the rules of a co-operative of the class to which the model rules apply do not provide for that matter, the provision of the model rules relating to that matter is deemed to be included in the rules of the co-operative. 35



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**[46] Section 110 Rules can only be altered in accordance with this Part** (cf Vic Act s 111)

Omit "Part" from section 110 (1). Insert instead "Act".

**[47] Section 110 (2)**

Omit the subsection.

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**[48] Section 111**

Omit the section. Insert instead:

**111 Alteration by special resolution** (cf Vic Act s 113)

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

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**[49] Sections 113–113B**

Omit section 113. Insert instead:

**113 Alteration does not take effect until registered**

(cf Vic Act s 115)

- (1) An alteration of the rules of a co-operative does not take effect unless and until it is registered by the Registrar. 15
- (2) An application for registration of an alteration must:
  - (a) be made in a form approved by the Registrar, and
  - (b) be made within 28 days, or such other period as may be prescribed by the regulations, after the alteration is made, and 20
  - (c) be accompanied by a consolidated copy of the rules of the co-operative, including the alteration.
- (3) The Registrar must register the alteration unless:
  - (a) the Registrar is satisfied that the alteration is contrary to this Act or the regulations, or 25
  - (b) the Registrar has other reasonable cause to refuse to register the alteration.
- (4) The Registrar may refer any alteration to the Council for advice and report but is not required to follow the advice of the Council on the alteration. 30

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- (5) A certificate of registration of any alteration of the rules of a co-operative given by the Registrar is, in favour of any person giving financial accommodation to the co-operative on the faith of the certificate or in favour of any guarantor of that financial accommodation, conclusive evidence that the alteration in the rules was duly made. 5

**113A Appeal against refusal to register alteration**

(cf Vic Act s 117)

A co-operative may appeal to the Court against: 10

- (a) a decision of the Registrar to refuse to register an alteration of its rules, or
- (b) a failure of the Registrar to register an alteration of its rules.

**113B Registrar to comply with Court order** (cf Vic Act s 118) 15

The Registrar must comply with an order of the Court on an appeal under this Part.

**[50] Part 6 Active membership requirements, note**

Insert before Division 1:

**Note.** Each provision of Divisions 1–4 (other than sections 119 (2), 120, 123 (2) (b) and (3), 124, 125, 129, 134 (2) (b), 135 and 136 (in so far as the latter 2 sections apply to and in respect of the Council and CCUs) and 143) is a core consistent provision. 20

**[51] Section 121 Factors and considerations for determining primary activities etc** (cf Vic Act s 124) 25

Insert after section 121 (4):

- (5) Nothing in this section limits the right of active members other than the board of the co-operative to propose an active membership resolution.

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**[52] Section 122 Regular subscription—active membership of non-trading co-operative** (cf Vic Act s 126)

Insert “for a non-trading co-operative” after “membership provisions” in section 122 (1).

**[53] Section 123 Active membership provisions—trading co-operatives** (cf Vic Act s 125) 5

Omit section 123 (1).

**[54] Section 123 (2)**

Omit “in the rules of such a”. Insert instead “in the rules of a trading”.

10

**[55] Sections 126A–126C**

Insert after section 126:

**126A Eligibility to vote on active membership resolution**  
(cf Vic Act s 128)

The only members of a co-operative who are eligible to vote on an active membership resolution when the rules do not contain active membership provisions are those members who would be active members if the resolution had already taken effect.

15

**126B Eligibility of directors to vote on proposal at board meeting** (cf Vic Act s 129)

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If the board of a co-operative is meeting to consider a proposal to submit an active membership resolution to a meeting of the co-operative:

- (a) subject to paragraph (b), a director is only eligible to vote on that proposal if he or she would be eligible to vote on the resolution at the meeting of the co-operative, or

25



- (b) if less than 2 directors (whether or not they are present at the meeting of the board of directors) would be eligible to vote on the resolution at the meeting of the co-operative, all the directors are eligible to vote on that proposal at the meeting of the board of directors. 5

**126C Other entitlements of members not affected**  
(cf Vic Act s 130)

A provision of this Division which renders a member of a co-operative ineligible to vote on a resolution does not affect any other right, entitlement, obligation or duty of the member as a member. 10

**[56] Section 127**

Omit the section. Insert instead:

**127 Cancellation of membership of inactive member** 15  
(cf Vic Act s 131)

- (1) The board of a co-operative must declare the membership of a member cancelled if:
- (a) the whereabouts of the member are not presently known to the co-operative and have not been known to the co-operative for at least the required period before that time, or 20
- (b) the member is not presently an active member of the co-operative and has not been an active member of the co-operative at any time during the required period immediately before that time. 25
- (2) This section applies to a member only if he or she was a member of the co-operative throughout the required period.
- (3) The question of whether a member was an active member at a particular time in the past is to be determined as if the active membership provisions concerned had been in force at that time. 30

- 
- (4) The board's declaration under this section has the effect of cancelling the membership concerned.
- (5) A person may apply to the Council for an order under section 129 in respect of the cancellation of the person's membership under this section. 5
- (6) In this section *the required period* in relation to a co-operative, means:
- (a) 3 years, or
- (b) if a shorter period is provided for in the rules of the co-operative, that shorter period. 10

**[57] Section 128 Shares to be forfeited if membership cancelled**

(cf Vic Act s 134)

Insert after section 128 (2):

- (3) Nothing in this section affects the operation of section 134. 15

**[58] Section 130**

Omit the section. Insert instead:

**130 Deferral of forfeiture by board** (cf Vic Act s 134)

- (1) The board of a co-operative may by resolution defer cancellation of a member's membership for a period of up to 12 months: 20
- (a) if the board has reasonable grounds to believe that a member has ceased to be an active member due to unusual circumstances which prevent the member fulfilling his or her active membership obligations, or 25
- (b) if:
- (i) the board thinks that during that period an active membership resolution may be put to the members of the co-operative, and 30

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- (ii) the effect of the resolution would be relevant to the question of whether the member is an active member.
  - (2) The board of the co-operative must review the resolution to defer before the end of the deferral period to determine if a further resolution should be made under subsection (1). 5
- [59] **Section 131 Cancellation of membership prohibited in certain circumstances** (cf Vic Act s 135)  
Insert before section 131 (a): 10
  - (aa) if the co-operative is insolvent or there are reasonable grounds for suspecting that the co-operative is insolvent, or
- [60] **Section 133 Failure to cancel membership—offence by director** (cf Vic Act s 133) 15  
Omit “10 penalty units”. Insert instead “20 penalty units”.
- [61] **Section 134 Repayment of amounts due in respect of cancelled membership** (cf Vic Act s 138)  
Omit section 134 (1) and (2). Insert instead:
  - (1) If the membership of a member of a co-operative is cancelled under this Part, the co-operative must, within 12 months after the date of cancellation: 20
    - (a) repay to the former member the amount due to the member in respect of that cancellation, or
    - (b) apply that amount in accordance with subsection (2) if: 25
      - (i) the board is of the opinion that repayment would adversely affect the financial position of the co-operative, or
      - (ii) the board and the former member so agree. 30



- 
- (2) The amount due may be applied as follows:
- (a) if the co-operative is a deposit-taking co-operative, the co-operative may apply the amount as a deposit by the former member with the co-operative (subject to the requirements of section 135 as to interest on the deposit), 5
  - (b) the co-operative may allot or issue debentures or CCUs of the co-operative to the former member in satisfaction of the amount,
  - (c) the co-operative may appropriate the amount due as a donation to the co-operative, but only if the former member consents in writing to the donation. 10

**[62] Section 135**

Omit the section. Insert instead: 15

**135 Interest on deposits, debentures and CCUs**

(cf Vic Act s 139)

- (1) This section applies when the amount due to a former member under section 134 is applied as a deposit with the co-operative or the co-operative allots or issues debentures or CCUs to the former member in satisfaction of the amount. 20
  - (2) The deposit, debenture or CCU bears interest during any period:
    - (a) in the case of a co-operative with share capital: 25
      - (i) at the rate (or, if there is more than one rate, at the higher or highest rate) of dividend payable in respect of that period on the share capital of the co-operative, or
      - (ii) if the rate of dividend payable in respect of that period has not been determined, at the rate (or the higher or highest rate) payable in respect of the immediately preceding period for which a rate has been determined, or 30
- 35

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- (iii) if a rate of dividend has never been determined in respect of the share capital of the co-operative, at the rate that the board of the co-operative considers reasonable, or
    - (b) in the case of a co-operative without share capital, at the rate that the board of the co-operative considers reasonable, or 5
    - (c) if the rules provide for a rate to be payable that is higher than the rate applicable under paragraph (a) or (b), at that higher rate. 10
  - (3) A former member may agree to the rate of interest being less than that which would otherwise be payable under this section and may agree to no interest being paid.
  - (4) The provisions of Part 7.12 (Offering securities for subscription or purchase) of the *Corporations Law* adopted under section 266 of this Act do not apply to an allotment or issue of debentures under this section. 15
- [63] Sections 139 (4), 140 (1) (b) and 339 (1) and (2)**

Omit "an amalgamation" wherever occurring.  
Insert instead "a merger". 20
- [64] Section 140 Entitlements of former shareholders on mergers etc**

(cf Vic Act s 144)

Omit "Division 2" from section 140 (1) (c).  
Insert instead "Division 1".
- [65] Section 141 Set-off of amounts repaid etc on forfeited shares** 25

(cf Vic Act s 145)

Omit "30 days" from section 141 (4) (a). Insert instead "28 days".

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**[66] Part 7 Shares, note**

Insert before Division 1:

**Note.** Each provision of the Part (other than sections 145, 148, 153, 154, 172 (3) and (6) and 173 (except in so far as it applies to and in respect of CCUs)) is a core consistent provision.

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**[67] Section 144 Share capital required except for non-profit co-operatives**

Omit section 144 (1).

**[68] Section 145 Restrictions on conversion of non-trading co-operative to co-operative without share capital**  
(cf Vic Act s 28)

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Omit "An alteration of the rules for the conversion cannot be passed" from section 145 (2).

Insert instead "Despite compliance with the notice requirements of section 194, a special postal ballot cannot be held for the purposes of this section".

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**[69] Part 7, Division 1A (section 146A)**

Insert after section 146:

**Division 1A Disclosure**

**146A Disclosure to members** (cf Vic Act s 149)

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(1) In addition to any information required under Part 4 to be provided, the board of a trading co-operative must provide a member of the co-operative with a disclosure statement before shares are issued to the member.

(2) The disclosure statement must contain:

25

(a) a statement of the rights and liabilities attaching to shares, and



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- (b) a copy of the last annual report of the co-operative under section 252, and
- (c) any other relevant information concerning the financial position and prospects of the co-operative if there has been a significant change since the date of the last annual report, and 5
- (d) any other information that the Registrar directs.

**[70] Section 147 Shares—general** (cf Vic Act s 150)

Omit section 147 (3). Insert instead:

- (3) A co-operative may have more than one class of shares provided the share holding and the rights of shareholders comply with the co-operative principles. 10
- (4) Subject to this Part and Part 4, shares must not be issued to a non-member.

**[71] Section 149 Minimum paid up amount** (cf Vic Act s 151) 15

Omit “(other than a bonus share issued under section 156)” from section 149 (1).

**[72] Section 149 (3)**

Insert after section 149 (2):

- (3) This section does not apply to a bonus share issued under section 151 (4) (a), 156 or 282. 20

**[73] Section 151**

Omit the section. Insert instead:

**151 Issue of shares at a premium** (cf Vic Act s 153)

- (1) A trading co-operative may issue shares at a premium. 25
- (2) A premium may be in the form of cash or other valuable consideration.

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- |     |   |    |
|-----|---|----|
| (3) | If a trading co-operative issues shares for which it receives a premium, a sum equal to the aggregate amount or value of the premiums on those shares must be transferred to a share premium account. |    |
| (4) | The share premium account is to be regarded as paid up share capital of the trading co-operative and may be applied in any one or more of the following ways:   | 5  |
| (a) | in paying up unissued shares to be issued to members of the co-operative as fully paid bonus shares,  | 10 |
| (b) | in paying up in whole or in part the balance unpaid on shares previously issued to members of the co-operative,   |    |
| (c) | in the payment of dividends, if those dividends are satisfied by the issue of shares to members of the co-operative,  | 15 |
| (d) | in writing off the preliminary expenses of the co-operative,  |    |
| (e) | in providing for the premium payable on redemption of shares, debentures or CCUs.   | 20 |

**[74] Section 153 Dividends etc**

Omit section 153 (1) and (2).

**[75] Section 155**

Omit the section. Insert instead:

**155 Members may be required to take up additional shares** 25  
 (cf Vic Act s 155)

- |     |  |    |
|-----|--|----|
| (1) | If authorised by the rules of the co-operative, the board of a trading co-operative may require a member to take up or subscribe for additional shares in accordance with a proposal approved by a special resolution of the co-operative. | 30 |
|-----|--|----|

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- (2) The board of a trading co-operative may deduct amounts in payment for additional shares from money due to members in respect of dealings with the co-operative, in accordance with a proposal approved by a special resolution of the co-operative. 5
- (3) Any proposal to require a member to take up or subscribe for additional shares must:
  - (a) be accompanied by a disclosure statement, approved by the Registrar, that explains the purpose for which the funds raised by the issue of the additional shares are to be used, and 10
  - (b) clearly show the total number of additional shares to be issued and the basis on which the shares are to be apportioned amongst members, and
  - (c) be accompanied by a statement informing the member that the member may inform the board by notice on or before the date specified in the statement (being a date before the passing of the special resolution) that the member resigns on the passing of the special resolution. 15  
20
- (4) Any proposal to deduct amounts in payment for additional shares from money due to members in respect of their dealings with the trading co-operative must clearly show:
  - (a) the basis on which the deductions are to be made, and 25
  - (b) the time and manner of making those deductions.
- (5) A proposal approved under this section is binding on:
  - (a) all members of the trading co-operative at the date of the passing of the special resolution other than a member who has given a notice of resignation in accordance with subsection (3) (c), and 30
  - (b) all persons who become members of the trading co-operative after that date and before the total number of shares to be issued pursuant to the proposal has been issued. 35



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- (6) Sections 17 (except subsections (2), (4) and (11)) and 28A apply to the approval of a disclosure statement under this section with any necessary modifications and in particular as if any reference in section 17 to a formation meeting were a reference to the special resolution. 5
- [76] Section 156 Bonus share issues** (cf Vic Act ss 156 and 158)  
 Insert "trading" after "rules of a" in section 156 (1).
- [77] Section 156 (2) (d)**  
 Insert "under this section" after "co-operative" where firstly occurring. 10
- [78] Section 156 (3) (e)**  
 Omit "place, and". Insert instead "place."
- [79] Section 156 (3) (f)**  
 Omit the paragraph. 15
- [80] Section 158 Notice of non-beneficial ownership not notified at time of transfer** (cf Vic Act s 160)  
 Insert after section 158 (4):
- (5) This section does not apply in respect of any shares for which particulars were set out in a non-beneficial ownership notice under section 157 included in the instrument of transfer. 20
- [81] Section 160 Notification of change in nature of shareholding** (cf Vic Act s 162)  
 Omit section 160 (1). Insert instead: 25
- (1) A person must notify the co-operative in accordance with this section of the change in the person's shareholding in the co-operative if the person:
- (a) commences to hold any shares beneficially that the person currently holds non-beneficially, or 30

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- (b) commences to hold any shares non-beneficially  
that the person currently holds beneficially.

Maximum penalty: 10 penalty units or imprisonment for  
3 months, or both.

**[82] Section 160 (3)** 5

Omit "Maximum penalty: 10 penalty units or imprisonment for 3  
months, or both."

**[83] Section 170 Sale or transfer of shares** (cf Vic Act s 172)

Insert "and section 170A" after "Part 4" in section 170 (a).

**[84] Section 170 (2)** 10

Insert at the end of the section:

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

**[85] Sections 170A and 170B**

Insert after section 170: 15

**170A Transfer on death of member** (cf Vic Act s 173)

- (1) On the death of a member, the member's share in the  
co-operative cannot be transferred to a person other than  
an administrator or executor except with the consent of  
the board of the co-operative. 20
- (2) The board may only give its consent under subsection (1)  
if there are reasonable grounds for believing that the  
person will be an active member of the co-operative.

**170B Restriction on total shareholding** (cf Vic Act s 174)

The board of a co-operative must not consent under  
section 170 or 170A to the sale or transfer of a share if as  
a result of the sale or transfer the nominal value of the  
shares held by the purchaser or transferee would exceed: 25

- (a) 20% of the nominal value of the share capital of  
the co-operative, or 30

- (b) if a lower percentage is specified in the rules of the co-operative, that lower percentage of the nominal value of the share capital of the co-operative.

**[86] Section 172 Purchase and repayment of shares** (cf Vic Act s 176) 5

Omit section 172 (4). Insert instead:

- (4) The amount paid for a share when it is repurchased may be an amount determined by the board that is less than the nominal value of the share but only:
- (a) if the books of the co-operative disclose that the amount paid is the net shareholder's equity per share in the undertaking of the co-operative, or 10
- (b) in accordance with the rules of the co-operative.
- (5) This section does not apply if the member has been expelled from the co-operative or the member's membership has been otherwise cancelled under Part 6. 15
- (6) A co-operative must not repurchase shares or repay amounts paid up on shares if:
- (a) the co-operative is likely to become insolvent because of the repurchase of the shares or because of the repayment of amounts paid up on the shares, or 20
- (b) the co-operative is insolvent.

**[87] Section 173**

Omit the section. Insert instead: 25

**173 Deposits, debentures or CCUs in lieu of payment when share repurchased** (cf Vic Act s 177)

- (1) If a co-operative repurchases a share of a member, the co-operative may instead of paying the purchase price to the member: 30
- (a) in the case of a deposit-taking co-operative, apply the amount as an interest bearing deposit by the member with the co-operative, or



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- (b) allot or issue debentures or CCUs of the co-operative to the member in satisfaction of the amount.
- (2) Subsection (1) applies only:
  - (a) if the board is of the opinion that payment of the repurchase price would adversely affect the financial position of the co-operative, or 5
  - (b) if the board and the member so agree.
- (3) The deposit, debenture or CCU bears interest during any period: 10
  - (a) in the case of a co-operative with share capital:
    - (i) at the rate (or, if there is more than one rate, at the higher or highest rate) of dividend payable in respect of that period on the share capital of the co-operative, or 15
    - (ii) if the rate of dividend payable in respect of that period has not been determined, at the rate (or the higher or highest rate) payable in respect of the immediately preceding period for which a rate has been determined, or 20
    - (iii) if a rate of dividend has never been determined in respect of the share capital of the co-operative, at the rate that the board of the co-operative considers reasonable, or 25
  - (b) in the case of a co-operative without share capital, at the rate that the board of the co-operative considers reasonable, or
  - (c) if the rules provide for a rate to be payable that is higher than the rate applicable under paragraph (a) or (b), at that higher rate. 30
- (4) The deposit, debenture or CCU must be repaid to the member as soon as repayment would not, in the opinion of the board, adversely affect the financial position of the co-operative. 35

- (5) The deposit, debenture or CCU must in any case be repaid within 10 years (or within any shorter period that the rules of the co-operative may require) after the repurchase of the shares concerned.

**[88] Part 8 Voting, note** 5

Insert before Division 1:

**Note.** Each provision of this Part (other than sections 177, 178 (2) and (3), 180, 182, 190B (2) (c), 196, 197 and 200) is a core consistent provision.

**[89] Section 176** 10

Omit the section. Insert instead:

**176 Voting** (cf Vic Act s 180)

- (1) The right to vote attaches to membership and not share holding.
- (2) Except as provided in subsections (3) and (4), each member has only one vote at a meeting of the co-operative. 15
- (3) Except as specifically authorised by this Act, the rules of a co-operative must not contain a provision that restricts the voting rights of members. 20
- (4) If the rules so provide, the chairperson has a second vote at a board meeting or general meeting.
- (5) In the case of joint membership:
  - (a) the joint members have only one vote between them, and 25
  - (b) that vote may be exercised (subject to the grant of a proxy or power of attorney) only by the joint member determined in accordance with the rules.
- (6) If shares are held jointly, each member (other than a joint member) holding the share is entitled to vote at a general meeting. 30

**[90] Section 179**

Omit the section. Insert instead:

**179 Voting by proxy** (cf Vic Act s 181)

- |     |  |    |
|-----|--|----|
| (1) | If the rules so provide, voting may be by proxy at a general meeting.  | 5  |
| (2) | The instrument of proxy may specify the manner in which a proxy is to vote in respect of a particular resolution.  |    |
| (3) | The proxy must vote in the manner authorised by an instrument of proxy referred to in subsection (2).  | 10 |
| (4) | A person must not act as a proxy unless he or she:   |    |
|     | (a) is an active member of the co-operative, or  |    |
|     | (b) in the case of an association or a federation, is entitled to represent a component co-operative or association of the association or federation on the association or federation. | 15 |
| (5) | A person must not act as proxy for more than 10 persons (or any lesser number of persons specified in the rules of the co-operative) on any one occasion.                              |    |
| (6) | Subsection (5) does not apply if the proxy acts under an instrument of proxy referred to in subsection (2).  | 20 |

**[91] Section 181A**

Insert after section 181:

**181A Control of the right to vote** (cf Vic Act s 185)

- |     |   |    |
|-----|---|----|
| (1) | A person must not directly or indirectly control the exercise of the right to vote of a member. | 25 |
|-----|---|----|

Maximum penalty: 60 penalty units or imprisonment for 6 months, or both.



- 
- (2) If a person controls the exercise of the right to vote of a member at a meeting of a co-operative:
- (a) the vote of that member, and
  - (b) the vote of that person, if that person is a member, are invalid.
- (3) Nothing in this section prevents the exercise of a vote by means of a proxy or power of attorney.

5

**[92] Section 183A**

Insert after section 183:

**183A Restriction on voting by representatives of bodies corporate** (cf Vic Act s 183)

10

A person is not entitled to exercise, as the representative of a body corporate, the power of a body corporate member of the co-operative to vote if the person has that power as the representative of another body corporate member of the co-operative.

15

**[93] Section 184 Rights of representatives to vote etc**

Omit the section.

**[94] Section 189**

Omit the section. Insert instead:

20

**189 Special resolutions** (cf Vic Act s 192)

- (1) A special resolution is a resolution of a co-operative which is passed:
- (a) by a two-thirds majority at a general meeting of members, or
  - (b) by a two-thirds majority in a postal ballot (other than a special postal ballot) of members, or
  - (c) by a three-quarters majority in a special postal ballot of members.

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- (2) A special resolution may be passed by a postal ballot only if the rules of the co-operative so permit or this Act requires the special resolution to be passed by postal ballot (including a special postal ballot).
  - (3) A resolution is not to be considered to have been passed as a special resolution unless not less than 21 days' notice has been given to the members of the co-operative specifying:
    - (a) the intention to propose the special resolution, and
    - (b) the reasons for the making of the special resolution, and
    - (c) the effect of the special resolution being passed.
  - (4) A failure to give notice to the Registrar under subsection (4) does not affect the validity of the resolution.
- [95] Section 190 How majority obtained is ascertained** 15  
(cf Vic Act s 193)  
Omit section 190 (3).
- [96] Sections 190A and 190B**
- Insert after section 190:
- 190A Disallowance by Registrar** (cf Vic Act s 194) 20  
The Registrar may disallow a proposed special resolution before it is passed by written notice to the co-operative if the Registrar is of the opinion that the effect of the special resolution if passed would be in contravention of this Act or the regulations or any other law. 25
- 190B Effect of special resolution** (cf Vic Act s 196)  
(1) Subject to subsection (2), a special resolution has effect from the date that it is passed.

- 
- (2) A special resolution relating to any of the following has no effect until it is registered:
- (a) the removal of an auditor,
  - (b) the expulsion of a member,
  - (c) any matter for which a special resolution is required to be passed by special postal ballot (other than a special postal ballot in favour of a voluntary winding up). 5

**[97] Section 192**

Omit section 192. Insert instead: 10

**192 Lodgment of special resolution** (cf Vic Act s 197)

- (1) A co-operative must lodge 2 copies of each special resolution passed by the co-operative with the Registrar in accordance with this section for registration.
- (2) The copies must: 15
  - (a) be lodged within 28 days after the passing of a special resolution or such further period as the Registrar allows, and
  - (b) be signed by a director and the secretary of the co-operative, and 20
  - (c) be accompanied by the lodgment fee prescribed by the regulations.
- (3) A co-operative and any officer of the co-operative that knowingly fails to lodge the required copies in accordance with this section is guilty of an offence. 25
 

Maximum penalty: 20 penalty units.
- (4) This section and section 192A do not apply to a special resolution altering the rules of a co-operative.

**192A Decision of Registrar on application to register special resolution** (cf Vic Act s 198) 30

- (1) If the Registrar is satisfied that the co-operative has complied with the provisions of this Act and the regulations, and that the resolution is not contrary to this



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Act or the regulations, the Registrar must register the resolution.

- (2) If the Registrar is of the opinion that the effect of a special resolution lodged for registration would be in contravention of this Act or the regulations or any other law, the Registrar may: 5
- (a) refuse to register the special resolution, and
  - (b) give written notice to the co-operative that the special resolution:
    - (i) has no effect, in the case of a special resolution referred to in section 190B (2), and 10
    - (ii) has no effect as from the date that it was passed, in any other case.
- (3) A certificate of registration of a special resolution given by the Registrar is, in favour of any person giving financial accommodation to the co-operative on the faith of the certificate or in favour of any guarantor of that advance, conclusive evidence that the resolution was duly passed. 15 20

**[98] Section 194 Special postal ballots** (cf Vic Act s 200)

Omit "1 month" from section 194 (2). Insert instead "21 days".

**[99] Section 194 (5)**

Insert after section 194 (4):

- (5) Sections 17 (except subsections (2), (4) and (11)) and 28A apply to the approval of a disclosure statement under this section with any necessary modifications and in particular as if any reference in section 17 to a formation meeting were a reference to the notice of the special postal ballot. 25 30

**[100] Section 194A**

Insert after section 194:

**194A When is a special postal ballot required?**

(cf Vic Act s 201)

In addition to any requirement of this Act, the rules of a co-operative must require a special postal ballot to be conducted for the purpose of passing a special resolution in relation to any of the following matters relating to a co-operative: 5

- (a) a conversion of a trading co-operative to a non-trading co-operative, 10
- (b) transfer of incorporation,
- (c) an acquisition or disposal of assets referred to in section 285,
- (d) the maximum permissible level of share interest in the co-operative, 15
- (e) takeover,
- (f) merger,
- (g) transfer of engagements,
- (h) members' voluntary winding up. 20

**[101] Section 195**

Omit the section. Insert instead:

**195 Holding of postal ballot on requisition** (cf Vic Act s 202)

- (1) The board of a co-operative must conduct a postal ballot (including a special postal ballot) for the passing of a special resolution on the written requisition of such number of members who together are able to cast at least 20% (or any lesser percentage specified in the rules of the co-operative) of the total number of votes able to be cast at a meeting of the co-operative. 25  
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- (2) A member is not entitled to be a requisitioning member unless the member is an active member.
- (3) The following provisions apply to a requisition for a postal ballot:
  - (a) it must specify: 5
    - (i) the proposed special resolution to be voted on, and
    - (ii) the reasons for the making of the special resolution, and
    - (iii) the effect of the special resolution being passed, 10
  - (b) it must be signed by the requisitioning members (and may consist of several documents in like form each signed by one or more requisitioning members), 15
  - (c) it must be served on the co-operative by being lodged at the registered office of the co-operative.
- (4) The postal ballot must be conducted as soon as practicable and in any case must be conducted within 2 months after the requisition is served. 20
- (5) If the special resolution for which the requisitioned postal ballot is conducted is not passed, the co-operative may recover the expenses of the postal ballot from the members who requisitioned the postal ballot as a debt due to the co-operative. 25

**[102] Section 195A**

Insert after section 195:

**195A Expenses involved in postal ballots on requisition**

(cf Vic Act s 203)

- (1) All reasonable expenses incurred by a co-operative in and in connection with preparing for and holding a special postal ballot are to be considered to constitute the *expenses of the postal ballot* for the purposes of section 195. 30



- 
- (2) Those expenses include (but are not limited to) the following expenses:
- (a) the cost of obtaining expert advice (including legal and financial advice) and of commissioning expert reports, 5
  - (b) costs attributable to the use of staff of the co-operative in connection with preparing for and holding the ballot,
  - (c) the cost of producing, printing and posting the ballot papers and other material associated with the ballot. 10

**[103] Sections 198–199B**

Omit sections 198 and 199. Insert instead:

**198 Annual general meetings** (cf Vic Act s 204)

- (1) The first annual general meeting of a co-operative must be held at any time within 19 months after the incorporation of the co-operative. 15
- (2) The second or any subsequent annual general meeting of a co-operative must be held within:
  - (a) 5 months after the close of the financial year of the co-operative, or 20
  - (b) any further time that may be allowed by the Registrar or is prescribed by the regulations.

**199 Special general meetings** (cf Vic Act s 205)

A special general meeting of a co-operative may be convened at any time by the board of directors. 25

**199A Notice of meetings** (cf Vic Act s 206)

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

---

**199B Quorum at meetings** (cf Vic Act s 207)

- (1) The quorum for a meeting of a co-operative must be specified in the rules.
- (2) An item of business must not be transacted at a meeting of a co-operative unless a quorum of members entitled to vote is present during the transaction of that item. 5

**[104] Section 202 Convening of general meeting on requisition**

(cf Vic Act s 209)

Omit section 202 (1). Insert instead:

- (1) The board of a co-operative must convene a general meeting of the co-operative on the written requisition of such number of members who together are able to cast at least 20% (or any lesser percentage specified in the rules of the co-operative) of the total number of votes able to be cast at a meeting of the co-operative. 10  
15

**[105] Section 203**

Omit the section. Insert instead:

**203 Minutes** (cf Vic Act s 210)

- (1) Minutes of each general meeting, board meeting and sub-committee meeting must be entered in the appropriate records and confirmed at and signed by the chairperson of the next succeeding meeting. 20
- (2) The minutes of each general meeting must be available for inspection by members.
- (3) The rules may provide that the minutes of board meetings and sub-committee meetings be available for inspection by members. 25
- (4) Minutes must be kept in the English language.

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**[106] Part 9 Management and administration of co-operatives, note**

Insert before Division 1:

**Note.** Each provision of this Part (other than sections 204 (4) and (5), 205 (5) and (9), 206 (2) and (3), 206A, 215–217, 218 (2) (h), 234 (9) and (10), 252 (1) (e), 255 (4)–(8), 256 and 258 (4)) is a core consistent provision.

5

**[107] Section 204 Board of directors** (cf Vic Act s 211)

Omit section 204 (1) and (2). Insert instead:

- (1) Subject to this Act and the rules of a co-operative, the business of a co-operative is to be managed by a board of directors. 10
- (2) The board of directors may exercise all the powers of the co-operative that are not, by this Act or the rules of the co-operative, required to be exercised by the co-operative in general meeting. 15

**[108] Section 205**

Omit the section. Insert instead:

**205 Election of directors** (cf Vic Act s 212)

- (1) Except as provided in subsections (2), (3) and (4), the directors of a co-operative are to be elected in the manner specified in the rules of the co-operative. 20
- (2) The first directors of:
  - (a) a co-operative formed under this Act are to be elected at its formation meeting, and
  - (b) a co-operative which was a body corporate incorporated under another Act are to be the directors in office at the date of registration under this Act. 25



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- (3) If so authorised by the rules of the co-operative, a board of directors may appoint a person to fill a casual vacancy in the office of a director until the next annual general meeting.
- (4) A motion approving or nominating for election 2 or more persons as directors by a single resolution must not be made at a meeting of a co-operative unless a resolution that it be so made has first been agreed to by the meeting without any vote being given against it. 5
- (5) If a resolution is passed following a motion in contravention of subsection (4): 10
  - (a) the resolution is void, and
  - (b) there is no provision for the automatic re-election of retiring directors in default of another election.
- (6) This section does not apply to a resolution altering the rules to prevent the election of 2 or more directors by ballot. 15
- (7) A nomination for election or appointment to the office of a director must provide details of the qualifications and experience of the person nominated. 20
- (8) Except as specified in this Act or in the rules of a co-operative, a director is eligible for re-election at the expiration of his or her term of office.
- (9) The Registrar is not to register a rule that specifies the manner of election of directors or any alteration of such a rule unless the Registrar approves of the manner of electing directors that will result from the rule or alteration. 25

**[109] Section 206 Qualification of directors** (cf Vic Act s 213)

Omit section 206 (1) and (2). Insert instead: 30

- (1) A person is not qualified to be a director of a co-operative unless he or she is:

- 
- (a) an active member of the co-operative or a representative of a body corporate which is an active member of the co-operative (*active member director*), or
  - (b) an employee of the co-operative or a person qualified as provided by the rules (*independent director*). 5

**[110] Section 206 (5)**

Omit the subsection.

**[111] Section 206A Exemptions concerning composition of board 10**

Omit "and (5)" from section 206A (6).

**[112] Sections 208–210**

Omit the sections. Insert instead:

**208 Disqualified persons (cf Vic Act s 214)**

- (1) A person must not act as a director or directly or indirectly take part in or be concerned with the management of a co-operative if the person: 15
  - (a) is the auditor of the co-operative or a partner, employee or employer of the auditor, or
  - (b) has been convicted, whether before or after the commencement of this section, within or outside New South Wales: 20
    - (i) on indictment of an offence in connection with the promotion, formation or management of a body corporate, or 25
    - (ii) of an offence involving fraud or dishonesty punishable on conviction by imprisonment for a period of not less than 3 months, or

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- 
- (iii) of any offence under section 232, 590, 591, 592, 704, 705 or 996 of the *Corporations Law* or under any provision of a law in force in another State or in a Territory that corresponds with any of those sections, or 5
    - (iv) of any offence under any provision of a previous law of New South Wales or of another State or Territory, with which any of the provisions referred to in subparagraph (iii) corresponds, 10

within a period of 5 years after the conviction or, if sentenced to imprisonment, after his or her release from prison, except with the leave of the Court.

Maximum penalty: 240 penalty units or imprisonment for 2 years, or both. 15
  - (2) A person must not act as a director or directly or indirectly take part in or be concerned with the management of a co-operative if the person:
    - (a) has been convicted of any offence under this Act, within a period of 5 years after the conviction, except with the leave of the Court, or 20
    - (b) is prohibited from being a director of a company under section 599 of the *Corporations Law*, or
    - (c) is an insolvent under administration (as defined in the *Corporations Law*), or 25
    - (d) is prohibited from managing a co-operative by an order under section 1317EA of the *Corporations Law*, as adopted under this Act.

Maximum penalty: 240 penalty units or imprisonment for 2 years, or both. 30
  - (3) In any proceeding for an offence against subsection (1), a certificate by an authority prescribed by the regulations stating that a person was released from prison on a specified date, is in the absence of evidence to the contrary, proof that that person was released from prison on that date. 35



- 
- |     |   |    |
|-----|---|----|
| (4) | A person who intends to apply for leave of the Court must give the Registrar at least 21 days notice of his or her intention.   |    |
| (5) | The Court may grant leave subject to any condition or limitation it considers appropriate.  | 5  |
| (6) | A person must comply with any condition or limitation subject to which leave is granted.<br><br>Maximum penalty: 240 penalty units or imprisonment for 2 years, or both.  |    |
| (7) | On the application of the Registrar, the Court may revoke its leave.  | 10 |
| (8) | Subject to this section, section 599 of the <i>Corporations Law</i> is adopted as far as is applicable to co-operatives and applies with any modifications that are necessary and any other modifications that are prescribed by the regulations. | 15 |

#### **209 Meeting of the board of directors** (cf Vic Act s 215)

- |     |   |    |
|-----|---|----|
| (1) | Meetings of the board of directors must be held at least once every 3 months and may be held as often as may be necessary.  | 20 |
| (2) | A meeting of the board of directors may be called by a director giving notice individually to every other director.   |    |
| (3) | A meeting of the board of directors may be called or held using any technology consented to by the board. The consent may be a standing one.  | 25 |
| (4) | A quorum of a meeting of the board of directors is 50 per cent of the number of directors or such greater number of the directors as is specified in the rules.   |    |
| (5) | The chairperson of the board may be elected either by the board or at a general meeting of the co-operative, and is to be elected, hold office, and retire, and may be removed from office, as provided by the rules of the co-operative. | 30 |

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**210 Transaction of business outside meetings**

(cf Vic Act s 216)

- |     |   |    |
|-----|---|----|
| (1) | The board of a co-operative may, if it thinks fit, transact any of its business by the circulation of papers among all of the directors of the board.   | 5  |
| (2) | A resolution in writing approved in writing by a majority of the directors of the board is to be taken to be a decision of the board.   |    |
| (3) | Separate copies of a resolution may be distributed for signing by the directors if the wording of the resolution and approval is identical in each copy.  | 10 |
| (4) | For the purpose of the approval of a resolution under this section, the chairperson of the board and each director of the board have the same voting rights as they have at an ordinary meeting of the board. | 15 |
| (5) | The resolution is approved when the last director required for the majority signs.  |    |
| (6) | A resolution approved under this section must be recorded in the minutes of the meetings of the board.  |    |
| (7) | Papers may be circulated among directors of the board for the purposes of this section by facsimile or other transmission of the information in the papers concerned.   | 20 |

**[113] Section 212 Filling of vacancies on board**

Omit section 212 (1). Insert instead:

- |       |  |    |
|-------|--|----|
| (1)   | A casual vacancy on the board of a co-operative (being a vacancy under section 218) is to be filled: | 25 |
| (a)   | by election by the members held:   |    |
| (i)   | at a meeting of the co-operative, or   |    |
| (ii)  | by means of a postal ballot, or  |    |
| (iii) | in the manner specified in the rules of the co-operative for the ordinary election of directors, or  | 30 |
| (b)   | as provided for by section 205 (3), or   |    |
| (c)   | in such other manner as the Registrar may approve in a particular case.                              | 35 |

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**[114] Section 212 (4)**

Omit the subsection. Insert instead:

- (4) The term of office of a director appointed by the board to fill a vacancy under this section is until the next annual general meeting of the co-operative.

5

**[115] Section 213 Delegation by board** (cf Vic Act s 218)

Omit section 213 (1). Insert instead:

- (1) If the rules of a co-operative so provide, the board may, by resolution, delegate the exercise of such of the board's functions (other than this power of delegation) as are specified in the resolution:

10

- (a) to a director, or  
(b) to a committee of 2 or more directors, or  
(c) to a committee of members of the co-operative, or  
(d) to a committee of members of the co-operative and other persons if members comprise the majority of persons on the committee.

15

**[116] Section 219**

Omit the section.

**[117] Section 221 Officers must act honestly** (cf Vic Act s 221)

20

Omit "200 penalty units or imprisonment for 5 years, or both" from section 221 (2) (a).

Insert instead "240 penalty units or imprisonment for 5 years, or both".

**[118] Section 221 (2) (b)**

25

Omit "50 penalty units". Insert instead "60 penalty units".



(cf Vic Act s 222)

Omit "10 penalty units" from section 222 (1).  
Insert instead "20 penalty units".

## 5

Omit the section. Insert instead:

(cf Vic Act s 223)

- (1) An officer or employee or former officer or former employee of a co-operative or a member of a committee referred to in section 213 (1) must not make improper use of information acquired by reason of his or her position as such an officer or employee or member to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the co-operative.
- (2) An officer or employee of a co-operative or a member of a committee referred to in section 213 (1) must not make improper use of his or her position as an officer or employee or member, to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the co-operative.
- (3) The penalty applicable to a contravention of this section is:
  - (a) if the contravention was committed with intent to deceive or defraud the co-operative, members or creditors of the co-operative or creditors of any other person or for any other fraudulent purpose—a penalty not exceeding 240 penalty units or imprisonment for 2 years, or both, or
  - (b) in any other case—a penalty not exceeding 60 penalty units.

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**[121] Section 229 Adoption of Corporations Law provisions concerning officers of co-operatives** (cf Vic Act s 228)

Omit "the commencement of section 343B of this Act" from section 229 (2) (d).

Insert instead "15 December 1995".

5

**[122] Section 230**

Omit the section. Insert instead:

**230 Directors' remuneration** (cf Vic Act s 229)

A director of a co-operative must not be paid any remuneration for services as a director other than fees, concessions and other benefits that are approved at a general meeting of the co-operative.

10

**[123] Section 231**

Omit the section.

**[124] Section 232**

15

Omit the section. Insert instead:

**232 Financial accommodation to directors and associates**

(cf Vic Act s 231)

(1) In this section:

*associate* of a director means:

20

(a) the director's spouse, or

(b) a person when acting in the capacity of trustee of a trust under which:

(i) the director or director's spouse has a beneficial interest, or

25

(ii) a body corporate mentioned in paragraph (c) has a beneficial interest, or

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- (c) a body corporate if:
    - (i) the director or director's spouse has a material interest in shares in the body corporate, and
    - (ii) the nominal value of the shares is not less than 10% of the nominal value of the issued share capital of the body corporate. 5
  - (2) For the purposes of this section, a person has a *material interest* in a share in a body corporate if:
    - (a) the person has power to withdraw the share capital subscribed for the share or to exercise control over the withdrawal of that share capital, or 10
    - (b) the person has power to dispose of or to exercise control over the disposal of the share, or
    - (c) the person has power to exercise or to control the exercise of any right to vote conferred on the holder of the share. 15
  - (3) A co-operative must not provide financial accommodation to a director, or to a person the co-operative knows or should reasonably know is an associate of a director, unless: 20
    - (a) the accommodation is:
      - (i) approved under subsection (4), or
      - (ii) given under a scheme approved under subsection (4), or 25
      - (iii) provided on terms no more favourable to the director or associate than the terms on which it is reasonable to expect the co-operative would give if dealing with the director or associate at arm's length in the same circumstances, and 30
    - (b) the directors have approved the accommodation, at a meeting of the board at which a quorum was present, by a majority of at least two-thirds of the directors present and voting on the matter. 35
- Maximum penalty: 500 penalty units.



- 
- (4) For the purposes of subsection (3) (a) (i) and (ii), financial accommodation or a scheme is approved if:
- (a) it is approved by a resolution passed at a general meeting,
  - (b) the full details of the accommodation or scheme were made available to members at least 21 days before the meeting. 5
- (5) A director or an associate of a director who obtains financial accommodation given in contravention of subsection (3) is guilty of an offence. 10
- Maximum penalty: 240 penalty units or 2 years imprisonment, or both.
- (6) For the purposes of this section, a concessional rate of interest for a borrower from a co-operative is a normal term only if the borrower is entitled to the concession by being a member of a class of borrowers from the co-operative specified in its rules as being entitled to the concession. 15
- (7) If a director of a co-operative or an associate of a director accepts in payment of a debt owed by a member of the co-operative to the director or associate, any proceeds of financial accommodation provided to the member by the co-operative, this section has effect as if the financial accommodation has been provided to the director or associate. 20
- (8) In this section, a reference to:
- (a) the provision of financial accommodation to a director or an associate of a director, or
  - (b) the obtaining of financial accommodation by a director or an associate of a director, or 30
  - (c) a debt owed to a director or an associate of a director,
- includes a reference to a provision of financial accommodation to, or an obtaining of financial accommodation by, the director or associate, or a debt owed to the director or associate, jointly with another person. 35
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**[125] Section 233A**

Insert after section 233:

**233A Management contracts** (cf Vic Act s 233)

- (1) In this section, *management contract* means a contract or other arrangement under which: 5
  - (a) a person who is not an officer of the co-operative agrees to perform the whole, or a substantial part, of the functions of the co-operative, whether under the control of the co-operative or not, or
  - (b) a co-operative agrees to perform the whole or a substantial part of its functions: 10
    - (i) in a particular way, or
    - (ii) in accordance with the directions of any person, or
    - (iii) subject to specified restrictions or conditions. 15
- (2) A co-operative must not enter into a management contract unless that contract has first been approved by special resolution.
- (3) A management contract entered into in contravention of subsection (2) is void. 20

**[126] Sections 234–237**

Omit the sections. Insert instead:

**234 Declaration of interest** (cf Vic Act s 234)

- (1) A director of a co-operative who is or becomes in any way (whether directly or indirectly) interested in a contract, or proposed contract with the co-operative must declare the nature and extent of the interest to the board of directors under this section. 25
- Maximum penalty: 240 penalty units or imprisonment for 2 years, or both. 30

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- (2) In the case of a proposed contract, the declaration must be made:
- (a) at the meeting of the board at which the question of entering into the contract is first considered, or
  - (b) if the director was not at that time interested in the proposed contract, at the next meeting of the board held after the director becomes interested in the proposed contract. 5
- (3) If a director becomes interested in a contract with the co-operative after it is made, the declaration must be made at the next meeting of the board held after the director becomes interested in the contract. 10
- (4) For the purposes of this section, a general written notice given to the board by a director to the effect that the director:
- (a) is a member of a specified entity, and
  - (b) is to be regarded as interested in any contract which may, after the giving of the notice, be made with the entity,
- is a sufficient declaration. 15 20
- (5) A director of a co-operative who holds an office or has an interest in property whereby, whether directly or indirectly, duties or interests might be created that could conflict with the director's duties or interests as director must, under subsection (6), declare at a meeting of the board of directors the fact and the nature, character and extent of the conflict. 25
- Maximum penalty: 240 penalty units or imprisonment for 2 years, or both.
- (6) A declaration required by subsection (5) in relation to holding an office or having an interest must be made by a person:
- (a) if the person holds the office or has the interest when he or she becomes a director, at the first meeting of the board held after: 35
    - (i) the person becomes a director, or
-



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- (ii) the relevant facts as to holding the office or having the interest come to the person's knowledge,
- whichever is the later, or
- (b) if the person starts to hold the office or acquires the interest after the person becomes a director, at the first meeting of the board held after the relevant facts as to holding the office or having the interest come to the person's knowledge. 5
- (7) If a director has made a declaration under this section, then unless the board otherwise determines, the director must not: 10
- (a) be present during any deliberation of the board in relation to the matter, or
- (b) take part in any decision of the board in relation to the matter. 15
- (8) For the purposes of the making of a determination of the board under subsection (7) in relation to a director who has made a declaration under this section, the director must not: 20
- (a) be present during any deliberation of the board for the purpose of making the determination, or
- (b) take part in the making by the board of the determination.
- (9) This section does not extend to or in respect of a vote relating to a transaction referred to in section 241. 25
- (10) Any vote cast in contravention of this section is not to be counted.

**[127] Section 240 Penalty**

Omit the section. 30

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**[128] Section 241 Certain interests need not be declared**

(cf Vic Act s 237)

Insert after section 241 (a):

- (a1) a lease of land to the director by the co-operative,  
or

5

**[129] Section 242 Pecuniary interest disentitles director from voting**

Omit the section.

**[130] Section 249 Registers to be kept by co-operatives**

(cf Vic Act s 244)

Insert after section 249 (1) (f):

10

- (f1) a register of notifiable interests in accordance with  
section 294,

**[131] Sections 250 and 251**

Omit the sections. Insert instead:

**250 Location of registers** (cf Vic Act s 245)

15

- (1) A register kept under this Division must be kept at:
- (a) the co-operative's registered office, or
  - (b) an office at the co-operative's principal place of business, or
  - (c) an office (whether of the co-operative or of someone else) where the work involved in maintaining the register is done, or
  - (d) another office approved by the Registrar.
- (2) The office must be in New South Wales.

20

- (3) The co-operative must lodge with the Registrar a notice of the address at which the register is kept within 28 days after the register is:
- (a) established at an office that is not the co-operative's registered office, or 5
  - (b) moved from one office to another.
- Maximum penalty: 10 penalty units or imprisonment for 3 months, or both.

**251 Inspection of registers etc** (cf Vic Act s 246)

- (1) A co-operative must have at the office where the registers are kept and available during all reasonable hours for inspection by any member free of charge the following: 10
- (a) a copy of this Act and the regulations,
  - (b) a copy of the rules of the co-operative, 15
  - (c) a copy of the minutes of each general meeting of the co-operative,
  - (d) a copy of the last annual report of the co-operative under section 252,
  - (e) the register of directors, members and shares, 20
  - (f) the register of names of persons who have given loans or deposits to or hold securities or debentures given or issued by the co-operative,
  - (g) such other registers as the regulations provide are to be open for inspection under this section. 25
- Maximum penalty: 20 penalty units.
- (2) If a register is not kept on a computer, the person inspects the register itself.
- (3) If the register is kept on a computer, the person inspects a hard copy of the information on the register unless the person and the co-operative agree that the person can access the information by computer. 30



- 
- (4) A member is entitled to make a copy of entries in a register specified in subsection (1) and to do so free of charge unless the rules of the co-operative require a fee to be paid, in which case on payment of the required fee.
- (5) The fee required by the rules must not exceed the fee prescribed by the regulations for a copy of any entry in the Register. 5
- (6) A co-operative must:
- (a) permit a member to inspect a document or make a copy of a document that the member is entitled to inspect or make under this section, and 10
- (b) give the member all reasonable assistance to inspect the document or make the copy.
- Maximum penalty: 20 penalty units.
- (7) A co-operative must have at the place where the registers are kept and available during all reasonable hours for inspection by any person such documents in relation to the co-operative as are prescribed by the regulations. 15
- Maximum penalty: 20 penalty units.
- 251A Use of information on registers** (cf Vic Act s 247) 20
- (1) A person must not:
- (a) use information about a person obtained from a register kept under this Division to contact or send material to the person, or
- (b) disclose information of that kind knowing that the information is likely to be used to contact or send material to the person, 25
- unless the requirements of subsection (2) are met.
- Maximum penalty: 50 penalty units or imprisonment for one year, or both. 30
-

- (2) The requirements of this section for use or disclosure of the information are that the use or disclosure of the information is:
- (a) relevant to the holding of the directorship, membership, shares, loans, securities, debentures or deposits concerned or the exercise of the rights attaching to them, or 5
  - (b) approved by the board, or
  - (c) necessary to comply with a requirement of this Act. 10
- (3) A person who contravenes subsection (1) is liable to compensate anyone else who suffers loss or damage because of the contravention.
- (4) A person who makes a profit from a contravention of subsection (1) owes a debt to the co-operative. The amount of the debt is the amount of the profit. 15

**251B Notice of appointment etc of directors and officers**

(cf Vic Act s 248)

- (1) A co-operative must give notice to the Registrar in accordance with this section of the appointment of a person as a director, principal executive officer or secretary of the co-operative or any subsidiary of the co-operative, and of the cessation of any such appointment. 20
- (2) The notice must: 25
- (a) be in the form approved by the Registrar, and
  - (b) be given within 28 days after the appointment or cessation of appointment, and
  - (c) specify the particulars prescribed by the regulations of the appointment or cessation of appointment. 30

Maximum penalty: 20 penalty units.

**[132] Section 252**

Omit the section. Insert instead:

**252 Annual report** (cf Vic Act s 249)

- (1) A co-operative must send to the Registrar within the required period in each year an annual report containing each of the following: 5
- (a) a list in the form approved by the Registrar specifying the directors and the principal executive officers of the co-operative and of each subsidiary of the co-operative, as at the date that the annual report is sent to the Registrar, 10
  - (b) a copy of the accounts of the co-operative in respect of its financial year then last past,
  - (c) a copy of the accounts of each subsidiary of the co-operative in respect of the financial year of the subsidiary then last past, 15
  - (d) a copy of any report by the auditors or directors of the co-operative or subsidiary on the accounts referred to in paragraphs (b) and (c),
  - (e) a return in the form prescribed by the regulations containing such other particulars as may be so prescribed. 20

Maximum penalty: 20 penalty units.

- (2) For the purposes of subsection (1) *the required period* is: 25
- (a) 28 days after the annual general meeting of the co-operative, or
  - (b) if the annual general meeting of the co-operative is not held within the period specified in section 198 (2) (a), 28 days after the end of that period.



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**[133] Section 255 Name to include certain matter**      (cf Vic Act s 252)

Insert after section 255 (3):

- (4) A body corporate which is formed or incorporated under any Act other than this Act must not register under that other Act by any name which includes the word "Co-operative" or the abbreviation "Co-op." or any word or words importing a similar meaning. 5  
Maximum penalty: 20 penalty units.
- (5) Subsection (4) does not apply to:
  - (a) a co-operative housing society within the meaning of the *Co-operation Act 1923*, or 10
  - (b) a credit union or foreign society within the meaning of the *Financial Institutions (NSW) Code*, or
  - (c) a company or society formed or incorporated under any other Act before the commencement of the *Co-operation Act 1923*, or 15
  - (d) the Farmers and Settlers Co-operative Insurance Company of Australia Limited, or
  - (e) a foreign co-operative registered under Part 13A, or 20
  - (f) a co-operative exempted by the regulations from the operation of that subsection and that complies with any conditions to which the exemption is made subject, or 25
  - (g) a co-operative exempted by the Registrar in writing from the operation of that subsection and that complies with any conditions to which the exemption is made subject.
- (6) The Registrar is not to grant an exemption under this section unless satisfied that the body or organisation concerned is trading or carrying on business for the purpose of promoting the economic interests of its members in accordance with co-operative principles or 30

for any charitable purpose. The expression *charitable purpose* includes any benevolent, philanthropic or patriotic purpose.

- (7) An exemption granted by the Registrar may be limited as to time. 5
- (8) The Registrar may vary the conditions of an exemption or revoke an exemption by giving notice in writing of the variation or revocation to the body or any member of the controlling body of the organisation.

**[134] Section 258 Name to appear on business documents etc** 10  
(cf Vic Act s 254)

Omit section 258 (6). Insert instead:

- (6) In this section:
  - business document*, in relation to a co-operative, means a document that is issued, signed or endorsed by or on behalf of the co-operative and is: 15
  - (a) a business letter, statement of account, invoice or order for goods or services, or
  - (b) a bill of exchange, promissory note, cheque or other negotiable instrument, or 20
  - (c) a receipt or letter of credit issued by the co-operative, or
  - (d) a document of a class prescribed by the regulations as a class of business documents.

**[135] Section 259 Change of name of co-operative** (cf Vic Act s 255) 25

Omit section 259 (6). Insert instead:

- (6) The Registrar may direct a co-operative to change its name if the Registrar is of the opinion that the name is such as is likely to be confused with the name of a body corporate or a registered business name. 30

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- [136] Section 260 Restrictions on use of "co-operative" by other bodies**  
Omit the section.
- [137] Section 261 Registered office of co-operative** (cf Vic Act s 256)  
Omit "and the rules of the co-operative must state the address of the registered office" from section 261 (1). 5
- [138] Section 261 (3)**  
Omit "14 days". Insert instead "28 days".
- [139] Part 10 Funds, property etc, note**  
Insert before Division 1: 10  
**Note.** Each provision of Divisions 1 and 3–5 (other than sections 267 (in so far as it relates to employees), 284 and 285 (2) and (3)) is a core consistent provision.
- [140] Section 262 Meaning of obtaining financial accommodation** (cf Vic Act s 257) 15  
Insert "the obtaining of credit and" after "reference to" in section 262.
- [141] Section 263 Fund raising to be in accordance with Act and regulations** (cf Vic Act s 258)  
Omit section 263 (3). 20
- [142] Section 263A**  
Insert after section 263:  
**263A Limits on deposit taking** (cf Vic Act s 259)  
A co-operative must not accept money on deposit unless:  
(a) the co-operative was authorised by its rules immediately before the commencement of this Act to accept money on deposit, or 25



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- (b) the co-operative was a deposit-taking body corporate immediately before it became a co-operative and it is authorised by its rules to accept money on deposit, or
  - (c) in the case of a merged co-operative, one or more of the co-operatives involved in the merger was a deposit-taking co-operative immediately before the registration of the merged co-operative and the merged co-operative is authorised by its rules to accept money on deposit.

**263B Members etc not required to see to application of money** (cf Vic Act s 260)

A member or other person from whom a co-operative obtains financial accommodation is not required to see to its application and is not affected or prejudiced by the fact that in doing so the co-operative contravened any provision of this Act or the regulations or the rules of the co-operative.

**[143] Section 266**

Omit the section. Insert instead:

**266 Application of Corporations Law to issues of debentures** (cf Vic Act s 263)

- (1) The provisions of Parts 1.2A (Disclosing entities), 7.11 (Conduct in relation to securities) and 7.12 (Offering securities for subscription or purchase) of the *Corporations Law* are adopted by this section and apply to and in respect of debentures of a co-operative.
- (2) Those provisions apply with any modifications that are prescribed and as if:
  - (a) a co-operative were a company, and
  - (b) a reference in those provisions to a corporation included a co-operative,
  - (c) a reference in those provisions to the Commission were a reference to the Registrar.

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- (3) The provisions of the *Corporations Law* adopted by this section do not apply to a loan to which section 268 applies.
- (4) The provisions of the *Corporations Law* adopted by this section do not apply to an issue of debentures of a co-operative which is made: 5
  - (a) solely to members, or
  - (b) solely to members and employees of the co-operative, or
  - (c) to a person who on becoming an inactive member of the co-operative has had his or her share capital converted to debt. 10
- (5) Expressions used in this section which are not defined in this Act have the same meaning as in the *Corporations Law*. 15
- (6) The Registrar may exempt a co-operative from any of the requirements of the *Corporations Law* adopted by this section or by section 11.

**266A Disclosure statement** (cf Vic Act s 264)

- (1) This section applies to the issue of debentures of a co-operative where the issue is made: 20
  - (a) solely to members, or
  - (b) solely to members and employees of the co-operative.
- (2) Before issuing to the person debentures to which this section applies, a co-operative must provide a person with a disclosure statement, approved by the Registrar, and containing such information as is reasonably necessary to enable a person to make an informed assessment of the financial prospects of the co-operative, including: 25
  - (a) the purpose for which the money raised by the co-operative by the issue of debentures is to be used, and 30
  - (b) the rights and liabilities attaching to the debentures, and 35

(c)	the financial position of the co-operative, and	
(d)	the interests of the directors of the co-operative in the issue of the debentures, and	
(e)	any compensation or consideration to be paid to officers or members of the co-operative in connection with the issue of debentures, and	5
(f)	such other matters as the Registrar directs.	
(3)	Sections 17 (except subsections (2), (4) and (11)) and 28A apply to the approval of a disclosure statement under this section with any necessary modifications and in particular as if any reference in section 17 to a formation meeting were a reference to the issue of debentures.	10
<b>266B Approval of board for transfer of debentures</b>		
(cf Vic Act s 265)		15
A debenture of a co-operative cannot be sold or transferred except with the consent of the board and in accordance with the rules of the co-operative.		
<b>[144]</b>	<b>Section 267 Application of Corporations Law—re-issue of redeemed debentures</b> (cf Vic Act s 266)	20
Insert “or employees” after “members”.		
<b>[145]</b>	<b>Section 268</b>	
Omit the section. Insert instead:		
<b>268 Compulsory loan by member to co-operative</b>		
(cf Vic Act s 267)		25
(1)	If the rules of the co-operative so provide, the co-operative may require its members to lend money, with or without security, to the co-operative, in accordance with a proposal approved by special resolution of the co-operative.	30



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- (2) The proposal must not require a loan to be for a term exceeding 7 years or such other term as is prescribed by the regulations.
- (3) The proposal must:
- (a) be accompanied by a disclosure statement, approved by the Registrar, that explains the purpose for which the money raised by the co-operative pursuant to the proposal is to be used and includes any other information that the Registrar directs, and 5  
10
  - (b) clearly show the total amount of the loan to be raised by the co-operative and the basis on which the money required to be lent by each member is to be calculated, and
  - (c) be accompanied by a statement informing the member that the member may inform the board by notice on or before the date specified in the statement (being a date before the passing of the special resolution) that the member resigns on the passing of the special resolution. 15  
20
- (4) If the proposal so allows, the board of the co-operative may, in accordance with the terms of the proposal, deduct the money required to be lent by a member to the co-operative from money due from the co-operative to the member in respect of his or her dealings with the co-operative. 25
- (5) A proposal to deduct money referred to in subsection (4) must, in addition, clearly show:
- (a) the basis on which the money is to be deducted, and 30
  - (b) the time and manner of making the deductions.
- (6) When approved, the proposal is binding on:
- (a) all members of the co-operative at the date of passing of the special resolution other than a member who has given a notice of resignation in accordance with subsection (3) (c), and 35

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- (b) all persons who become members of the co-operative after that date and before the total amount of the loan to be raised pursuant to the proposal has been raised.
- (7) Sections 17 (except subsections (2), (4) and (11)) and 28A apply to the approval of a disclosure statement under this section with any necessary modifications and in particular as if any reference in section 17 to a formation meeting were a reference to the special resolution. 5 10

**268A Interest payable on compulsory loan** (cf Vic Act s 268)

- (1) The rate of interest payable by a co-operative in respect of a loan under section 268 during any period is:
- (a) in the case of a co-operative with share capital:
- (i) the rate (or, if there is more than one rate, at the higher or highest rate) of dividend payable in respect of that period on the share capital of the co-operative, or 15
- (ii) if the rate of dividend payable in respect of that period has not been determined, at the rate (or the higher or highest rate) payable in respect of the immediately preceding period for which a rate has been determined, or 20
- (iii) if a rate of dividend has never been determined in respect of the share capital of the co-operative, at the rate that the board of the co-operative considers reasonable, or 25
- (b) in the case of a co-operative without share capital, at the rate that the board of the co-operative considers reasonable, or 30
- (c) if the rules provide for a rate to be payable that is higher than the rate applicable under paragraph (a) or (b), at that higher rate.
- (2) A member may agree to the rate of interest being less than that which would otherwise be payable under this section and may agree to no interest being paid. 35

**[146] Sections 280–283**

Omit the sections. Insert instead:

**280 Retention of surplus for benefit of co-operative**

(cf Vic Act s 271)

The board of a co-operative may resolve to retain all or 5  
any part of the surplus arising in any year from the  
business of the co-operative to be applied for the benefit  
of the co-operative.

**281 Application for charitable purposes or members' purposes**

(cf Vic Act s 272)

10

- (1) The rules of a co-operative may authorise the 15  
co-operative to apply a part of the surplus arising in any  
year from the business of the co-operative for any  
charitable purpose. The expression *charitable purpose*  
includes any benevolent, philanthropic or patriotic  
purpose.
- (2) The rules of a trading co-operative may authorise the 20  
co-operative to apply a part of the surplus arising in any  
year from the business of the co-operative for supporting  
any activity approved by the co-operative.
- (3) The rules must limit the amount that may be applied  
under subsection (1) or (2) to a specified proportion of  
the surplus.
- (4) A co-operative may apply part of the surplus for a 25  
purpose and to the extent authorised by rules under  
subsection (1) or (2).

**282 Distribution of surplus or reserves to members**

(cf Vic Act s 273)

- (1) The rules of a trading co-operative may authorise the 30  
co-operative to apply a part of the surplus arising in any  
year from the business of the co-operative or a part of  
the reserves of the co-operative by:
  - (a) distribution to members as a rebate on the basis of  
business done with the co-operative, or



- 
- (b) the issue of bonus shares to members, or
  - (c) the issue to members of a limited dividend.
  - (2) The amount of any rebate or dividend payable to a member under subsection (1) may, with the consent of the member, be applied:
    - (a) in payment for the issue to the member of bonus shares, or
    - (b) as a loan to the co-operative.
  - (3) In this section *limited dividend* means a dividend that does not exceed the amount prescribed by the regulations or such other amount or rate as the Registrar may approve in any particular case.

**283 Application of surplus to other persons**

(cf Vic Act s 274)

- (1) If authorised by its rules, any part of the surplus arising in any year from the business of a trading co-operative may be credited to any person who is not a member, but is qualified to be a member, by way of rebate in proportion to the business done by him or her with the co-operative, if:
  - (a) the person was a member at the time the business was done and the membership has lapsed, or
  - (b) the person has applied for membership after the business was done.
- (2) Nothing in this section precludes the payment of a bonus to an employee in accordance with the terms of his or her employment.

**[147] Section 285 Acquisition and disposal of assets** (cf Vic Act s 275)

Omit section 285 (1). Insert instead:

- (1) A co-operative must not do any of the following things except as approved by special resolution by means of a special postal ballot:

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| (a) | sell or lease as a going concern, the undertaking of the co-operative or a part of the undertaking that relates to its primary activities the value of which represents 5% or more of the total value of the undertaking,  | 5        |
| (b) | acquire from or dispose to a director or employee of the co-operative, or a relative (within the meaning of the <i>Corporations Law</i> ) of such a director or employee or of the spouse of such a director or employee, of any property the value of which represents 5% or more of the total value of all the assets of the co-operative that relate to its primary activities, | 10       |
| (c) | acquire an asset the value of which exceeds 5% or more of the assets of the co-operative if the acquisition would result in the co-operative commencing to carry on an activity that is not one of its primary activities,   | 15       |
| (d) | dispose of an asset if the disposal would result in the co-operative ceasing to carry on any primary activity of the co-operative, or in the ability of the co-operative to carry on any primary activity of the co-operative being substantially impaired either generally or in a particular geographical region.  | 20<br>25 |
- [148] Section 285 (3)**
- Omit "50 penalty units". Insert instead "60 penalty units".
- [149] Part 11 Restrictions on acquisition of interests in co-operatives, note**
- Insert before Division 1:
- 30
- Note.** Each provision of this Part (other than sections 300 (1) and 308) is a core consistent provision.
- [150] Section 288 Requirements for notices** (cf Vic Act s 279)
- Omit "prescribed form" from section 288 (a).
- Insert instead "form approved by the Registrar".
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**[151] Section 295 Unlisted companies to provide list of shareholders etc** (cf Vic Act s 286)

Omit "1 month" wherever occurring in section 295 (3).  
Insert instead "28 days".

**[152] Sections 303 and 304** 5

Omit the sections.

**[153] Part 12, heading**

Omit "Amalgamation". Insert instead "Merger".

**[154] Part 12, note**

Insert before Division 1: 10

**Note.** Each provision of the Part (other than sections 311A (3), 312, 314, 315, 316 (4), 332A and 338) is a core consistent provision.

**[155] Part 12, Division 1, heading**

Omit "Amalgamation". 15  
Insert instead "Merger and transfer of engagements".

**[156] Sections 309–311C**

Omit sections 309–311. Insert instead:

**309 Application of Division** (cf Vic Act s 298)

This Division does not apply to a merger or transfer of engagements to which Part 13A applies. 20

**310 Mergers and transfers of engagements of local co-operatives** (cf Vic Act s 299)

Any 2 or more co-operatives may consolidate all or any of their assets, liabilities and undertakings by way of merger or transfer of engagements approved under this Division. 25



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**311 Requirements before application can be made**

(cf Vic Act s 300)

- (1) Before co-operatives can apply for approval under this Division of a merger or transfer of engagements, the proposed merger or transfer must have been approved by each of the co-operatives by: 5
  - (a) a special resolution passed by means of a special postal ballot, or
  - (b) if permitted by subsection (2)—a resolution of the board of the co-operative. 10
- (2) The proposed merger or transfer of engagements may be approved by resolution of the board of a co-operative if the Registrar consents to that procedure applying in the particular case.

**311A Disclosure statement required** (cf Vic Act s 301) 15

- (1) A resolution of a co-operative is not effective for the purposes of this Division unless this section and section 194 (1), (2) and (4) has been complied with.
- (2) Each co-operative must send to each of its members a disclosure statement approved by the Registrar specifying: 20
  - (a) the financial position of the each co-operative concerned in the proposed merger or transfer of engagements as shown in financial statements that have been prepared as at a date that is not more than 6 months before the date of the statement, and 25
  - (b) any interest that any officer of each co-operative has in the proposed merger or transfer of engagements, and 30
  - (c) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to any officer or member of each co-operative in relation to the proposed merger or transfer of engagements, and 35

- 
- (d) whether the proposal is a merger or transfer of engagements and the reason for the merger or transfer of engagements, and
  - (e) in the case of a transfer of engagements, whether it is a total or partial transfer of engagements, and 5
  - (f) any other information that the Registrar directs.
  - (3) The disclosure statement must be sent to the members of each co-operative so that it will in the ordinary course of post reach each member who is entitled to vote on the special resolution not later 21 days before the day on which the ballot commences. 10

**311B Making an application** (cf Vic Act s 302)

- (1) An application for approval of a merger or transfer of engagements under this Division must be made to the Registrar in the manner and form required by the Registrar. 15
- (2) An application for approval of a merger must be accompanied by 2 copies of the proposed rules of the merged co-operative and any other particulars required by the Registrar. 20

**311C Approval of merger** (cf Vic Act s 303)

- (1) The Registrar must approve a merger pursuant to an application under this Division if satisfied that:
  - (a) this Division has been complied with in relation to the application, and 25
  - (b) the proposed rules of the merged co-operative are consistent with this Act and the regulations and are such that may reasonably be approved, and
  - (c) the certificates of registration of the co-operatives have been surrendered to the Registrar, and 30
  - (d) there is no good reason why the merged co-operative and its rules should not be registered.

- (2) On approving an application for merger, the Registrar must:
  - (a) cancel the registration of the co-operatives involved in the merger, and
  - (b) register the merged co-operative and its rules, and 5
  - (c) issue to the merged co-operative a certificate of registration under this Act.
- (3) A merger takes effect on the issue of the certificate of registration for the merged co-operative.

**[157] Section 312 Exemptions concerning mergers** 10

Insert "concerning mergers" after "any matter" in section 312 (1).

**[158] Section 312 (2) and (3)**

Omit the subsections.

**[159] Division 2**

Omit the heading. 15

**[160] Section 313**

Omit the section. Insert instead:

**313 Approval of transfer of engagements** (cf Vic Act s 304)

- (1) The Registrar must approve a transfer of engagements pursuant to an application under this Division if satisfied that: 20
  - (a) this Division has been complied with in relation to the application, and
  - (b) the rules or proposed rules of the transferee co-operative are adequate, and 25
  - (c) in the case of a total transfer of engagements from a co-operative, the certificate of registration of the co-operative has been surrendered to the Registrar, and
  - (d) there is no good reason why the transfer of 30 engagements should not take effect.



- (2) A transfer of engagements takes effect on the day specified in the approval of the Registrar.

**[161] Section 314 Transfer of engagements by direction of Registrar**  
(cf Vic Act s 305)

Omit "10 penalty units" from section 314 (7).  
Insert instead "20 penalty units".

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**[162] Section 316 Application for transfer** (cf Vic Act s 307)

Omit section 316 (2). Insert instead:

- (2) Before an application is made, the co-operative must by special resolution passed by means of a special postal ballot:
- (a) approve the proposed application, and
- (b) determine under what name the co-operative is to apply to be incorporated or registered, and
- (c) adopt any memorandum or articles of association or rules that may be necessary or considered desirable.

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**[163] Sections 321 (2), 339 (1) (except where firstly occurring) and (2) (except where firstly occurring), 351 (1) and 357 (2) (a) and (3) (g)**

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Omit "amalgamation" wherever occurring. Insert instead "merger".

**[164] Section 325 Application of Corporations Law to winding up**  
(cf Vic Act s 316)

Insert after section 325 (3) (b):

- (b1) section 513B (Voluntary winding up) were amended by inserting after paragraph (d):
- "(da) if the winding up is on the certificate of the Registrar—on the date that the certificate is given, or",

25

**[165] Section 328 Distribution of surplus—non-trading co-operatives**  
(cf Vic Act s 319)

Omit section 328 (1). Insert instead:

- (1) On a winding up of a non-trading co-operative, the surplus property of the co-operative must be distributed as required by the rules of the co-operative. 5

**[166] Section 330**

Omit the section. Insert instead:

**330 Review of liquidator's remuneration** (cf Vic Act s 321)

Any member or creditor of a co-operative or the liquidator may at any time before the completion of the winding up of the co-operative apply to the Court to review the amount of the remuneration of the liquidator. 10

**[167] Section 332 Adoption of Part 5.3A of Corporations Law**  
(cf Vic Act s 323)

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Omit "sections 36–39" from section 332 (2) (b).  
Insert instead "sections 36–38".

**[168] Sections 333–337**

Omit the sections. Insert instead:

**333 Appointment of administrator of co-operative**  
(cf Vic Act s 324)

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- (1) The Registrar may, by written notice, appoint an administrator to conduct the affairs of a co-operative.
- (2) A notice of appointment of an administrator must specify: 25
- (a) the date of appointment, and
  - (b) the appointee's name, and
  - (c) the appointee's business address.

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- (3) If the appointee's name or business address changes, the appointee must immediately give written notice of the change to the Registrar.
  - (4) The Registrar must not appoint an administrator unless the necessary grounds for the taking of that action exist, as referred to in section 343. 5

**334 Effect of appointment of administrator** (cf Vic Act s 325)

- (1) On the appointment of an administrator of a co-operative:
  - (a) the directors of the co-operative cease to hold office, and 10
  - (b) all contracts of employment with the co-operative are terminated, and
  - (c) all contracts for the provision of secretarial or administrative services for the co-operative are terminated, and 15
  - (d) the administrator may terminate any contract for providing other services to the co-operative.
- (2) An administrator of a co-operative has the functions of the board of the co-operative, including the board's powers of delegation. 20
- (3) A director of a co-operative must not be appointed or elected while the administrator is in office except as provided by this Division.

**335 Revocation of appointment** (cf Vic Act s 326) 25

- (1) An administrator holds office until the administrator's appointment is revoked or the administrator dies.
- (2) The Registrar may, by written notice, revoke the appointment of an administrator.
- (3) When a liquidator of a co-operative is appointed, the appointment of any administrator of the co-operative is automatically revoked. 30



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- (4) Immediately on the revocation of an administrator's appointment, the administrator must prepare and submit a report to the Registrar showing how the administration was carried out, and for that purpose an administrator has access to the co-operative's records and documents. 5
- (5) On providing the report and accounting fully in relation to the administration of the co-operative to the satisfaction of the Registrar, the administrator is released from any further duty to account in relation to the administration of the co-operative other than on account of fraud, dishonesty, negligence or wilful failure to comply with this Act or the regulations. 10
- (6) Before revoking the appointment of an administrator of a co-operative, the Registrar must:
  - (a) appoint another administrator, or 15
  - (b) appoint a liquidator, or
  - (c) ensure that directors of the co-operative have been elected in accordance with the rules of the co-operative at a meeting convened by the administrator in accordance with those rules, or 20
  - (d) appoint directors of the co-operative.
- (7) Directors elected or appointed under subsection (6):
  - (a) take office on revocation of the administrator's appointment, and
  - (b) in the case of directors appointed under subsection (6), hold office until the next annual general meeting of the co-operative after the revocation of that appointment. 25

**336 Expenses of administration** (cf Vic Act s 327)

- (1) The expenses of and incidental to the conduct of a co-operative's affairs by an administrator are payable from the co-operative's funds. 30

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- (2) The expenses of conducting a co-operative's affairs include:
- (a) if the administrator is not an officer or employee of the public service, remuneration of the administrator at a rate approved by the Registrar, or 5
  - (b) if the administrator is an officer or employee of the public service, the amount that the Registrar certifies should be paid to the credit of the public service as repayment of the administrator's remuneration. 10
- (3) An amount certified under subsection (2) (b) may be recovered in a court of competent jurisdiction as a debt due to the Crown.
- (4) An administrator has, in relation to the expenses specified in subsection (1), the same priority on the winding up of a co-operative as the liquidator of the co-operative has. 15

### **337 Liabilities arising from administration** (cf Vic Act s 328)

- (1) If a co-operative incurs any loss because of any fraud, dishonesty, negligence or wilful failure to comply with this Act or the regulations or the rules of the co-operative by an administrator, the administrator is liable for the loss. 20
- (2) An administrator is not liable for any loss that is not a loss to which subsection (1) applies but must account for the loss in a report given under section 335. 25

### **337A Additional powers of Registrar** (cf Vic Act s 329)

- (1) If the Registrar appoints directors of a co-operative under section 335, the Registrar may, by written notice given to the co-operative, specify: 30
- (a) a time during which this section is to apply in relation to the co-operative, and
  - (b) the terms and conditions on which all or any of the directors hold office, and 35
  - (c) the rules that are to be the co-operative's rules.

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- (2) While this section applies to a co-operative, the Registrar may:
- (a) from time to time remove and appoint directors, and
  - (b) from time to time, vary, revoke or specify new terms and conditions in place of all or any of the terms and conditions specified under subsection (1), and 5
  - (c) amend all or any of the rules specified under subsection (1). 10
- (3) The Registrar may, by written notice given to the co-operative, extend the time for which this section is to apply in relation to a co-operative.
- (4) A rule specified by the Registrar under this section as a rule of a co-operative: 15
- (a) is not to be altered except in the way set out in this section, and
  - (b) if it is inconsistent with any other rule of the co-operative, prevails over the other rule, and the other rule is to the extent of the inconsistency invalid, and 20
  - (c) has the same evidentiary value as is by this Act accorded to the co-operative's rules and to copies of them.
- 337B Stay of proceedings** (cf Vic Act s 330) 25
- (1) If the Registrar appoints an administrator to conduct a co-operative's affairs, a person must not begin or continue any proceeding in a court against the co-operative until the administrator's appointment is revoked except with the leave of the Court and, if the Court grants leave, in accordance with any terms and conditions that the Court imposes. 30
- (2) A person intending to apply for leave of the Court under subsection (1) must give the Registrar not less than 10 days' notice of intention to apply. 35



- (3) On the hearing of an application under subsection (1), the Registrar may be represented and may oppose the granting of the application.

**337C Administrator to report to Registrar** (cf Vic Act s 331)

On the receipt of a request from the Registrar, the administrator of a co-operative must, without delay, prepare and give to the Registrar a report showing how the administration is being carried out. 5

**[169] Part 12, Division 7, heading**

Omit "amalgamation". Insert instead "merger". 10

**[170] Section 339 How this Division applies to a merger**

(cf Vic Act s 332)

Omit "(including when a foreign co-operative is involved)" from section 339 (1).

**[171] Section 339 (2), definitions of "new body" and "original body"** 15

Omit "or foreign co-operative" wherever occurring.

**[172] Section 339 (2), definition of "relevant day"**

Omit "or the amalgamated foreign co-operative is registered, incorporated or established under the law of the place outside the State". 20

**[173] Section 340 How this Division applies to transfer of engagements** (cf Vic Act s 333)

Omit "Division 2" from section 340 (1). Insert instead "Division 1".

**[174] Section 342, heading**

Omit the heading. Insert instead:

**342 Effect of merger on property, liabilities etc .**  
(cf Vic Act s 335)

**[175] Section 342 (1)**

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Omit "clause". Insert instead "section".

**[176] Section 342 (4)**

Omit the subsection.

**[177] Part 13 Arrangements and reconstructions, note**

Insert before Division 1:

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**Note.** Each provision of this Part is a core consistent provision.

**[178] Section 351 Directors to arrange for reports** (cf Vic Act s 346)

Omit "10 penalty units" from section 351 (2).  
Insert instead "20 penalty units".

**[179] Section 353 Court need not approve compromise or arrangement takeovers** (cf Vic Act s 348)

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Omit "is not to" from section 353 (1). Insert instead "need not".

**[180] Section 357, heading**

Omit the heading. Insert instead:

**357 Provisions for facilitating reconstructions and mergers**  
(cf Vic Act s 352)

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**[181] Section 360 Acquisition of shares pursuant to notice to dissenting shareholder** (cf Vic Act s 355)

Omit "1 month" from section 360 (4). Insert instead "28 days".

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**[182] Section 362 Remaining shareholders may require acquisition**  
(cf Vic Act s 357)

Omit "1 month" from section 362 (1) (a). Insert instead "28 days".

**[183] Section 363 Transfer of shares pursuant to compulsory acquisition** (cf Vic Act s 358)

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Omit "1 month" from section 363 (2) (a). Insert instead "28 days".

**[184] Section 365 Notification of appointment of scheme manager**  
(cf Vic Act s 360)

Omit "5 penalty units". Insert instead "10 penalty units".

**[185] Part 13A (sections 369A–369W)**

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Insert after Part 13:

**Part 13A Foreign co-operatives**

**Note.** Each provision in this Part is a core consistent provision.

**Division 1 Introductory**

**369A Definitions** (cf Vic Act s 365)

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In this Part:

***co-operatives law*** means a law that under an order in force under section 369B is declared to be a co-operatives law for the purposes of this Part.

***non-participating co-operative*** means a foreign co-operative other than a participating co-operative.

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***participating co-operative*** means a foreign co-operative that is registered, incorporated or formed under, or subject to, a co-operatives law.



*participating State* means any State in which a co-operatives law is in force.

*State* includes the Australian Capital Territory and the Northern Territory.

**369B Co-operatives law** (cf Vic Act s 366) 5

- (1) Subject to subsection (2), the Governor may, by order published in the Gazette, declare that a law of a State other than New South Wales is a co-operatives law for the purposes of this Part.
- (2) An order must not be made under subsection (1) in respect of the law of another State unless the Governor is satisfied that the law:
  - (a) substantially corresponds to the provisions of this Act, and
  - (b) contains provisions that are referred to in this Part as provisions of a co-operatives law that correspond to specified provisions of this Act. 15

**Division 2 Registration of foreign co-operatives**

**369C Operation of foreign co-operatives in New South Wales** (cf Vic Act s 367) 20

A foreign co-operative must not carry on business in New South Wales unless it is registered under this Part.

Maximum penalty: 240 penalty units.

**369D What constitutes carrying on business** (cf Vic Act s 368)

- (1) A foreign co-operative carries on business in New South Wales if it:
  - (a) solicits for members in New South Wales, or
  - (b) seeks share capital in New South Wales, or
  - (c) provides any goods or services within New South Wales. 30

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- (2) A foreign co-operative is not to be regarded as carrying on business in New South Wales only by reason that in New South Wales it:
- (a) is or becomes a party to any action or suit or arbitration proceeding or effects settlement of an action, suit or proceeding or of any claim or dispute, or 5
  - (b) holds meetings of its directors or members or carries on other activities concerning its internal affairs, or 10
  - (c) maintains any bank account, or
  - (d) effects any sale through an independent contractor, or
  - (e) solicits or procures any offer that becomes a binding contract only if the offer is accepted outside New South Wales, or 15
  - (f) creates evidence of any debt or creates a charge on real and personal property, or
  - (g) secures or collects any of its debts or enforces its rights in regard to any securities relating to the debts, or 20
  - (h) conducts an isolated transaction that is completed within a period of 31 days not being one of a number of similar transactions repeated from time to time. 25

**369E Application for registration of participating co-operative**  
(cf Vic Act s 369)

- (1) A participating co-operative that proposes to carry on business as a co-operative in New South Wales may apply to the Registrar in the manner prescribed by the regulations to be registered as a foreign co-operative. 30
- (2) An application by a participating co-operative must be accompanied by:

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- (a) a certificate, not more than 2 months old, from the Registrar of the participating State, in which the participating co-operative is registered, incorporated or formed stating that the co-operative is complying with the provisions of the co-operatives law of that State prescribed for the purpose of the section of that law that corresponds with section 369N, and 5
  - (b) the documents prescribed for the purpose of the section of the co-operatives law of that State that corresponds with section 369N, and 10
  - (c) a copy of the current rules of the co-operative, and
  - (d) a statement, verified as prescribed by the regulations, setting out:
    - (i) the full name and address of each person who will act as agent of the co-operative in New South Wales, and 15
    - (ii) the address of the proposed registered office of the co-operative in New South Wales, and 20
    - (iii) a copy of an instrument appointing a person resident in New South Wales (other than a body corporate incorporated outside New South Wales) as a person on whom all notices and legal process may be served on behalf of the co-operative, and 25
  - (e) any other documents or information that are prescribed by the regulations, and
  - (f) the fee prescribed by the regulations.
- 369F Application for registration of non-participating co-operative** (cf Vic Act s 370) 30
- (1) A non-participating co-operative that proposes to carry on business as a co-operative in New South Wales may apply to the Registrar in the manner prescribed by the regulations to be registered as a foreign co-operative. 35



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- (2) An application by a non-participating co-operative must be accompanied by:
- (a) a copy of the current rules of the co-operative, and
  - (b) a statement, verified as prescribed by the regulations, setting out:
    - (i) the full name and address of each person who will act as agent of the co-operative in New South Wales, and
    - (ii) the address of the proposed registered office of the co-operative in New South Wales, and
    - (iii) a copy of an instrument appointing a person resident in New South Wales (other than a body corporate incorporated outside New South Wales) as a person on whom all notices and legal process may be served on behalf of the co-operative, and
  - (c) any other documents or information that are prescribed by the regulations, and
  - (d) the fee prescribed by the regulations.

**369G Registrar to approve rules of non-participating co-operative** (cf Vic Act s 371)

- A non-participating co-operative is not eligible for registration unless the Registrar is satisfied that the rules of the co-operative:
- (a) comply with co-operative principles, and
  - (b) include acceptable active membership provisions, and
  - (c) provide procedures acceptable to the Registrar for disclosure of information, and
  - (d) provide that a member has one vote only, and
  - (e) make adequate provision for the duties of directors, and
  - (f) provide for acceptable accounting standards for the co-operative.

**369H Name of foreign co-operative** (cf Vic Act s 372)

- (1) A foreign co-operative is eligible for registration under this Part if the name under which it proposes to carry on business in New South Wales is not such as is likely to be confused with the name of a body corporate or a registered business name. 5
- (2) If the Registrar advises the foreign co-operative that the name under which it proposes to carry on business in New South Wales is likely to be confused with the name of a body corporate or registered business name, the co-operative may amend its application by substituting another name. 10

**369I Registration of foreign co-operative** (cf Vic Act s 373)

If, on due application, the Registrar is satisfied that the foreign co-operative is eligible for registration, the Registrar must register the foreign co-operative as a foreign co-operative and issue a certificate of registration in accordance with the regulations. 15

**369J Application of Act and regulations to foreign co-operatives** (cf Vic Act s 374) 20

The provisions of this Act and the regulations prescribed by the regulations apply, with all necessary modifications and any modifications prescribed by the regulations, to a foreign co-operative which is registered under this Part as if the foreign co-operative were a co-operative. 25

**369K Registrar to be notified of certain changes**  
(cf Vic Act s 375)

Within 28 days of any alteration affecting:

- (a) the rules or constitution of a foreign co-operative registered under this Part, or 30
- (b) the directors of the foreign co-operative, or
- (c) the agents (or their addresses) of the foreign co-operative, or

- 
- (d) the person appointed as the person on whom notices and legal process may be served on behalf of the foreign co-operative, or
  - (e) the address of the registered office in New South Wales of the foreign co-operative, or 5
  - (f) the address of the registered office in the participating State of a participating co-operative registered under this Part, or
  - (g) the name under which the participating co-operative carries on business in the participating State, 10

the foreign co-operative must lodge with the Registrar particulars of the alteration accompanied by any documents prescribed by the regulations.

**369L Balance sheets** (cf Vic Act s 376) 15

- (1) A foreign co-operative registered under this Part must, within 6 months (or such longer period as the Registrar may allow) of the end of each of its financial years, lodge with the Registrar:
  - (a) in the case of a participating co-operative, a copy of the balance sheet relating to its financial affairs as at the end of the financial year, in the form and with any accompanying documents required by the co-operatives law of the participating State concerned, and 20
  - (b) in the case of a non-participating co-operative, a copy of the balance sheet relating to its financial affairs as at the end of the financial year, in the form and with any accompanying documents required by the Registrar. 25

Maximum penalty: 20 penalty units.

- (2) If the Registrar is of the opinion that a balance sheet lodged with the Registrar under this section does not sufficiently disclose the financial affairs of the foreign



co-operative, the Registrar may, by written notice, require the foreign co-operative to give the Registrar further information or documents.

- (3) A foreign co-operative must comply with a notice given to it under subsection (2) within the period specified in the notice. 5

Maximum penalty: 60 penalty units.

**369M Cessation of business** (cf Vic Act s 377)

- (1) A foreign co-operative registered under this Part must, within 7 days of ceasing to carry on business as a co-operative in New South Wales, notify the Registrar in writing of that fact. 10

Maximum penalty: 60 penalty units.

- (2) On notifying the Registrar that it has ceased to carry on business as a co-operative in New South Wales, a foreign co-operative is no longer obliged to comply with this Part. 15

- (3) Unless the Registrar has been notified in writing that the foreign co-operative has resumed carrying on business as a co-operative in New South Wales, the Registrar must, one year after receiving a notification under subsection (1), cancel the registration of the foreign co-operative. 20

**369N Co-operative proposing to register as a foreign co-operative** (cf Vic Act s 378)

- (1) A co-operative that proposes to apply to be registered as a foreign co-operative in another participating State may apply to the Registrar for a certificate that it is complying with all provisions of this Act prescribed by the regulations including, if the Registrar has varied a requirement in relation to that co-operative, the provision as varied. 25 30

- (2) The Registrar must issue the certificate to the co-operative unless he or she is of the opinion that the co-operative is not complying with the provisions so prescribed. 35

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

### Division 3 Mergers and transfers of engagements

#### 369O Who is the appropriate Registrar? (cf Vic Act s 379) 5

In this Division:

*appropriate Registrar* in relation to a proposed merger or transfer of engagements means:

- (a) the New South Wales Registrar, if the merger is to result in a New South Wales co-operative or the transfer is to a New South Wales co-operative, or 10
- (b) the Registrar for the participating State concerned, if the merger is to result in a co-operative under the co-operatives law of that participating State or the transfer is to such a co-operative. 15

#### 369P Authority for merger or transfer of engagements (cf Vic Act s 380)

- (1) A New South Wales co-operative and a participating co-operative may consolidate all or any of their assets, liabilities and undertakings by way of merger or transfer of engagements approved under this Division. 20
- (2) A New South Wales co-operative and a non-participating co-operative may consolidate all or any of their assets, liabilities and undertakings by way of merger or transfer of engagements approved under this Division if: 25
  - (a) the merger is to result in a New South Wales co-operative, or
  - (b) the transfer is to a New South Wales co-operative.

#### 369Q Requirements before application can be made (cf Vic Act s 381) 30

- (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 by:
- (a) a special resolution passed by special postal ballot, or 5
  - (b) if permitted by subsection (3), 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: 10
- (a) must have been approved:
    - (i) in the case of the non-participating co-operative, by a special resolution of the co-operative, and 15
    - (ii) in the case of the New South Wales co-operative, by a special resolution passed by special postal ballot, or
  - (b) if permitted by subsection (3), must have been approved by a resolution of the board of each of the co-operatives. 20
- (3) The proposed merger or transfer of engagements may be approved by resolution of the board of a co-operative if:
- (a) the New South Wales Registrar consents to that procedure applying in the particular case, and 25
  - (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. 30

**369R Disclosure statement required** (cf Vic Act s 382)

- (1) A special resolution of the New South Wales co-operative or foreign co-operative is not effective for the purposes of this Division unless this section has been complied with. 35



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- (2) Each co-operative must send to each of its members a disclosure statement approved by the appropriate Registrar specifying:
- (a) the financial position of the New South Wales co-operative and the foreign co-operative as shown in financial statements that have been prepared as at a date that is not more than 6 months before the date of the statement, and 5
  - (b) any interest that any officer of the New South Wales co-operative or the foreign co-operative has in the proposed merger or transfer of engagements, and 10
  - (c) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to any officer or member of the New South Wales co-operative or foreign co-operative in relation to the proposed merger or transfer of engagements, and 15
  - (d) whether the proposal is a merger or transfer of engagements and the reason for the merger or transfer of engagements, and 20
  - (e) in the case of a transfer of engagements—whether it is a total or partial transfer of engagement, and
  - (f) in the case of a merger—whether the merged co-operative will result in a New South Wales co-operative or a co-operative under the co-operatives law of the participating State concerned, and 25
  - (g) any other information that the Registrar directs.
- (3) The disclosure statement must be sent to the members of the New South Wales co-operative or foreign co-operative so that it will in the ordinary course of post reach each member who is entitled to vote on the special resolution not later than: 30
- (a) where the resolution is to be decided at a meeting—21 days before the date of the meeting, or 35
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- (b) where the resolution is to be decided by a postal ballot—21 days before the day on or before which the ballot papers must be returned by members voting in the ballot.
- (4) The appropriate Registrar may exempt the New South Wales co-operative or foreign co-operative from complying with this section. 5
- (5) The appropriate Registrar may grant an exemption, or approve a disclosure statement, subject to any conditions it considers appropriate. 10

**369S Making an application** (cf Vic Act s 383)

- (1) An application for approval of a merger or transfer of engagements under this Division must be made to the New South Wales Registrar and, if the merger or transfer of engagements affects a participating co-operative, to the Registrar for the participating State concerned in the manner and form required by the Registrar concerned. 15
- (2) An application for approval of a merger must be accompanied by:
  - (a) 2 copies of the proposed rules of the merged co-operative, and 20
  - (b) in the case of a non-participating co-operative, details of voting on the special resolution (if any) of the co-operative, and
  - (c) any other information required by the Registrar to whom the application is made. 25

**369T Approval of merger** (cf Vic Act s 384)

- (1) If the New South Wales Registrar is the appropriate Registrar, he or she must approve a merger pursuant to an application under this Division if satisfied that: 30
  - (a) this Division has been complied with in relation to the application, and
  - (b) the proposed rules of the merged co-operative are adequate, and

- 
- (c) the certificate of registration of the New South Wales co-operative has been surrendered to the New South Wales Registrar, and
  - (d) in the case of a merger with a participating co-operative, the certificate of registration of the participating co-operative has been surrendered to the Registrar for the participating State concerned, and 5
  - (e) in the case of a merger with a non-participating co-operative, the merged co-operative will comply with this Act, and 10
  - (f) there is no good reason why the merged co-operative and its rules should not be registered.
  - (2) If the New South Wales Registrar is not the appropriate Registrar, he or she must approve a merger pursuant to an application under this Division if satisfied that the merger has been approved under the provision of the co-operatives law of the participating State that corresponds with subsection (1). 15
  - (3) On approving an application for merger, the New South Wales Registrar must: 20
    - (a) cancel the registration of the New South Wales co-operative involved in the merger, and
    - (b) if the merger is to result in a New South Wales co-operative, register the merged co-operative and its rules and issue to it a certificate of registration under this Act. 25
  - (4) A merger takes effect on the issue of the certificate of registration for the merged co-operative (whether under this Act or under the co-operatives law of the participating State concerned). 30

### 369U Approval of transfer of engagements (cf Vic Act s 385)

- (1) If the New South Wales Registrar is the appropriate Registrar, he or she must approve a transfer of engagements pursuant to an application under this Division if satisfied that: 35



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- (a) this Division has been complied with in relation to the application, and
  - (b) the rules or proposed rules of the transferee co-operative are adequate, and
  - (c) in the case of a total transfer of engagements from a participating co-operative, the certificate of registration of the participating co-operative has been surrendered to the Registrar for the participating State concerned, and 5
  - (d) in the case of a total transfer of engagements from a non-participating co-operative, the certificate of registration of the non-participating co-operative has been surrendered to the Registrar, and 10
  - (e) in the case of a transfer of engagements by a non-participating co-operative, the transferee co-operative will comply with this Act, and 15
  - (f) there is no good reason why the transfer of engagements should not take effect.
- (2) If the New South Wales Registrar is not the appropriate Registrar, he or she must approve a transfer of engagements pursuant to an application under this Division if satisfied that the transfer has been approved under the provision of the co-operatives law of the participating State that corresponds with subsection (1). 20
  - (3) A transfer of engagements takes effect on the day specified in the approval of the New South Wales Registrar. 25

**369V Effect of merger or transfer of engagements**

(cf Vic Act s 386)

- (1) In this section: 30
 

*assets* means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money) and includes securities, choses in action and documents. 35

**instrument** means an instrument (other than this Act) which creates, modifies, or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law) and includes any judgment, order and process of a court.

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**liabilities** means liabilities, debts and obligations (whether present or future and whether vested or contingent).

**original co-operative** means:

- (a) in the case of a transfer of engagements, the transferor co-operative, or
- (b) in the case of a merger, each of the co-operatives that are merging.

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**successor co-operative** means:

- (a) in the case of a transfer of engagements, the transferee co-operative, or
- (b) in the case of a merger, the co-operative formed by the merger.

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- (2) When a merger or transfer of engagements takes effect under this Division (*the transfer day*), the following provisions apply to the extent necessary to give effect to the merger or transfer:

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- (a) persons who were members of the original co-operative immediately before the transfer day are members of the successor co-operative in accordance with its rules, and
- (b) the assets of the original co-operative vest in the successor co-operative without the need for any conveyance, transfer, assignment or assurance, and
- (c) the rights and liabilities of the original co-operative become the rights and liabilities of the successor co-operative, and
- (d) all proceedings by or against the original co-operative that are pending immediately before the transfer day are taken to be proceedings pending by or against the successor co-operative, and

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- (e) any act, matter or thing done or omitted to be done by, to or in respect of the original co-operative before the transfer day is (to the extent to which that act, matter or thing has any force or effect) to be taken to have been done or omitted by, to or in respect of the successor co-operative, and 5
    - (f) a reference in an instrument or in any document of any kind to the original body is to be read as, or as including, a reference to the new body.
  - (3) The operation of this section is not to be regarded: 10
    - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
    - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or 15
    - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability. 20
  - (4) A document or an instrument executed or registered for or with respect to a transfer of any property to give effect to this section in respect of a transfer of engagements is not liable to stamp duty or to any fee chargeable under any Act for registration. 25
  - (5) A document or an instrument executed or registered for or with respect to a transfer of any property to give effect to this section in respect of a merger is not liable to stamp duty or to any fee chargeable under any Act for registration if the co-operative formed by the merger is a non-trading co-operative. 30

**369W Division applies instead of certain other provisions of this Act** (cf Vic Act s 387)

- (1) This Division applies instead of Division 1 of Part 12, in respect of the merger of a New South Wales co-operative with a foreign co-operative. 35



- (2) This Division applies instead of Division 1 of Part 12, in respect of a transfer of engagements between a New South Wales co-operative and a foreign co-operative.

**[186] Part 14 Supervision and protection of co-operatives, note**

Insert before Division 1:

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**Note.** Each provision of this Part (other than sections 374, 381, 399, 401 (4) and 408 (3)) is a core consistent provision.

**[187] Section 379 Offence—failing to comply with requirements of inspector** (cf Vic Act s 397)

Omit “50 penalty units” wherever occurring from section 379 (1), (2) and (3). 10

Insert instead “120 penalty units”.

**[188] Section 379 (4)**

Omit “25 penalty units”. Insert instead “50 penalty units”.

**[189] Section 382 Copies or extracts of records to be admitted in evidence** (cf Vic Act s 400) 15

Omit section 382 (3). Insert instead:

- (3) For the purposes of subsection (2), evidence that a copy of or extract from a record is a true copy of the record or of a part of the record may be given either orally or by an affidavit or statutory declaration by a person who has compared the copy or extract with the record or the relevant part of the record. 20

**[190] Section 383 Privilege** (cf Vic Act s 401)

Omit “Penalty: 20 penalty units or imprisonment for 3 months, or both.” from section 383 (4). 25

Insert instead “Maximum penalty: 60 penalty units.”.

**[191] Section 385 Definitions** (cf Vic Act s 403)

Insert in alphabetical order in section 385:

*investigator* means a person appointed under section 386.

**[192] Section 386 Appointment of investigators** (cf Vic Act s 404) 5

Omit "Such a person is referred to as an 'investigator'." from section 386 (1).

**[193] Section 389 Privilege** (cf Vic Act s 407)

Omit "Penalty: 20 penalty units or imprisonment for 3 months, or both." from section 389 (3). 10

Insert instead "Maximum penalty: 60 penalty units."

**[194] Section 390 Offences by involved person** (cf Vic Act s 408)

Omit "100 penalty units" from section 390 (1).  
Insert instead "240 penalty units".

**[195] Section 391 Offences relating to documents** (cf Vic Act s 409) 15

Omit "50 penalty units". Insert instead "120 penalty units".

**[196] Section 392 Record of examination** (cf Vic Act s 410)

Omit "10 penalty units" from section 392 (4).  
Insert instead "60 penalty units".

**[197] Section 397 Falsification of records** (cf Vic Act s 415) 20

Omit "20 penalty units". Insert instead "60 penalty units".

**[198] Section 398 Fraud or misappropriation** (cf Vic Act s 416)

Omit "20 penalty units" from section 398 (1).  
Insert instead "60 penalty units".

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**[199] Section 398 (2)**

Omit "imprisonment for 3 months".  
 Insert instead "60 penalty units or imprisonment for 6 months, or both".

**[200] Section 399 Offering or paying commission** (cf Vic Act s 417) 5

Omit "20 penalty units". Insert instead "60 penalty units".

**[201] Section 400 Accepting commission** (cf Vic Act s 418)

Omit "20 penalty units" from section 400 (1).  
 Insert instead "60 penalty units".

**[202] Section 401 False statements in loan application etc** 10

(cf Vic Act s 419)

Omit "50 penalty units or imprisonment for 12 months, or both" from section 401 (1).  
 Insert instead "60 penalty units or imprisonment for 6 months, or both". 15

**[203] Section 408 Extension or abridgment of time** (cf Vic Act s 426)

Omit "enlargement" wherever occurring in section 408.  
 Insert instead "extension".

**[204] Part 15 Administration of this Act, note**

Insert before Division 1: 20

**Note.** Each provision of Divisions 1 and 3 is a core consistent provision.

**[205] Sections 409 and 410**

Omit the sections. Insert instead:

**409 Registrar's functions** (cf Vic Act s 429) 25

- (1) Subject to this Act, the Registrar is responsible for the general administration of this Act.



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- (2) The Registrar has the functions that are conferred on the Registrar by or under this Act.
- (3) The Registrar must have a seal of office.
- (4) The Registrar may enter into any arrangements or agreements with any person or body to act as the agent of the Registrar in the carrying out of his or her functions. 5

**410 Register of Co-operatives** (cf Vic Act s 432)

- (1) There is established a Register of Co-operatives for the purposes of this Act. 10
- (2) The Registrar must record in the Register those documents relating to co-operatives and proposed co-operatives lodged with the Registrar which the Minister requires by order published in the Gazette to be recorded in the Register. 15

**410A Keeping of registers** (cf Vic Act s 433)

- (1) The Registrar must keep the Register of Co-operatives and such other registers as the Registrar considers necessary or desirable for the purposes of this Act.
- (2) Subject to section 410, a register must be kept in the form and contain the particulars that the Registrar thinks fit. 20
- (3) Subject to section 413, any document lodged with, furnished to or registered by the Registrar under this Act must be kept in the office of the Registrar. 25

**[206] Section 413**

Omit the section. Insert instead:

**413 Disposal of records by Registrar** (cf Vic Act s 434)

The Registrar may, if in the opinion of the Registrar it is no longer necessary or desirable to retain them, destroy or dispose of any of the following: 30

- (a) any annual return or balance-sheet lodged more than 7 years ago,

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|-----|--|----|
| (b) | any document creating or evidencing a charge, or the complete or partial satisfaction of a charge, if a memorandum of satisfaction of the charge was registered more than 7 years ago, |    |
| (c) | any other document (except the rules or any document affecting the rules of a co-operative) that was lodged, furnished or registered more than 15 years ago,                           | 5  |
| (d) | any document lodged, furnished or registered in relation to a co-operative that was dissolved or ceased to be registered more than 15 years ago,                                       | 10 |
| (e) | any document a transparency or electronic image of which has been incorporated with a register kept by the Registrar or is otherwise kept in the office of the Registrar.              | 15 |

**[207] Sections 413A–413D**

Insert after section 413:

**413A Inspection of Register** (cf Vic Act s 435)

- |     |   |    |
|-----|---|----|
| (1) | A person may:   |    |
| (a) | inspect the Register on payment of the fee (if any) prescribed by the regulations, and  | 20 |
| (b) | inspect documents prescribed by the regulations or documents of a class prescribed by the regulations kept by the Registrar relating to a co-operative on payment of the fee (if any) prescribed by the regulations, and  | 25 |
| (c) | obtain, on payment of the fee prescribed by the regulations, a certified copy of a document that the person may inspect under paragraph (b).  |    |
| (2) | If a reproduction or transparency of a document or an extract of information contained in a document and recorded in the Register is produced for inspection, a person is not entitled under subsection (1) to require the production of the original of that document. | 30 |

**413B Lodgment of documents** (cf Vic Act s 437)

A document is not to be taken to have been lodged under this Act or the regulations unless:

- (a) all information required to be provided in or with the document is provided, and 5
- (b) the fee (if any) prescribed by the regulations has been paid.

**413C Method of lodgment** (cf Vic Act s 438)

- (1) Subject to section 413B, it is sufficient compliance with a requirement under this Act or the regulations that a document be lodged with the Registrar if the Registrar receives a copy of the document by facsimile or electronic transmission. 10
- (2) If the Registrar receives from a person a copy of a document under subsection (1), the Registrar may require that person to produce and lodge the original within the time specified by the Registrar. 15
- (3) If the person does not comply with a requirement of the Registrar within the specified time, the person is to be taken not to have lodged the document. 20

**413D Power of Registrar to refuse to register or reject documents** (cf Vic Act s 439)

- (1) The Registrar may refuse to register or may reject a document submitted to the Registrar if the Registrar considers that the document: 25
  - (a) contains matter contrary to law, or
  - (b) contains matter, that in a material particular, is false or misleading in the form or context in which it is included, or
  - (c) by reason of an omission or misdescription, has not been duly completed, or 30
  - (d) does not comply with the requirements of this Act, or
  - (e) contains any error, alteration or erasure.



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- (2) If the Registrar refuses to register or rejects a document under subsection (1), the Registrar may request:
- (a) that the document be appropriately amended, or
  - (b) that a fresh document be submitted in its place, or
  - (c) if the document has not been duly completed, that a supplementary document in the form approved by the Registrar be submitted. 5
- [208] Section 419 Appeal to Court from decision of Council**  
Omit "Supreme Court". Insert instead "Court".
- [209] Section 421 Certificate evidence** (cf Vic Act s 441) 10  
Insert after section 421 (1A):
- (1B) The Registrar may issue a certificate stating that on a date specified in the certificate a body specified in the certificate was not or had ceased to be registered as a co-operative under this Act. 15
- [210] Section 426, heading**  
Omit the heading. Insert instead:
- 426 The Registrar and proceedings** (cf Vic Act s 446)
- [211] Part 16 Offences and proceedings, note**  
Insert at the beginning of the Part: 20
- Note.** Each provision of this Part (other than sections 428A, 435 and 435A–435D) is a core consistent provision.
- [212] Section 428A**  
Insert before section 429 after the note inserted by this Act:
- 428A Meaning of "co-operatives law" and "participating State"** 25  
In this Part, *co-operatives law* and *participating State* have the same meaning as in section 369A.

**[213] Section 430 Notice to be given of conviction for offence**

(cf Vic Act s 450)

Omit "15 months" from section 430. Insert instead "28 days".

**[214] Section 431 Secrecy** (cf Vic Act s 451)

Omit "50 penalty units" from section 431 (1). Insert instead "60 penalty units". 5

**[215] Section 431 (4) and (5)**

Omit the subsections. Insert instead:

- (4) Information may be divulged to:
  - (a) the Minister, or 10
  - (b) the Treasurer, or
  - (c) the Commissioner of State Revenue, or
  - (d) the Auditor-General, or
  - (e) the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation holding office under a law of the Commonwealth, or 15
  - (f) the Australian Securities Commission, or
  - (g) the person who, under a law of another State, or of a Territory, administers a law of the State or Territory that relates to taxation or the imposition of a duty, or 20
  - (h) any special commission (within the meaning of the *Special Commissions of Inquiry Act 1983*) if:
    - (i) the Registrar has received a written request in writing for information from the special commission, and 25
    - (ii) the Minister has given written approval to the Registrar of the communication of that information, and 30

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- (iii) the Registrar has given to that person written approval of the communication of that information, or
    - (i) a person seeking information under a reciprocal arrangement under section 441, or 5
    - (j) a police officer exercising functions as such, or
    - (k) a person nominated by a person referred to in paragraphs (a)–(g), or
    - (l) any person, to whom, in the opinion of the Registrar, it is in the public interest that the information be divulged. 10
  - (5) For the purposes of this section, a person is, or was, engaged in the administration of this Act or the former Act if the person exercises, or at any time exercised, a function as: 15
    - (a) the Registrar holding office under this Act or the former Act, or
    - (b) an inspector appointed under this Act or the former Act, or
    - (c) an investigator appointed under this Act, or 20
    - (d) a person appointed or employed for the purposes of this Act or the former Act.

**[216] Section 432 False or misleading statements** (cf Vic Act s 452)

Omit “100 penalty units” wherever occurring from section 432 (1) and (2). 25  
 Insert instead “120 penalty units”.

**[217] Section 432 (3) and (4)**

Omit “50 penalty units” wherever occurring.  
 Insert instead “60 penalty units”.



**[218] Sections 435A–435D**

Insert after section 435:

**435A Offences under this Act and co-operatives law**

If:

- (a) an act or omission constitutes an offence under this Act and under a co-operatives law of a participating State, and 5
- (b) the offender has been punished for that offence under the co-operatives law of the participating State, 10

the offender is not liable to be punished for the offence under this Act.

**435B Civil liability under this Act and co-operatives law**

In a proceeding under this Act in respect of loss or damage arising out of a contravention of this Act, it is a defence if it is proved: 15

- (a) that the plaintiff has recovered in respect of the loss or damage in an action brought under a co-operatives law of a participating State, or
- (b) that: 20
  - (i) the plaintiff has brought proceedings under a co-operatives law of a participating State to recover in respect of the loss or damage, and
  - (ii) judgment has been entered for the defendant in those proceedings. 25

**435C Offences committed partly in and partly outside jurisdiction**

If:

- (a) a person does or omits to do an act outside this State, and 30

- (b) if the person had done or omitted to do that act in this State, the person would, by reason of also having done or omitted to do an act in the State, have been guilty of an offence against this Act,

the person is guilty of that offence.

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**435D Reciprocity in relation to offences**

If:

- (a) a person does or omits to do an act within this State, and

- (b) if that person had done or omitted to do that act in a participating State, the person would have been guilty of an offence against a provision of a co-operatives law of the participating State,

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the person is guilty of an offence against the corresponding provision of this Act.

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**[219] Part 17 General, note**

Insert at the beginning of the Part:

**Note.** Each provision of this Part (other than sections 444–446) is a core consistent provision.

**[220] Sections 436 Interpretation of adopted provisions of Corporations Law (cf Vic Act s 10) 436A Implied adoption of regulations and other provisions of Corporations Law (cf Vic Act s 11) and 436B Effect of amendments to adopted provisions of Corporations Law (cf Vic Act s 12)**

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Omit “applied” wherever occurring. Insert instead “adopted”.

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**[221] Section 436 (4)**

Omit “apply”. Insert instead “adopt”.

**[222] Section 436A (3)**

Omit “applying”. Insert instead “adopting”.

**[223] Sections 436, 436A and 436B**

Omit the sections, renumber them as sections 10, 11 and 12 respectively and insert them in appropriate numerical order in Part 1.

**[224] Section 438 Inspection of documents**

Omit the section.

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**[225] Section 440, heading**

Omit the heading. Insert instead:

**440 Service of documents on co-operative** (cf Vic Act s 459)

**[226] Section 440 (2)**

Omit the subsection. Insert instead:

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(2) A document may be served on a foreign co-operative:

(a) by post, or

(b) by leaving it with a person who appears to be aged 16 or more and is at a place where the foreign co-operative carries on business in New South Wales, or

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(c) by leaving it at the registered office in New South Wales of the foreign co-operative registered under Part 13A.

**[227] Section 440A**

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Insert after section 440:

**440A Service on member of co-operative** (cf Vic Act s 460)

(1) A notice required under this Act to be given to a member of a co-operative must be in writing.



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- (2) A notice or other document required under this Act to be given to a member of a co-operative may be given:
- (a) personally, or
  - (b) by post, or
  - (c) by publishing the notice in a newspaper circulating generally in New South Wales or in the area served by the co-operative, if:
    - (i) the co-operative is a non-trading co-operative, or
    - (ii) the member's whereabouts are unknown to the co-operative, or
    - (iii) the Registrar permits notice to be given to members of that co-operative in that manner.
- [228] Section 443A** 15
- Insert after section 443:
- 443A Power of Court to punish for contempt**
- Nothing in a provision of this Act affects the powers of the Court in relation to the punishment of contempts of the Court. 20
- [229] Section 446 Regulations** (cf Vic Act s 463)
- Omit section 446 (2) (b). Insert instead:
- (b) the manner of lodgment of documents with the Registrar (including electronic lodgment and lodgment by facsimile), 25
  - (c) fees to be paid in connection with the administration of this Act including fees for lodgment of any documents under this Act and additional fees for late lodgment of any documents under this Act. 30

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(2A) Regulations relating to fees:

- (a) may prescribe different fees for different classes of cases,
- (b) may authorise the Registrar to waive, reduce or refund fees in particular cases or classes of cases. 5

**[230] Section 446 (3)**

Omit "50 penalty units". Insert instead "20 penalty units".

**[231] Schedule 1**

Omit the Schedule. Insert instead:

**Schedule 1      Matters for which rules must make provision** 10

(Section 107)

**Note.** Each provision of this Schedule is a core consistent provision.

**1 Requirements for all co-operatives** 15

The rules of all co-operatives must set out or make provision for each of the following:

- 1 The name of the co-operative.
- 2 Active membership provisions (within the meaning of Part 6). 20
- 3 The mode and conditions of admission to membership, and the payment to be made or the share or interest to be acquired before rights of membership are exercised.
- 4 The rights and liabilities of members, and of the estates of deceased members, and the rights and liabilities of representatives of members under bankruptcy or mental incapacity. 25
- 5 The circumstances in which members may be expelled or suspended, and the rights and liabilities of expelled or suspended members. 30

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|----|--|--------------|
| 6  | The circumstances in which membership ceases.  |              |
| 7  | Any charges or subscriptions which are to be payable by a member to the co-operative.  |              |
| 8  | The circumstances in which fines and forfeitures may be imposed on members of the co-operative, and the amount of the fines, not exceeding the prescribed maximum amount.  | 5            |
| 9  | The grievance procedures for settling disputes under the rules between the co-operative and any of its members as defined in section 89, or between a member and any other member.   | 10           |
| 10 | The restrictions, if any, on the powers of the co-operative and the board.   |              |
| 11 | The number of directors, the qualification of directors, and the manner of electing, remunerating and removing directors and filling vacancies, the period for which directors are to hold office, and whether directors are to retire by rotation or otherwise and for the holding of annual elections. | 15<br><br>20 |
| 12 | The quorum for meetings, and the procedure at meetings, of the board.  |              |
| 13 | The device, custody and use of the seal of the co-operative.   |              |
| 14 | The manner in which the funds of the co-operative are to be managed, and in particular the mode of drawing and signing cheques, drafts, bills of exchange, promissory notes, and other negotiable instruments for and on behalf of the co-operative.   | 25           |
| 15 | Provision for the custody of securities belonging to the co-operative.   | 30           |
| 16 | The manner in which debentures may be transferred.   |              |
| 17 | The date on which the financial year of the co-operative concludes.  | 35           |
| 18 | Provision for the accounts of the co-operative to be audited annually or more frequently and the manner of appointment of the auditor.   |              |
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| 19 | The manner in which any loss which may result from the transactions of the co-operative is to be provided for.   |    |
| 20 | The manner of calling general and special meetings, the requisite notices of meetings and the quorum for meetings of the co-operative.   | 5  |
| 21 | The procedure at meetings of the co-operative, including the rights of members in voting at meetings, the manner of voting, and the majority necessary for carrying resolutions. | 10 |
| 22 | The method of conducting postal ballots, including special postal ballots, including the sending and lodgment of information and votes by facsimile or electronic means.         |    |
| 23 | The manner of altering the rules.  | 15 |
| 24 | The manner in which the co-operative may be wound up.  |    |
| 25 | Any matters that may be prescribed by the regulations, whether in addition to or in substitution for any matter specified in this clause.  | 20 |
| 26 | Any other matters that to the co-operative appear necessary or desirable.  |    |

**2 Additional matters—co-operatives with share capital**

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|---|--|----|
|   | In addition to the matters specified in clause 1, the rules of a co-operative with a share capital must set out or make provision for each of the following: | 25 |
| 1 | The nominal value of each share in the co-operative.   |    |
| 2 | The amount of the contingent liability, if any, attaching to shares.   | 30 |
| 3 | The terms on which shares, not including bonus shares, but including shares, if any, with a contingent liability attached to them are to be issued.          |    |
| 4 | The periodic subscriptions by which or the manner in which shares are to be paid for.  | 35 |

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|---|--|---------|
| 5 | In the case of a trading co-operative, the manner in which any surplus may be distributed.   |         |
| 6 | The allocation of a deficiency on the winding up of a co-operative.  |         |
| 7 | Provision for the forfeiture of shares on expulsion or on failure to pay any subscription or call, the extent to which members whose shares have been forfeited are to remain liable for any amount still unpaid in respect of them, and the sale or cancellation of forfeited shares. | 5<br>10 |
| 8 | The manner in which shares may be transferred.   |         |
| 9 | Any matters that may be prescribed, whether in addition to or in substitution for any matter specified in this clause.   |         |

**3 Additional matters—non-trading co-operatives** 15

In addition to the matters specified in clauses 1 and 2, the rules of a non-trading co-operative must provide:

- |   |  |    |
|---|--|----|
| 1 | that there must be no return or distribution on surplus or share capital to members other than the nominal value of shares (if any) at winding up, and | 20 |
| 2 | for the manner of distribution of the surplus property at winding up.  |    |

**[232] Schedule 2 Relevant interests, associates, related bodies, note**

Insert before Part 1: 25

**Note.** Each provision of this Schedule is a core consistent provision.

**[233] Schedule 3**

Omit the Schedule. Insert instead:

**Schedule 3 Registration etc of charges** 30

(Section 278)

**Note.** Each provision of this Schedule is a core consistent provision.

## Part 1 Preliminary

### 1 Interpretation

In this Schedule:

*co-operative* includes a foreign co-operative registered under Part 13A. 5

*document of title* means a document:

- (a) used in the ordinary course of business as proof of possession or control, or of the right to possession or control, of property other than land, or
- (b) authorising or purporting to authorise, whether by endorsement or delivery, the possessor of the document to transfer or receive property other than land, 10

and includes:

- (c) a bill of lading, and 15
- (d) a warehousekeeper's certificate, and
- (e) a wharfinger's certificate, and
- (f) a warrant or order for the delivery of goods, and
- (g) a document that is, or evidences title to, a marketable security. 20

*marketable securities* has the same meaning as in the *Corporations Law*.

*present liability*, in relation to a charge, means a liability that has arisen, being a liability the extent or amount of which is fixed or capable of being ascertained, whether or not the liability is immediately due to be met. 25

*property*, in relation to a co-operative, means property within New South Wales held by the co-operative, whether or not as trustee.

*prospective liability*, in relation to a charge, means any liability that may arise in the future, or any other liability, but does not include a present liability. 30



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**Register** means the Register of Co-operative Charges referred to in clause 18.

**registrable charge** means a charge in relation to which, by virtue of clause 4, the provisions of this Schedule mentioned in clause 4 (1) apply.

5

## **2 Application to charges referred to in clause 17**

- (1) A charge referred to in clause 17 is, until the charge is registered, to be treated for the purposes of this Schedule as if it were not a registrable charge but, when the charge is so registered, it has the priority accorded to a registered charge as from the time of registration. 10
- (2) The registration of a charge referred to in clause 17 does not prejudice any priority that would have been accorded to the charge under any other law (whether or not a law of a place in Australia) if the charge had not been registered. 15

## **3 Lodgment of documents**

For the purposes of this Schedule, a notice or other document is taken to be lodged when it is received at the office of the Registrar by an officer authorised to receive it. 20

## **Part 2 Registration**

### **Division 1 Charges**

#### **4 To which charges does Schedule apply?**

- (1) Subject to this Division, the provisions of this Schedule relating to the giving of notice in relation to, the registration of, and the priorities of, charges: 25
  - (a) apply in relation to the charges referred to in subclause (2) (whether legal or equitable) on property of a co-operative, and 30
  - (b) do not apply in relation to any other charges.

- (2) Subclause (1) applies to the following charges:
- (a) a floating charge on the whole or a part of the property, business or undertaking of the co-operative,
  - (b) a charge on uncalled share capital or uncalled share premiums, 5
  - (c) a charge on a call, whether in respect of share capital or share premiums, made but not paid,
  - (d) a charge on a personal chattel, including a personal chattel that is unascertained or is to be acquired in the future, but not including a ship registered in an official register kept under a law of a place in Australia relating to title to ships, 10
  - (e) a charge on goodwill, on a patent or licence under a patent, on a trade mark or service mark or a licence to use a trade mark or service mark, on a copyright or a licence under a copyright or on a registered design or a licence to use a registered design, 15
  - (f) a charge on a book debt, 20
  - (g) a charge on a marketable security, not being:
    - (i) a charge created in whole or in part by the deposit of a document of title to the marketable security, or
    - (ii) a mortgage under which the marketable security is registered in the name of the chargee or a person nominated by the chargee, 25
  - (h) a lien or charge on a crop, a lien or charge on wool or a stock mortgage, 30
  - (i) a charge on a negotiable instrument other than a marketable security.

## 5 Excluded charges

The provisions of this Schedule mentioned in clause 4 (1) do not apply in relation to:

- (a) a charge, or a lien over property, arising by operation of law, or 5
- (b) a pledge of a personal chattel or of a marketable security, or
- (c) a charge created in relation to a negotiable instrument or a document of title to goods, being a charge by way of pledge, deposit, letter of hypothecation or trust receipt, or 10
- (d) a transfer of goods in the ordinary course of the practice of any profession or the carrying on of any trade or business, or
- (e) a dealing, in the ordinary course of the practice of any profession or the carrying on of any trade or business, in respect of goods outside Australia. 15

## 6 Personal chattels

The reference in clause 4 (2) (d) to a charge on a personal chattel is a reference to a charge on any article capable of complete transfer by delivery, whether at the time of the creation of the charge or at some later time, and includes a reference to a charge on a fixture or a growing crop that is charged separately from the land to which it is affixed or on which it is growing, but does not include a reference to a charge on: 20

- (a) a document evidencing title to land, or
- (b) a chattel interest in land, or
- (c) a marketable security, or
- (d) a document evidencing a thing in action, or 30
- (e) stock or produce on a farm or land that by virtue of a covenant or agreement ought not to be removed from the farm or land where the stock or produce is at the time of the creation of the charge.



## 7 Book debts

The reference in clause 4 (2) (f) to a charge on a book debt:

- (a) is a reference to a charge on a debt due or to become due to the co-operative at some future time on account of or in connection with a profession, trade or business carried on by the co-operative, whether entered in a book or not, and 5
- (b) includes a reference to a charge on a future debt of the same nature although not incurred or owing at the time of the creation of the charge, 10

but does not include a reference to a charge on a marketable security, on a negotiable instrument or on a debt owing in respect of a mortgage, charge or lease of land. 15

## 8 Crops or stock

The reference in clause 4 (2) (h) to a lien or charge on a crop, a lien or charge on wool or a stock mortgage includes a reference to a security (however described) that is registrable under a law of a State or Territory prescribed by the regulations. 20

## 9 Deposit of documents of title

For the purposes of this Division, a co-operative is to be considered to have deposited a document of title to property with another person (in this clause referred to as the *chargee*) in a case where the document of title is not in the possession of the co-operative if: 25

- (a) the person who holds the document of title acknowledges in writing that the person holds the document of title on behalf of the chargee, or 30
- (b) a government, an authority or a body corporate that proposes to issue a document of title in relation to the property agrees, in writing, to deliver the document of title, when issued, to the chargee. 35

**10 Charges on land or fixtures on land**

- (1) The provisions of this Schedule mentioned in clause 4 (1) do not apply in relation to a charge on land.
- (2) The provisions of this Schedule mentioned in clause 4 (1) do not apply in relation to a charge on fixtures given by a charge on the land to which they are affixed. 5

**11 What if other property is also charged?**

For the purposes of this Division, a charge is to be considered to be a charge on property of a kind to which a particular paragraph of clause 4 (2) applies even though the instrument of charge also charges other property of the co-operative including other property that is of a kind to which none of the paragraphs of that subclause applies. 10

**12 Effect of failure to lodge or give notice or document 15**

A charge on property of a co-operative is not invalid merely because of the failure to lodge with the Registrar, or give to the co-operative or another person, a notice or other document that is required by this Part to be so lodged or given. 20

**Division 2 Notice of charge****13 Lodgment of notice of charge and copy of instrument**

- (1) If a co-operative creates a charge, the co-operative must ensure that there is lodged with the Registrar within 45 days after the creation of the charge, a notice in the form approved by the Registrar setting out the following particulars: 25
  - (a) the name of the co-operative and the date of the creation of the charge,
  - (b) whether the charge is a fixed charge, a floating charge or both a fixed and floating charge, 30
  - (c) if the charge is a floating charge, whether there is any provision in the resolution or instrument creating or evidencing the charge that prohibits or restricts the creation of subsequent charges, 35

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- 
- (d) a short description of the liability (whether present or prospective) secured by the charge,
    - (e) a short description of the property charged,
    - (f) whether the charge is created or evidenced by a resolution, by an instrument or by a deposit or other conduct, 5
    - (g) if the charge is constituted by the issue of a debenture or debentures, the name of the trustee (if any) for debenture holders,
    - (h) if the charge is not constituted by the issue of a debenture or debentures or there is no trustee for debenture holders, the name of the chargee, 10
    - (i) any other information that is prescribed by the regulations.
  - (2) If, pursuant to a resolution or resolutions passed by the co-operative, the co-operative issues a series of debentures constituting a charge to the benefit of which all the holders of debentures in the series are entitled in equal priority, and the charge is evidenced only by the resolution or resolutions and the debentures, the notice under subclause (1) must be accompanied by: 15
    - (a) a copy of the resolution or of each of the resolutions verified by a statement in writing to be a true copy, and
    - (b) a copy of the first debenture issued in the series and a statement in writing verifying the execution of that first debenture. 20 25
  - (3) If, in a case to which subclause (2) does not apply, the charge created by the co-operative was created or evidenced by an instrument or instruments, the notice under subclause (1) must be accompanied by: 30
    - (a) the instrument or each of the instruments, or
    - (b) a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy, and a statement in writing verifying the execution of the instrument or of each of the instruments. 35



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**14 Series of debentures**

In a case to which clause 13 (2) applies:

- (a) the charge is, for the purposes of clause 13, to be considered to be created when the first debenture in the series of debentures is issued, and 5
- (b) if, after the issue of the first debenture in the series, the co-operative passes a further resolution authorising the issue of debentures in the series, the co-operative must ensure that a copy of that resolution, verified by a statement in writing to be a true copy of that resolution, is lodged within 45 days after the passing of that resolution. 10

**15 Operation of priority provisions in respect of issue of debentures**

If a notice with respect to an instrument creating a charge has been lodged under clause 13 (1), being a charge in respect of an issue of several debentures the holders of which are entitled under the instrument in equal priority to the benefit of the charge, clauses 46–49 have effect as if any charges constituted by those debentures were registered at the time when the charge to which the notice relates was registered. 15  
20

**16 Discounts**

- (1) If a payment or discount has been made or allowed, either directly or indirectly, by a co-operative to a person in consideration of the person's subscribing or agreeing to subscribe, whether absolutely or conditionally, for debentures, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for debentures, the notice required to be lodged under clause 13 (1) must include particulars as to the amount or rate per cent of the payment or discount. 25  
30
- (2) If a co-operative issues debentures as security for a debt of the co-operative, the co-operative is not thereby to be regarded, for the purposes of subclause (1), as having allowed a discount in respect of the debentures. 35

**17 Acquisition of property subject to charge**

- (1) If a co-operative acquires property that is subject to a charge, being a charge that would have been registrable when it was created if it had been created by a co-operative, the co-operative must, within 45 days after the acquisition of the property: 5
  - (a) ensure that there is lodged with the Registrar a notice in the form approved by the Registrar in relation to the charge, setting out:
    - (i) the name of the co-operative, and 10
    - (ii) the date on which the property was so acquired, and
    - (iii) any other particulars required by clause 13 (1), and
  - (b) give to the chargee notice that it has acquired the property and the date on which it was so acquired. 15
- (2) If the charge referred to in subclause (1) was created or evidenced as mentioned in clause 13 (2), the notice under subclause (1) (a) must be accompanied by:
  - (a) a copy of the resolution or of each of the resolutions referred to in clause 13 (2) verified by a statement in writing to be a true copy, and 20
  - (b) a copy of the first debenture issued in the series referred to in clause 13 (2) verified by a statement in writing to be a true copy. 25
- (3) If the charge referred to in subclause (1) was created or evidenced by an instrument or instruments (otherwise than as mentioned in clause 13 (2)), the notice under subclause (1) (a) must be accompanied by:
  - (a) the instrument or each of the instruments, or 30
  - (b) a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy.

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### **Division 3      Registration**

#### **18 Register of Co-operative Charges**

The Registrar must keep a register to be known as the Register of Co-operative Charges.

#### **19 Registration of documents relating to charge** 5

- (1) If a notice is lodged with the Registrar in accordance with Division 2, the Registrar must as soon as practicable cause to be entered in the Register the time and date when the notice was lodged and the following particulars in relation to the charge: 10
  - (a) if the charge is a charge created by the co-operative, the date of its creation,
  - (b) if the charge was a charge existing on property acquired by the co-operative, the date on which the property was so acquired, 15
  - (c) a short description of the liability (whether present or prospective) secured by the charge,
  - (d) a short description of the property charged,
  - (e) the name of the trustee for debenture holders or, if there is no such trustee, the name of the chargee. 20
- (2) Subclause (1) only applies if the notice contains the required particulars and is accompanied by the required documents.
- (3) Subclause (1) applies whether the notice is lodged during or after the period within which the notice is required to be lodged. 25
- (4) Subject to this Division, if particulars in respect of a charge are entered in the Register in accordance with subclause (1), the charge is to be considered to be registered, and to have been registered from and including the time and date entered in the Register under that subclause. 30



- (5) The Registrar may enter in the Register in relation to a charge, in addition to the particulars expressly required by this Division to be entered, such other particulars as the Registrar thinks fit.

**20 Provisional registration if stamp duty not paid**

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- (1) If:
- (a) a notice in respect of a charge on property of a co-operative is lodged under Division 2, and
  - (b) the notice is not accompanied by a certificate to the effect that all documents accompanying the notice have been duly stamped as required by any applicable law relating to stamp duty,
- the Registrar must cause to be entered in the Register the time and date when the notice was lodged and the particulars referred to in clause 19 (1) (a)–(e), but must cause the word “provisional” to be entered in the Register next to the entry specifying that time and date.
- (2) Subclause (1) applies whether the notice was lodged during or after the period within which the notice was required to be lodged.
- (3) The Registrar must delete the word “provisional” entered in the Register under subclause (1) from an entry relating to a charge if a certificate to the effect set out in subclause (1) (b) has been produced to the Registrar:
- (a) within a period of 28 days, or
  - (b) within such longer period as is prescribed after the notice was lodged, or
  - (c) within such further period as the Registrar, if the Registrar considers it to be appropriate in a particular case, allows.
- (4) The Registrar must delete from the Register all the particulars that were entered in relation to a charge if:
- (a) the word “provisional” is entered in the Register under subclause (1) in relation to an entry relating to the charge, and

- (b) a certificate to the effect set out in subclause (1) (b) is not produced within the period, or the further period, referred to in subclause (3).

**21 Provisional registration if required particulars not supplied**

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- (1) If a defective notice in respect of a charge on property is lodged with the Registrar under clause 19, the Registrar must cause to be entered in the Register:

(a) the time and date when the document was lodged, and

10

(b) such of the particulars referred to in clause 19 (1) (a)–(e) as are ascertainable, and

(c) the word “provisional” next to the entry specifying the time and date.

- (2) If a defective notice in respect of a charge is lodged under clause 19, the Registrar must, by written notice to the person who lodged the defective notice, direct the person to ensure that there is lodged, on or before the day specified in the notice, a notice in relation to the charge that complies with the requirements of Division 2.

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- (3) Subclauses (1) and (2) apply whether the defective notice was lodged during or after the period within which the notice was required to be lodged.

- (4) The giving by the Registrar of a direction to the person under subclause (2) does not affect any liability that the co-operative may have incurred or may incur by reason of a contravention of Division 2.

25

- (5) If the Registrar gives a direction to a person under subclause (2) in relation to a charge and the direction is complied with on or before the day specified in the notice containing the direction, the Registrar must:

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(a) delete from the Register the word “provisional” that was inserted pursuant to subclause (1), and

(b) cause to be entered in the Register in relation to the charge any particulars referred to in clause 19 (1) that have not previously been entered.

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- (6) If the Registrar gives a direction to a person under subclause (2) in relation to a charge and the direction is not complied with on or before the day specified in the notice, the Registrar must delete from the Register all the particulars that were entered in relation to the charge. 5
- (7) If the Registrar gives a direction to a person under subclause (2) in relation to a charge and the direction is complied with after the day specified in the notice, the Registrar must cause to be entered in the Register in relation to the charge: 10
- (a) the time at which and day on which the direction was complied with, and
- (b) the particulars referred to in clause 19 (1) (a)–(e).
- (8) In this clause *defective notice* means a document that:
- (a) purports to be a notice in respect of a charge on property of a co-operative for the purposes of Division 2, and 15
- (b) contains the name of the co-operative concerned and the particulars referred to in clause 13 (1) (g) or (h), as the case requires, 20
- but does not contain some or all of the other particulars that are required to be included in the notice or is otherwise defective.

## 22 Effect of provisional registration

- (1) Subject to this clause, if the word “provisional” is entered in the Register next to an entry specifying a time and day in relation to a charge, the charge is to be considered not to have been registered. 25
- (2) If the word “provisional” is deleted from the Register pursuant to clause 20 or 21 (5), the charge is to be considered to be registered and to have been registered from and including the time and day specified in the Register pursuant to clause 20 or 21 (1), as the case may be. 30



- 
- (3) If the particulars in relation to the charge are deleted from the Register pursuant to clause 21 (6) and those particulars and a time and day are subsequently entered in the Register in relation to the charge pursuant to clause 21 (7) the charge is to be considered to be registered from and including that last-mentioned time and day. 5

**23 What if 2 or more charges relate to the same property?**

- (1) If, pursuant to clause 17, a co-operative lodges notices relating to 2 or more charges on the same property acquired by the co-operative (being charges that are not already registered under this Division), the time and day that is to be entered in the Register in relation to each of those charges are the time and day when the first notice was lodged. 10 15
- (2) If, in accordance with subclause (1), the time and day that are entered in the Register are the same in relation to 2 or more charges on property acquired by a co-operative, those charges are to have, as between themselves, the respective priorities that they would have had if they had not been registered under this Division. 20

**24 Registration of assignment or variation of charge**

- (1) If a notice is lodged under clause 36, the Registrar must as soon as practicable cause to be entered in the Register the time and day when the notice was so lodged and the particulars set out in the notice. 25
- (2) Subclause (1) applies whether the notice was lodged during or after the period within which the notice was required to be lodged.

**25 Standard time for the purposes of this Division** 30

- (1) The Registrar may, by notice published in the Gazette, declare a specified standard time to be the standard time for the purposes of this Division.

- (2) If a notice is in force under subclause (1), a reference in this Division to entering the time when a particular event happened is a reference to entering that time as expressed in terms of the standard time specified in the notice. 5

**Division 4 Certain charges void against liquidator or administrator**

**26 Definitions**

In this Division:

**critical day**, in relation to a co-operative, means: 10

- (a) if the co-operative is being wound up, the day when the winding up began, or
- (b) if the co-operative is under administration, the relevant day in relation to the administration, or
- (c) if the co-operative has executed a deed of arrangement, the relevant day in relation to the administration that ended when the deed was executed. 15

**relevant day**, in relation to the administration of a co-operative, means: 20

- (a) if, when the administration began, a winding up of the co-operative was in progress, the day on which the winding up is taken because of Division 1A of Part 5.6 of the *Corporations Law* (as adopted and applying under this Act) to have begun, or 25
- (b) otherwise, the day on which the administration began.

**27 Certain charges void against liquidator or administrator**

- (1) Subject to this Division, if:
- (a) an order is made, or a resolution is passed, for the winding up of a co-operative, or 30
  - (b) the Registrar gives a certificate under section 324 for the winding up of the co-operative, or

- 
- (c) an administrator of a co-operative is appointed under Part 5.3A of the *Corporations Law* as adopted and applying under this Act, or
- (d) a co-operative executes a deed of arrangement, a registrable charge on property of the co-operative is void as a security on that property as against the liquidator, the administrator of the co-operative, or the deed's administrator, as the case may be. 5
- (2) A charge is not void under subclause (1) if:
- (a) a notice in respect of the charge was lodged under clause 13 or 17, as the case requires: 10
- (i) within the relevant period, or
- (ii) at least 6 months before the critical day, or
- (b) the period within which a notice in respect of the charge (other than a notice under clause 36) is required to be lodged, being the period specified in the relevant clause or that period as extended by the Court under clause 29, has not ended at the start of the critical day and the notice is lodged before the end of that period, or 15 20
- (c) in relation to a charge to which clause 17 applies, the period of 45 days after the chargee becomes aware that the property charged has been acquired by a co-operative has not ended at the start of the critical day and the notice is lodged before the end of that period. 25
- (3) The reference in subclause (2) (a) to the relevant period is to be construed as a reference to:
- (a) in relation to a charge to which clause 13 applies—the period of 45 days specified in that clause, or that period as extended by the Court under clause 29, or 30
- (b) in relation to a charge to which clause 17 applies—the period of 45 days after the chargee becomes aware that the property has been acquired by a co-operative. 35
-



## 28 Certain varied charges void against liquidator or administrator

- (1) Subject to this Division, if, after there has been a variation in the terms of a registrable charge on property of a co-operative having the effect of increasing the amount of the debt or increasing the liabilities (whether present or prospective) secured by the charge:
  - (a) an order is made, or a resolution is passed, for the winding up of the co-operative, or
  - (b) an administrator of a co-operative is appointed under Part 5.3A of the *Corporations Law* (as adopted and applying under this Act), or
  - (c) a co-operative executes a deed of arrangement, the registrable charge is void as a security on that property to the extent that it secures the amount of the increase in that debt or liability.
- (2) A charge is not void under subclause (1) if:
  - (a) a notice in respect of the variation was lodged under clause 36:
    - (i) within the period of 45 days specified in clause 36 (2) or that period as extended by the Court under clause 29, or
    - (ii) not later than 6 months before the critical day, or
  - (b) the period of 45 days specified in clause 36 (2), or that period as extended by the Court under clause 29, has not ended at the start of the critical day and the notice is lodged before the end of that period.

## 29 Supreme Court may extend required period

The Court, if it is satisfied that the failure to lodge a notice in respect of a charge, or in respect of a variation in the terms of a charge, as required by any provision of this Schedule:

- (a) was accidental or due to inadvertence or some other sufficient cause, or
- (b) is not of a nature to prejudice the position of creditors or shareholders,

or that on other grounds it is just and equitable to grant relief, may, on the application of the co-operative or any person interested and on such terms and conditions as seem to the Court just and expedient, by order, extend the period for such further period as is specified in the order.

### 30 Certain later charges void

- (1) Subject to subclause (3), if:
  - (a) a registrable charge (in this clause referred to as the *later charge*) is created before the end of 45 days after the creation of an unregistered registrable charge (in this clause referred to as the *earlier charge*), and
  - (b) the later charge relates to all or any of the property to which the earlier charge related, and
  - (c) the later charge is given as a security for the same liability as is secured by the earlier charge or any part of that liability,

the later charge, to the extent to which it is a security for the same liability or part thereof, and so far as it relates to the property comprised in the earlier charge, is void as a security on that property as against a liquidator or administrator of the co-operative, or an administrator of a deed of arrangement executed by the co-operative.
- (2) Subclause (1) applies even if a notice in respect of the later charge was lodged under clause 13 within the period mentioned in clause 27 (2) (a).
- (3) Subclause (1) does not apply if it is proved to the satisfaction of the Court that the later charge was given in good faith for the purpose of correcting some material error in the earlier charge or under other proper circumstances and not for the purposes of avoiding or evading the provisions of this Division.

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**31 Effect of provisions on purchaser in good faith**

- (1) Nothing in clause 27 (1) or (2) or 28 operates to affect the title of a person to property purchased for value from a chargee or from a receiver appointed by a chargee in the exercise of powers conferred by the charge or implied by law if that person purchased the property in good faith and without notice of: 5
- (a) the filing of an application for an order for the winding up of the co-operative, or
  - (b) the passing of the necessary resolution for the voluntary winding up of the co-operative, or 10
  - (c) an administrator of the co-operative being appointed under Part 5.3A of the *Corporations Law* (as adopted and applying under this Act), or
  - (d) the co-operative executing a deed of arrangement. 15
- (2) The onus of proving that a person purchased property in good faith and without notice of any of the matters referred to in subclause (1) (a), (b), (c) or (d) is on the person asserting that the property was so purchased.

**Division 5 Certain charges in favour of persons void 20**

**32 Definitions**

In this Division:

***chargee***, in relation to a charge, means:

- (a) in any case, the holder, or all or any of the holders, of the charge, or 25
- (b) in the case of a charge that is an agreement to give or execute a charge in favour of a person or persons, whether on demand or otherwise, that person, or all or any of those persons.

***officer***, in relation to a co-operative, includes, in the case of a foreign co-operative, a local agent of the foreign co-operative. 30

***receiver*** includes a receiver and manager.



**relevant person**, in relation to a charge created by a co-operative, means:

- (a) a person who is at the time when the charge is created, or who has been at any time during the period of 6 months ending at that time, an officer of the co-operative, or 5
- (b) a person associated, in relation to the creation of the charge, with a person of a kind referred to in paragraph (a).

### 33 Charges in favour of certain persons void in certain cases 10

#### (1) If:

- (a) a co-operative creates a charge on property of the co-operative in favour of a person who is, or in favour of persons at least one of whom is, a relevant person in relation to the charge, and 15
- (b) within 6 months after the creation of the charge, the chargee purports to take a step in the enforcement of the charge without the Court having, under clause 34, given leave for the charge to be enforced, 20

the charge, and any powers purported to be conferred by an instrument creating or evidencing the charge, are, and are to be considered always to have been, void.

#### (2) Without limiting the generality of subclause (1), a person who: 25

- (a) appoints a receiver of property of a co-operative under powers conferred by an instrument creating or evidencing a charge created by the co-operative, or 30
- (b) whether directly or by an agent, enters into possession or assumes control of property of a co-operative for the purposes of enforcing a charge created by the co-operative,

is to be taken, for the purposes of subclause (1), to take a step in the enforcement of the charge. 35

### **34 Court may give leave for enforcement of charge**

On application by the chargee under a charge, the Court may give leave for the charge to be enforced, if the Court is satisfied that:

- (a) immediately after the creation of the charge, the co-operative that created the charge was solvent, and 5
- (b) in all the circumstances of the case, it is just and equitable for the Court to do so.

### **35 Certain transactions excluded 10**

- (1) Nothing in clause 33 affects a debt, liability or obligation of a co-operative that would, if that clause had not been enacted, have been secured by a charge created by the co-operative.
- (2) Nothing in clause 33 operates to affect the title of a person to property (other than the charge concerned or an interest in the charge concerned) purchased for value from a chargee under a charge, from an agent of a chargee under a charge, or from a receiver appointed by a chargee under a charge in the exercise of powers conferred by the charge or implied by law, if that person purchased the property in good faith and without notice that the charge was created in favour of a person who is, or in favour of persons at least one of whom is, as the case may be, a relevant person in relation to the charge. 15  
20  
25
- (3) The onus of proving that a person purchased property in good faith and without notice that a charge was created as mentioned in subclause (2) is on the person asserting that the property was so purchased.

## **Division 6 Assignment, variation or satisfaction of charges 30**

### **36 Assignment and variation of charges**

- (1) If, after a registrable charge on property of a co-operative has been created, a person other than the original chargee becomes the holder of the charge, the 35

person who becomes the holder of the charge must, within 45 days after he, she or it becomes the holder of the charge:

- (a) lodge a notice with the Registrar stating that he, she or it has become the holder of the charge, and 5
  - (b) give the co-operative a copy of the notice.
- (2) If, after a registrable charge on property of a co-operative has been created, there is a variation in the terms of the charge having the effect of:
  - (a) increasing the amount of the debt or increasing the liabilities (whether present or prospective) secured by the charge, or 10
  - (b) prohibiting or restricting the creation of subsequent charges on the property,

the co-operative must, within 45 days after the variation occurs, ensure that there is lodged with the Registrar a notice setting out particulars of the variation and accompanied by the instrument (if any) effecting the variation or a certified copy of that instrument. 15
- (3) If a charge created by a co-operative secures a debt of an unspecified amount or secures a debt of a specified amount and further advances, a payment or advance made by the chargee to the co-operative in accordance with the terms of the charge is not to be taken, for the purposes of subclause (2), to be a variation in the terms of the charge having the effect of increasing the amount of the charge or the liabilities (whether present or prospective) secured by the charge. 20 25
- (4) A reference in this clause to the chargee in relation to a charge is, if the charge is constituted by a debenture or debentures and there is a trustee for debenture holders, to be construed as a reference to the trustee for debenture holders. 30
- (5) Nothing in clause 13 requires the lodgment of a notice under that clause in relation to a charge merely because of the fact that the terms of the charge are varied only in a manner mentioned in this clause. 35



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**37 Satisfaction of, and release of property from, charges**

- (1) If, with respect to a charge registered under this Part:
- (a) the debt or other liability the payment or discharge of which was secured by the charge has been paid or discharged in whole or in part, or 5
  - (b) the property charged or part of that property is released from the charge,
- the person who was the holder of the charge at the time when the debt or other liability was so paid or discharged or the property or part of the property was released must, within 14 days after receipt of a request in writing made by the co-operative on whose property the charge exists, give to the co-operative a memorandum in the form approved by the Registrar acknowledging that the debt or other liability has been paid or discharged in whole or in part or that the property or that part of it is no longer subject to the charge, as the case may be. 10 15
- (2) The co-operative may lodge the memorandum with the Registrar and, on the memorandum being lodged, the Registrar must enter in the Register particulars of the matters stated in the memorandum. 20
- (3) The reference in subclause (1) to the person who was the holder of a charge at the time when the debt or other liability was so paid or discharged or the property or part of the property was released is, if the charge was constituted by a debenture or debentures and there was a trustee for debenture holders, to be construed as a reference to the person who was, at that time, the trustee of debenture holders. 25

**Division 7 General** 30

**38 Lodgment of notices**

- (1) If a notice in respect of a charge on property of a co-operative is required to be lodged under clause 13, 17 or 36 (2), the notice may be lodged by the co-operative or by any interested person. 35

- 
- (2) If a document required by this Part other than clause 36 (1) to be lodged with the Registrar is lodged by a person other than the co-operative concerned, that person:
- (a) must, within 7 days after the lodgment of the document, give to the co-operative a copy of the document, and 5
  - (b) is entitled to recover from the co-operative the amount of any fees properly paid by the person on lodgment of the document.

### **39 Lodgment offences** 10

- (1) If clause 13, 17 or 36 (2) is contravened in relation to a registrable charge on property of a co-operative, the co-operative and any officer of the co-operative who is knowingly concerned in or a party to the contravention is guilty of an offence. 15

Maximum penalty: 10 penalty units.

- (2) If a person who becomes the holder of a registrable charge fails to comply with clause 36 (1), the person and, if the person is a body corporate, any officer of the body corporate who is in default, each contravene this subclause. 20

### **40 Co-operative to keep documents relating to charges**

A co-operative must, at the place where the register referred to in clause 41 is kept, keep a copy of:

- (a) every document relating to a charge on property of the co-operative that is lodged with the Registrar under this Part, and 25
- (b) every document given to the co-operative under this Part.

Maximum penalty: 10 penalty units. 30

### **41 Co-operative to keep register**

- (1) A co-operative must keep a register.

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- (2) On the creation of a charge (whether registrable or not) on property of the co-operative, or on the acquisition of property subject to a charge (whether registrable or not), the co-operative must as soon as practicable enter in the register particulars of the charge, giving in each case: 5
- (a) if the charge is a charge created by the co-operative, the date of its creation or, if the charge was a charge existing on property acquired by the co-operative, the date on which the property was so acquired, and 10
- (b) a short description of the liability (whether present or prospective) secured by the charge, and
- (c) a short description of the property charged, and
- (d) the name of the trustee for debenture holders or, if there is no such trustee, the name of the chargee, and 15
- (e) the name of the person whom the co-operative believes to be the holder of the charge.
- (3) A register kept by a co-operative pursuant to subclause (1) must be open for inspection: 20
- (a) by any creditor or member of the co-operative, without charge, and
- (b) by any other person, on payment for each inspection of such amount, not exceeding the amount prescribed by the regulations, as the co-operative requires or, if the co-operative does not require the payment of an amount, without charge. 25
- (4) A person may request a co-operative to furnish the person with a copy of the register or any part of the register. 30
- (5) If a person makes a request under subsection (4), the co-operative must send the copy to that person:



- 
- (a) if the co-operative requires payment of an amount not exceeding the amount prescribed by the regulations, within 21 days after payment of the amount is received by the co-operative or within such longer period as the Registrar approves, or 5
- (b) in a case to which paragraph (a) does not apply, within 21 days after the request is made or within such longer period as the Registrar approves.
- (6) If default is made in complying with any provision of this clause, the co-operative is guilty of an offence. 10
- Maximum penalty: 10 penalty units.

#### 42 Certificates

- (1) If particulars of a charge are entered in the Register in accordance with this Part, the Registrar must, on request by any person, issue to that person a certificate: 15
- (a) setting out those particulars, and
- (b) stating the time and day when a notice in respect of the charge containing those particulars was lodged with the Registrar, and
- (c) if the word "provisional" appears in the Register next to the reference to that time and day, stating that fact. 20
- (2) A certificate issued under subclause (1) is evidence of the matters stated in the certificate.
- (3) If particulars of a charge are entered in the Register in accordance with this Part, and the word "provisional" does not appear in the Register next to the reference to the time and day when a notice in respect of the charge was lodged, the Registrar must, on request by any person, issue to that person a certificate stating that particulars of the charge are entered in the Register in accordance with this Part. 25  
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- (4) A certificate issued under subclause (3) is conclusive evidence that the requirements of this Part as to registration (other than the requirements relating to the period after the creation of the charge within which notice in respect of the charge is required to be lodged) have been complied with. 5

#### **43 Power of Court to rectify Register**

If the Court is satisfied:

- (a) that a particular with respect to a registrable charge on property of a co-operative has been omitted from, or mis-stated in, the Register or a memorandum referred to in clause 37, and 10
- (b) that the omission or mis-statement:
- (i) was accidental or due to inadvertence or to some other sufficient cause, or 15
- (ii) is not of a nature to prejudice the position of creditors or shareholders,
- or that on other grounds it is just and equitable to grant relief,

the Court may, on the application of the co-operative or any person interested and on such terms and conditions as seem to the Court just and expedient, order that the omission or mis-statement be rectified. 20

#### **44 Power to exempt from compliance with certain requirements of Part** 25

- (1) The Registrar may, by instrument in writing, exempt a person, as specified in the instrument and subject to the conditions (if any) that are specified in the instrument, from compliance with such of the requirements of clause 13, 17 or 36 relating to: 30
- (a) the particulars to be contained in a notice under the relevant clause, or
- (b) the documents (other than the notice) to be lodged under the relevant clause, or

- (c) the verification of any document required to be lodged under the relevant clause,

as are specified in the instrument.

- (2) A person who is exempted by the Registrar, subject to a condition, from compliance with a requirement of clause 13, 17 or 36 must not contravene the condition. 5
- (3) If a person has contravened a condition to which an exemption under this clause is subject, the Court may, on the application of the Registrar, order the person to comply with the condition. 10

### Part 3 Order of priority

#### Division 1 General

##### 45 Definitions

- (1) In this Part:

**prior registered charge**, in relation to another registered charge, means a charge the priority time of which is earlier than the priority time of the other charge. 15

**priority time**, in relation to a registered charge, means:

- (a) except as provided by paragraph (b) or (c), the time and date appearing in the Register in relation to the charge, being a time and day entered in the Register pursuant to Division 3 of Part 2, and 20
- (b) if a notice has been lodged under clause 17 in relation to a charge on property, being a charge that, at the time when the notice was lodged, was already registered under Part 2, the earlier or earliest time and day appearing in the Register in relation to the charge, being a time and day entered in the Register pursuant to clause 17, and 25
- (c) to the extent that the charge has effect as varied by a variation notice of which was required to be lodged under clause 36 (2), the time and day entered in the Register in relation to the charge pursuant to clause 24. 30



**registered charge** means a charge that is registered under Part 2.

**subsequent registered charge**, in relation to another registered charge, means a charge the priority time of which is later than the priority time of the other registered charge. 5

**unregistered charge** means a charge that is not registered under Part 2 but does not include a charge that is not a registrable charge.

(2) A reference in this Part to a person having notice of a charge includes a reference to a person having constructive notice of the charge. 10

(3) If, by virtue of the definition of **priority time** in subclause (1), a registered charge has 2 or more priority times each of which relates to a particular liability secured by the charge, each of those liabilities is, for the purposes of this Part, to be considered to be secured by a separate registered charge the priority time of which is the priority time of the first-mentioned registered charge that relates to the liability concerned. 15 20

#### 46 Priorities of charges

(1) Subject to this clause, Division 2 has effect with respect to the priorities, in relation to each other, of registrable charges on the property of a co-operative.

(2) The application, in relation to particular registrable charges, of the order of priorities of charges set out in Division 2, is subject to: 25

(a) any consent (express or implied) that varies the priorities in relation to each other of those charges, being a consent given by the holder of one of those charges, being a charge that would otherwise be entitled to priority over the other charge, and 30

(b) any agreement between those chargees that affects the priorities in relation to each other of the charges in relation to which those persons are the chargees. 35

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- (3) The holder of a registered charge, being a floating charge, on property of a co-operative is to be considered, for the purposes of subclause (2), to have consented to that charge being postponed to a subsequent registered charge, being a fixed charge that is created before the floating charge becomes fixed, on any of that property unless: 5
- (a) the creation of the subsequent registered charge contravened a provision of the instrument or resolution creating or evidencing the floating charge, and 10
- (b) a notice in respect of the floating charge indicating the existence of the provision referred to in paragraph (a) was lodged with the Registrar under clause 13, 17 or 36 before the creation of the subsequent registered charge. 15
- (4) If a charge relates to property of a kind or kinds to which a particular paragraph or paragraphs of clause 4 (1) applies or apply and also relates to other property, Division 2 applies so as to affect the priority of the charge only in so far as it relates to the first-mentioned property and does not affect the priority of the charge in so far as it relates to the other property. 20

## **Division 2     Priority rules**

### **47 General priority rules in relation to registered charges** 25

- (1) A registered charge on property of a co-operative has priority over:
- (a) a subsequent registered charge on the property, unless the subsequent registered charge was created before the creation of the prior registered charge and the chargee in relation to the subsequent registered charge proves that the chargee in relation to the prior registered charge had notice of the subsequent registered charge at the time when the prior registered charge was created, and 30 35

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- (b) an unregistered charge on the property created before the creation of the registered charge, unless the chargee in relation to the unregistered charge proves that the chargee in relation to the registered charge had notice of the unregistered charge at the time when the registered charge was created, and 5
  - (c) an unregistered charge on the property created after the creation of the registered charge.
- (2) A registered charge on property of a co-operative is postponed to: 10
  - (a) a subsequent registered charge on the property, if the subsequent registered charge was created before the creation of the prior registered charge and the chargee in relation to the subsequent registered charge proves that the chargee in relation to the prior registered charge had notice of the subsequent registered charge at the time when the prior registered charge was created, and 15
  - (b) an unregistered charge on the property created before the creation of the registered charge, where the chargee in relation to the unregistered charge proves that the chargee in relation to the registered charge had notice of the unregistered charge at the time when the registered charge was created. 20
- 48 General priority rule in relation to unregistered charges 25**

An unregistered charge on property of a co-operative has priority over:

  - (a) a registered charge on the property that was created after the creation of the unregistered charge and does not have priority over the unregistered charge under clause 47 (1), and 30
  - (b) another unregistered charge on the property created after the first-mentioned unregistered charge.



#### 49 Special priority rules

- (1) Except as provided by this clause, any priority accorded by this Part to a charge over another charge does not extend to any liability that, at the priority time in relation to the first-mentioned charge, is not a present liability. 5
- (2) If a registered charge on property of a co-operative secures:
  - (a) a present liability and a prospective liability of an unspecified amount, or
  - (b) a prospective liability of an unspecified amount, 10

any priority accorded by this Part to the charge over another charge of which the chargee in relation to the first-mentioned charge does not have actual knowledge extends to the prospective liability, whether the prospective liability became a present liability before or 15
- (3) If a registered charge on property of a co-operative secures:
  - (a) a present liability and a prospective liability up to a specified maximum amount, or 20
  - (b) a prospective liability up to a specified maximum amount,

and the notice lodged under clause 13 or 17 in relation to the charge sets out the nature of the prospective liability and the amount so specified, then any priority accorded by this Part to the charge over another charge extends to any prospective liability secured by the first-mentioned charge to the extent of the maximum amount so specified. 25
- (4) Subclause (3) applies whether the prospective liability became a present liability before or after the registration of the first-mentioned charge and despite the fact that the chargee in relation to the first-mentioned charge had actual knowledge of the other charge at the time when the prospective liability became a present liability. 30  
35

- (5) Subclause (6) applies if:
- (a) a registered charge on property of a co-operative secures:
    - (i) a present liability and a prospective liability up to a specified maximum amount, or 5
    - (ii) a prospective liability up to a specified maximum amount,  
but the notice lodged under clause 13 or 17 in relation to the charge does not set out the nature of the prospective liability or the maximum amount so specified, or 10
  - (b) a registered charge on property of a co-operative secures a prospective liability of an unspecified amount.
- (6) In relation to a charge referred to in subclause (5): 15
- (a) any priority accorded by this Part to the charge over another charge of which the chargee in relation to the first-mentioned charge has actual knowledge extends to any prospective liability secured by the first-mentioned charge that had become a present liability at the time when the chargee in relation to the first-mentioned charge first obtained actual knowledge of the other charge, and 20
  - (b) any priority accorded by this Part to the charge over another charge of which the chargee in relation to the first-mentioned charge has actual knowledge extends to any prospective liability secured by the first-mentioned charge that became a present liability, as the result of the making of an advance, after the time when the chargee in relation to the first-mentioned charge first obtained actual knowledge of the other charge if, 25  
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at that time, the terms of the first-mentioned charge required the chargee in relation to that charge to make the advance after that time.

- (7) Subclause (6) (b) extends to the prospective liability whether the advance was made before or after the registration of the first-mentioned charge and despite the fact that the chargee in relation to the first-mentioned charge had actual knowledge of the other charge at the time when the advance was made. 5

**[234] Schedule 4 Receivers, and other controllers, of property of co-operatives, note 10**

Insert before clause 1:

**Note.** Each provision of this Schedule is a core consistent provision.

**[235] Schedule 4, clause 1, definition of "co-operative" 15**

Insert "registered under Part 13A" after "foreign co-operative".

**[236] Schedule 4, clauses 12 (5), 15 (1) and 17 (2)**

Omit "prescribed form" wherever occurring.

Insert instead "form approved by the Registrar".

**[237] Schedule 5 Members and procedure of the Council, note 20**

Insert before Part 1:

**Note.** None of the provisions of this Schedule is a core consistent provision.

**[238] Schedule 6 Savings and transitional provisions, note**

Insert before Part 1: 25

**Note.** None of the provisions of this Schedule is a core consistent provision.



**[239] Schedule 6, clause 2**

Insert "*Co-operatives Amendment Act 1997*" at the end of clause 2 (1).

**[240] Schedule 6, Part 4**

Insert after Part 3:

5

**Part 4 Provisions consequent on Co-operatives  
Amendment Act 1997**

**18 Saving of registration of certain foreign co-operatives**

A foreign co-operative registered under Division 3 of Part 2 before the commencement of this clause is taken to be registered as a foreign co-operative under Division 2 of Part 13A.

10

**19 Saving of rules of certain foreign co-operatives**

An exemption granted to a foreign co-operative by the Registrar pursuant to clause 7 (2) (a) of the *Co-operatives (General) Regulation 1993* and in force immediately before the commencement of this clause is taken to be valid for a period of 2 years after that commencement.

15

**20 Pending applications for registration as co-operatives**

20

- (1) Part 2 as in force immediately before the commencement of this clause continues to apply to an application for registration of a co-operative received by the Registrar before that commencement.
- (2) On registration of a co-operative to which this clause applies, the co-operative is taken to be a co-operative registered under Part 2.

25

**21 Pending amalgamations**

- (1) Division 1 of Part 12 as in force immediately before the commencement of this clause continues to apply to an application for amalgamation made by 2 or more co-operatives before the commencement of this clause. 5
- (2) On registration of an amalgamated co-operative under this clause, the co-operative is taken to be a merged co-operative registered under Division 1 of Part 12.

**22 Pending transfers of engagements**

- (1) Division 2 of Part 12 as in force immediately before the commencement of this clause continues to apply to: 10
  - (a) a transfer of engagements being made by one co-operative to another co-operative, or
  - (b) a direction given by the Registrar to a co-operative to transfer its engagements to another co-operative, 15
 before the commencement of this clause.
- (2) On completion, any such transfer of engagements is taken to have been made under Division 1 of Part 12.

**23 Rules of existing co-operatives to conform with Act and regulations** 20

- (1) A co-operative that was registered under this Act immediately before the commencement of this clause must bring its rules into conformity with this Act and the regulations: 25
  - (a) within 2 years after the commencement of this clause, or
  - (b) within such further period as may be approved by the Registrar in respect of a particular co-operative. 30
- (2) The rules of a co-operative to which this clause applies are taken to be valid until:
  - (a) the co-operative complies with subclause (1), or
  - (b) the expiry of the relevant period under subclause (1). 35

- (3) If there is any inconsistency between a provision of this Act or the regulations and the rules of the co-operative as to the procedure for alteration of the rules of the co-operative, the provisions of this Act and the regulations prevail. 5

#### **24 Modification of certain rules**

- (1) This clause applies if, in the opinion of the Registrar, the rules of a co-operative registered under this Act immediately before the commencement of this clause should be altered to achieve conformity with any requirement of this Act or the regulations. 10
- (2) The Registrar may, by instrument served on a co-operative to which this clause applies, require it within a period specified in the instrument to alter its rules: 15
- (a) in a manner specified in the instrument, or
- (b) in a manner approved by the Registrar.
- (3) If, within the period specified in the instrument, the co-operative fails to alter its rules as required by the instrument, the Registrar may, by notation on the registered copy of the rules, alter the rules. 20
- (4) The Registrar must give written notice to a co-operative of any alteration of its rules made by the Registrar under this clause.
- (5) Any alteration made by the Registrar to the rules under this clause is as valid and effectual as an alteration made and registered under Part 5. 25

#### **25 Registration of special resolutions**

- (1) Sections 113 and 192 as in force immediately before the commencement of this clause continue to apply in respect of a special resolution passed by a co-operative under Division 2 of Part 8 before that commencement. 30



- (2) Any such resolution is taken to be a resolution registered under Division 2 of Part 8.

**26 Preservation of rights of members of non-trading co-operatives in shares issued at premium**

A member of a non-trading co-operative who, immediately before the commencement of this clause, held shares issued at a premium in the co-operative retains all rights to a return of premium in relation to the shares that the member held immediately before that commencement. 5  
10

**27 Exemptions relating to use of word "co-operative"**

An exemption granted to a co-operative under section 260 (3) (e) that is in force immediately before the repeal of that provision by the *Co-operatives Amendment Act 1997* is taken to be an exemption granted under section 255 (5) (g). 15

**28 Authentication of documents and proceedings**

The authentication of a document or proceeding in accordance with section 47 as in force immediately before the commencement of this clause is taken to be a valid authentication for the purposes of this Act after that commencement. 20

**29 Disputes involving members**

Division 4 of Part 4 as in force immediately before the commencement of this clause continues to apply in respect of the resolution of a dispute referred to arbitration or to the Registrar in accordance with that Division before that commencement. 25

**30 Pending applications concerning rate of dividend**

- (1) Section 153 (1) and (2) as in force immediately before the commencement of this clause continues to apply to an application to the Minister for approval of the rate of a dividend made before that commencement. 30

- (2) An order made by the Minister in respect of an application to which this clause refers has effect despite any provision of this Act.

### 31 Court may resolve transitional difficulties

- (1) The Court may, on the application of an interested person, make such order as the Court thinks appropriate and necessary to give effect to this Act to remove a difficulty arising in applying a provision of this Act to a particular case because of the amendment of that or another provision of this Act by the *Co-operatives Amendment Act 1997*. 5 10
- (2) An order under this clause has effect despite anything in a provision of this Act or in a provision of this Act as in force immediately before the commencement of the *Co-operatives Amendment Act 1997*. 15

### 32 Transitional regulations

- (1) If, on the commencement of this clause, regulations have not been made for or with respect to any matter that by this Act as amended by the *Co-operatives Amendment Act 1997* is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act as so amended, regulations may be made under clause 2 to provide that such of the regulations made under the *Co-operatives Act 1996* of Victoria as are identified in the regulations apply to co-operatives to which this Act applies with such modifications as are necessary and with such modifications (if any) as may be prescribed by the regulations. 20 25
- (2) Any regulation to which this clause applies expires 6 months after the date on which the regulation commences. 30

### 33 General saving

- (1) If anything done or commenced under this Act before the commencement of this clause and still having effect or not completed immediately before that 35

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commencement could have been done or commenced under this Act as amended by the *Co-operatives Amendment Act 1997* if this Act as so amended had been in force when the thing was done or commenced:

- (a) the thing continues to have effect, or 5
- (b) the thing commenced may be completed,

as if it had been done or commenced under this Act as so amended.

- (2) This clause is subject to any express provision of this Act on the matter. 10







New South Wales

# Co-operatives Amendment Act 1997 No 39

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New South Wales

# **Co-operatives Amendment Act 1997**

## **No 39**

Act No 39, 1997

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An Act to amend the *Co-operatives Act 1992* by enacting core consistent provisions to give effect to a national scheme for the regulation of co-operatives with respect to interstate operations, fund raising, mergers and other matters; and for other purposes. [Assented to 30 June 1997]

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

**1 Name of Act**

This Act is the *Co-operatives Amendment Act 1997*.

**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.

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## Schedule 1 Amendments

(Section 3)

### [1] Part 1 Preliminary, note

Insert before section 1:

**Note.** Sections 3, 5 (other than the definitions of *CCU*, *Council*, *Court* and *holding co-operative*), 5A and 6–12 (other than sections 7 (2) and (3) and 8 (2) (n)) are core consistent provisions.

### Division 1 Introduction

### [2] Section 3

Omit section 3. Insert instead:

#### 3 Objects of this Act (cf Vic Act s 3)

The objects of this Act are:

- (a) to enable the formation, registration and operation of co-operatives, and
- (b) to promote co-operative philosophy, principles, practices and objectives, and
- (c) to protect the interests of co-operatives, their members and the public in the operations and activities of co-operatives, and
- (d) to ensure that the directors of co-operatives are accountable for their actions and decisions to the members of co-operatives, and
- (e) to encourage and facilitate self-management by co-operatives at all levels, and
- (f) to encourage the development, integration and strengthening of co-operatives at local, regional, national and international levels by supporting and fostering State and National peak organisations and co-operative instrumentalities.

### Division 2 Interpretation



**[3] Section 5 Definitions** (cf Vic Act s 4)

Omit the definition of *accounting records* from section 5 (1).

Insert instead:

*accounting records* include:

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry, and
- (b) documents and records that record those entries, and
- (c) any working papers and other documents that are necessary to explain the methods and calculations by which accounts are made up.

**[4] Section 5 (1), definitions of "alter", "association", "component co-operative", "deposit taking co-operative", "federation", "model rules", "non-trading co-operative", "Register", "seal", "subordinated debt", "surplus" and "trading co-operative"**

Insert in alphabetical order:

*alter*, in relation to the rules of a co-operative, includes add to, substitute and rescind.

*association* means an association registered under this Act.

*component co-operative* means a member of an association.

*deposit taking co-operative* means a co-operative which is permitted to under section 263A accept money on deposit.

*federation* means a federation registered under this Act.

**model rules** means the model rules approved by the Registrar under Part 5.

**non-trading co-operative** means a non-trading co-operative within the meaning of section 15.

**Register** means the Register of Co-operatives established under Part 15.

**seal**, in relation to a co-operative, means common seal or official seal.

**subordinated debt** has the meaning given by section 265.

**surplus**, in relation to a co-operative, means the excess of income over expenditure after making proper allowance for taxation expense, depreciation in value of the property of the co-operative and for future contingencies.

**trading co-operative** means a trading co-operative within the meaning of section 14.

[5] **Section 5 (1), definition of “business document”**

Omit the definition.

[6] **Section 5 (1), definition of “co-operative”**

Omit the definition. Insert instead:

**co-operative** means a body registered under this Act as a co-operative and includes an association or federation.

[7] **Section 5 (1), note, meaning of “core consistent provisions”**

Insert after the definition of **co-operative**:

**Note.** For the purposes of the national scheme for the regulation of the operation of co-operatives, **core consistent provisions** means those provisions contained in this Act that are equivalent or comparable (though not necessarily identical) to provisions of the *Co-operatives Act 1996* of Victoria. These provisions are highlighted by notes at the beginning of each Part of and each Schedule to this Act.

**[8] Section 5 (1), definition of "foreign co-operative"**

Omit the definition. Insert instead:

*foreign co-operative* means a body corporate that is registered, incorporated or formed under, or subject to, a law in force outside New South Wales (including outside Australia), that regulates co-operatives or organisations having attributes the same as or similar to co-operatives but does not include:

- (a) a body registered under the *Corporations Law*, or
- (b) a financial institution or foreign society registered under financial institutions legislation within the meaning of the *Financial Institutions (NSW) Code*.

**[9] Section 5 (1), definition of "Registrar"**

Omit the definition. Insert instead:

*Registrar* means the person for the time being holding the office of Registrar of Co-operatives under this Act.

**[10] Section 5 (4), note**

Insert after the subsection:

**Note.** For the purposes of comparison, a number of provisions of this Act contain bracketed notes in headings, drawing attention ("cf") to equivalent or comparable (though not necessarily identical) provisions of the *Co-operatives Act 1996* of Victoria, abbreviated in the notes as "Vic Act".

**[11] Section 5A**

Insert after section 5:

**5A Qualified privilege** (cf Vic Act s 5)

- (1) If this Act provides that a person has qualified privilege in respect of an act, matter or thing, the person, in respect of that act, matter or thing:
  - (a) has qualified privilege in proceedings for defamation, or



- 
- (b) is not, in the absence of malice on the person's part, liable to an action for defamation at the suit of a person.
- (2) In subsection (1):  
*malice* includes ill-will to the person concerned or any other improper motive.
- (3) Neither this section nor a provision of this Act that provides as mentioned in subsection (1) limits or affects any right, privilege or immunity that a person has, apart from this section or such a provision, as defendant in proceedings, or an action, for defamation.

**[12] Section 6 and Part 2 (sections 8–28)**

Omit the section and the Part. Insert instead:

**Division 3 The co-operative principles**

**6 Co-operative principles** (cf Vic Act s 6)

In this Act, a reference to *co-operative principles* is a reference to the principles adopted by the International Co-operative Alliance, being the following principles:

**Voluntary and open membership**

Co-operatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.

**Democratic member control**

Co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary co-operatives members have equal voting rights (one member, one vote) and co-operatives at other levels are organised in a democratic manner.

### **Member economic participation**

Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of that capital is usually the common property of the co-operative. They usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing the co-operative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the co-operative; and supporting other activities approved by the membership.

### **Autonomy and independence**

Co-operatives are autonomous, self help organisations controlled by their members. If they enter into agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.

### **Education, training and information**

Co-operatives provide education and training for their members, elected representatives, managers and employees so they can contribute effectively to the development of their co-operatives. They inform the general public, particularly young people and opinion leaders, about the nature and benefits of co-operation.

### **Co-operation among co-operatives**

Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures.

### **Concern for the community**

While focusing on member needs, co-operatives work for the sustainable development of their communities through policies accepted by their members.

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## **7 Interpretation to promote co-operative principles**

(cf Vic Act s 7)

- (1) In the interpretation of a provision of this Act or the regulations, a construction that would promote co-operative principles is to be preferred to a construction that would not promote co-operative principles.
- (2) Any requirement in this Act that a co-operative function in accordance with co-operative principles is not to be construed:
  - (a) as requiring the co-operative to function in accordance with all of the principles set out in section 6, or
  - (b) as authorising the co-operative to contravene any other provision of this Act or of its rules.
- (3) The Governor may, by order published in the Gazette, amend the principles set out in section 6 so as to cause those principles to be the co-operative principles adopted from time to time by the International Co-operative Alliance.

## **Division 4      Application of Corporations Law to co-operatives**

### **8 Corporations Law applying under its own force**

(cf Vic Act s 8)

- (1) The provisions of the *Corporations Law* (other than the provisions of the *Corporations Law* mentioned in subsection (2)) are excluded from applying under their own force to co-operatives.
- (2) However, the following provisions of the *Corporations Law* are not excluded from applying under their own force to a co-operative:
  - (a) provisions that relate to any matter that the regulations provide is not to be excluded from the operation of the *Corporations Law*, or



- (b) provisions that relate to the role of a co-operative in the formation of a company, or
  - (c) provisions that relate to substantial share holdings, by or involving a co-operative, in a company, or
  - (d) provisions that confer or impose functions on a co-operative as a member, or former member, of a corporation, or
  - (e) provisions that relate to dealings by a co-operative in securities of a body corporate, other than securities of the co-operative itself, or
  - (f) provisions that confer or impose functions on a co-operative in its dealings with a corporation, not being dealings in securities of the co-operative, or
  - (g) provisions that relate to securities of a co-operative, other than shares in, debentures of or deposits with a co-operative, or
  - (h) provisions relating to the futures industry, or
  - (i) provisions relating to participants in the securities industry, or
  - (j) provisions relating to the conduct of securities business, or
  - (k) provisions relating to dealers' accounts and audit, or
  - (l) provisions relating to money and scrip of dealers' clients, or
  - (m) provisions relating to registers of interests in securities, or
  - (n) provisions relating to powers of Court to cure procedural irregularities and to make other orders.
- (3) To remove doubt it is declared that subsection (1) does not operate to exclude the operation of Parts 1.2A (Disclosing entities), 7.11 (Conduct in relation to securities) and 7.12 (Offering securities for subscription or purchase) of the *Corporations Law*, except in relation to shares in, debentures of or deposits with a co-operative.

- (4) This section does not operate to give rise to any operation of the *Corporations Law*, and does not confer any function under that Law, which that Law would not otherwise have or confer of its own force.
- (5) This section has effect despite any provision of the *Corporations (New South Wales) Act 1990* or the applicable provisions within the meaning of that Act.

**9 Corporations Law adopted by this Act or the regulations** (cf Vic Act s 9)

- (1) The regulations may adopt, with or without specified modifications, a provision of the *Corporations Law* for application in relation to co-operatives.
- (2) Any provision of this Act or any regulation which adopts provisions of the *Corporations Law* for application in relation to co-operatives operates to apply those provisions as part of this Act and the adopted provisions are to be read as forming part of this Act.
- (3) If a provision of the *Corporations Law* is adopted by any provision of this Act or the regulations, neither the adopted provision nor the adopting provision gives power to the Australian Securities Commission to administer the adopted provision for this Act.

**Part 2 Formation**

**Note.** Each provision of Divisions 1–5 and 8 (other than sections 14 (3) (c), 15 (3) (c), 16 (3) (c) and 19 (1) (c) (ii) (in so far as they may allow a co-operative to have fewer than 5 members), 16 (2) (a), 17 (1), (4), (10) and (11), 19 (1) (d) (ii), 20 (3)–(6) and 23 (2) (b)) is a core consistent provision.

**Division 1 Types of co-operatives**

**13 Types of co-operatives** (cf Vic Act s 13)

- (1) A body may be registered under this Act as a co-operative.
- (2) A co-operative may be either:
  - (a) a trading co-operative, or
  - (b) a non-trading co-operative.

**14 Trading co-operatives** (cf Vic Act s 14)

- (1) A trading co-operative must have a share capital.
- (2) A trading co-operative is a co-operative that gives returns or distributions on surplus or share capital.
- (3) A trading co-operative must have a membership of:
  - (a) 2 or more co-operatives, in the case of an association, and
  - (b) 2 or more associations, in the case of a federation, and
  - (c) 5 or more active members, in the case of any other trading co-operative, or such lesser number as the Registrar may approve in a particular case.

**15 Non-trading co-operatives** (cf Vic Act s 15)

- (1) A non-trading co-operative must not give returns or distributions on surplus or share capital to members other than the nominal value of shares (if any) at winding up.
- (2) A non-trading co-operative may or may not have a share capital.
- (3) A non-trading co-operative must have a membership of:
  - (a) 2 or more co-operatives, in the case of an association, and
  - (b) 2 or more associations, in the case of a federation, and
  - (c) 5 or more active members, in the case of any other non-trading co-operative, or such lesser number as the Registrar may approve in a particular case.

**Division 2      Formation meeting**

**16 Formation meeting** (cf Vic Act s 16)

- (1) Before a proposed co-operative (other than an existing body corporate) can be registered, a formation meeting must be held in accordance with this section.



- (2) At the formation meeting:
- (a) a disclosure statement approved under section 17 must be presented to the meeting, and
  - (b) the proposed rules of the co-operative approved under section 18 in respect of the proposed co-operative, and including active membership provisions in accordance with Part 6, must be passed by two-thirds of the proposed members of the proposed co-operative attending the meeting, and
  - (c) the proposed members of the proposed co-operative must sign the application for membership which must be in a form approved by the Registrar, and
  - (d) the proposed members must elect the first directors of the proposed co-operative in accordance with the proposed rules, and
  - (e) the proposed members must authorise a person:
    - (i) to apply to the Registrar for registration of the proposed co-operative, and
    - (ii) to do any act or thing necessary to have the proposed co-operative registered.
- (3) The formation meeting must be held by:
- (a) not less than 2 suitably qualified co-operatives, in the case of an association, and
  - (b) not less than 2 suitably qualified associations, in the case of a federation, and
  - (c) not less than 5 persons suitably qualified to be members of the proposed co-operative in the case of any other co-operative, or such lesser number as the Registrar may have approved under section 14 or 15.
- (4) For the purposes of subsection (3), a person is suitably qualified to be a member if:
- (a) there are reasonable grounds to believe the person will be an active member of the proposed co-operative, and

- (b) in the case of a natural person, the person has attained the age of 18, and
  - (c) the person satisfies any other requirements for membership set out in the proposed rules.
- (5) Each co-operative forming a proposed association and each association forming a proposed federation may be represented at the formation meeting by one person.

### **Division 3      Approval of disclosure statement and rules**

#### **17 Approval of disclosure statement      (cf Vic Act s 17)**

- (1) A draft disclosure statement of a proposed co-operative must be submitted to the Registrar at least 28 days (or such shorter period as the Registrar may allow in a particular case) before the formation meeting is due to be held.
- (2) The disclosure statement of a proposed trading co-operative must contain the information necessary to ensure that prospective members are adequately informed of the nature and extent of a person's financial involvement or liability as a member of the co-operative including so far as applicable:
  - (a) the estimated costs of formation, and
  - (b) the nature of the proposed membership of the co-operative, and
  - (c) the rights and liabilities attaching to shares in the proposed co-operative (including the capital required for the co-operative), and
  - (d) the projected income and expenditure of the co-operative for its first year of operation, and
  - (e) information about any contracts required to be entered into by the co-operative, and
  - (f) any other information that the Registrar directs.
- (3) The disclosure statement of a proposed trading co-operative must not include a statement purporting to be made by an expert or to be based on a statement made by an expert unless:

- (a) the expert has given, and has not withdrawn, the expert's written consent to the submission of the disclosure statement with the statement included in the form and context in which it is included, and
  - (b) there appears in the disclosure statement a statement that the expert has given, and has not withdrawn, the expert's consent.
- (4) The disclosure statement of a proposed non-trading co-operative must be in a form approved by the Registrar and contain such information as is required by the Registrar.
- (5) The Registrar may:
  - (a) approve the draft statement as submitted, or
  - (b) approve a different statement to that submitted, or
  - (c) refuse to approve the statement.
- (6) Approval may be given at any time before the formation meeting is held.
- (7) Subject to subsection (8), the Registrar approves of a disclosure statement by giving notice of the approval of the statement to the person who submitted the draft statement to the Registrar.
- (8) The Registrar is to be considered to have approved the disclosure statement as submitted to the Registrar unless at least 5 days before the formation meeting is due to be held:
  - (a) the Registrar gives notice of approval of a different disclosure statement, or
  - (b) the Registrar gives notice to the person who submitted the draft statement that the Registrar is still considering the matter, or
  - (c) the Registrar gives notice of refusal to approve the disclosure statement.
- (9) A notice under this section must be in writing.



- (10) The Registrar may approve a disclosure statement with or without conditions.
- (11) In the case of a proposed non-trading co-operative, the Registrar may, in a particular case and either unconditionally or subject to conditions, dispense with the requirement that a disclosure statement be presented to the formation meeting.

**Note.** This section draws a distinction between requirements for disclosure statements for proposed trading and non-trading co-operatives. While the requirements for non-trading co-operatives are less onerous than those for trading co-operatives, the Registrar may require a non-trading co-operative to comply with requirements that are comparable to those for trading co-operatives.

#### **18 Approval of rules**      (cf Vic Act s 18)

- (1) A draft of the rules proposed for the co-operative (including active membership provisions in accordance with Part 6) must be submitted to the Registrar at least 28 days (or such shorter period as the Registrar may allow in a particular case) before the formation meeting is due to be held.
- (2) The proposed rules must:
  - (a) be in accordance with section 107, and
  - (b) be in a form that may reasonably be approved, and
  - (c) if the rules contain any alterations of the model rules, be accompanied by a statement setting out the alterations and the reasons for the alterations.
- (3) If the rules do not make provision for any matter included in the model rules, the Registrar may approve the relevant provisions of the model rules as rules of the co-operative.
- (4) The Registrar may:
  - (a) approve the rules as submitted, or
  - (b) approve different rules to those submitted, or
  - (c) refuse to approve the rules.

- (5) The Registrar approves of the rules by giving written notice of the approval of the rules to the person who submitted the draft alterations to the Registrar.
- (6) The Registrar must give written notice of the refusal to approve the rules to the person who submitted the rules to the Registrar.

#### **Division 4 Registration of proposed co-operative**

##### **19 Application for registration of proposed co-operative**

(cf Vic Act s 19)

- (1) An application for registration of a proposed co-operative (other than an existing body corporate) must:
  - (a) be made in the form approved by the Registrar, and
  - (b) be accompanied by the fee prescribed by the regulations, and
  - (c) be signed by:
    - (i) at least 2 directors in the case of an association or federation, and
    - (ii) at least 5 suitably qualified members, including 2 directors elected at the formation meeting, in the case of any other proposed co-operative, or such lesser number of qualified members as the Registrar may have approved under section 14 or 15, and
  - (d) be accompanied by:
    - (i) 2 copies of the proposed rules signed and certified by the persons who acted as chairperson and secretary at the formation meeting, and
    - (ii) a copy of the disclosure statement presented to the formation meeting signed and certified by the persons who acted as chairperson and secretary at the formation meeting, and

- (iii) a statement listing the name, address, occupation and place and date of birth of each director, and
  - (iv) any other particulars that the Registrar may require in a particular case.
- (2) The application must be lodged with the Registrar within 2 months after closure of the formation meeting for the proposed co-operative or within such extended period as the Registrar may allow.

**20 Registration of co-operative** (cf Vic Act s 20)

- (1) When an application is made under this Division for registration of a proposed co-operative, the Registrar must register the co-operative and its rules if satisfied that the requirements for registration of the co-operative have been met.
- (2) The requirements for registration of a co-operative under this Division are as follows:
  - (a) the proposed rules of the proposed co-operative must be the rules approved by the Registrar under section 18, and
  - (b) the requirements of this Act and the regulations must have been complied with in respect of the proposed co-operative and compliance must be likely to continue, and
  - (c) the proposed co-operative must be designed to function in accordance with the co-operative principles or, if it is not designed to function entirely in accordance with the co-operative principles, the Registrar must be satisfied that there are special reasons why the co-operative should be registered under this Act, and
  - (d) there must be no reasonable cause for refusing registration of the proposed co-operative.



- (3) If the Registrar is not satisfied that the requirements for registration of the co-operative have been met, the Registrar is to:
  - (a) refuse registration of the co-operative, or
  - (b) refer the application to the Council for its recommendation.
- (4) If the Registrar refuses registration of the co-operative, the applicants for registration may request the Registrar to refer the application to the Council and the Registrar must comply with such a request. A request made by or on behalf of a majority of the persons elected as referred to in section 16 (2) (d) (the persons to be proposed as the first directors of the co-operative) is taken to have been made by the applicants for registration.
- (5) If the application is referred to the Council, the Council must either recommend registration or recommend refusal of registration but may only recommend refusal if of the opinion that:
  - (a) the requirements for registration of the co-operative have not been met, or
  - (b) the proposed co-operative would not be a genuine co-operative, or
  - (c) the proposed co-operative is not designed or intended to serve fairly the interests of its members and prospective members.
- (6) The Registrar is required to comply with the Council's recommendation.

## **21 Incorporation and certificate of registration**

(cf Vic Act s 21)

- (1) The incorporation of the co-operative takes effect on the registration of the co-operative.
- (2) On the registration of the co-operative, the Registrar must issue a certificate of registration.

## **Division 5      Registration of existing body corporate**

### **22 Existing body corporate can be registered**

(cf Vic Act s 22)

A body corporate (other than a co-operative deemed to be registered under this Act) may apply to the Registrar to be registered as a co-operative under this Act, if before or after the commencement of this Act, the body corporate was:

- (a) incorporated or registered or deemed to be registered under the *Corporations Law*, or
- (b) incorporated or registered under any other Act relating to the incorporation or registration of bodies corporate.

### **23 Formation meeting      (cf Vic Act s 23)**

- (1) Before applying for registration as a co-operative, the body corporate must pass a special resolution in accordance with its articles of association or rules approving of:
  - (a) the proposed registration, and
  - (b) any alterations of its existing memorandum and articles of association or rules necessary to enable the body corporate to comply with this Act.
- (2) At the meeting to pass the special resolution:
  - (a) the proposed rules of the proposed co-operative approved under section 18, and including active membership provisions in accordance with Part 6, must also be passed by special resolution, and
  - (b) in the case of a proposed trading co-operative, a disclosure statement approved under section 17 must be presented to the meeting.

### **24 Application for registration      (cf Vic Act s 24)**

An application for registration must be:

- (a) in the form approved by the Registrar, and
- (b) accompanied by the fee prescribed by the regulations, and

## (c) accompanied by:

- (i) a declaration in writing signed by the directors or the committee of management of the body corporate stating that at a meeting of the directors or committee they formed the opinion that the body corporate will be able to pay its debts as they fall due, and
- (ii) a report in the form approved by the Registrar as to the affairs of the body corporate and showing its assets and liabilities, made up to the latest practicable date before the application, and
- (iii) a copy of the memorandum and articles of association or rules of the body corporate in force at the date of the application, and
- (iv) 2 copies of the proposed rules of the co-operative, as provided for by the special resolution, and
- (v) a copy of the disclosure statement presented to the meeting held under section 23 and signed and certified by the directors or committee of management of the body corporate, and
- (vi) a list containing the name, address, occupation and place and date of birth of each director, and
- (vii) evidence to the satisfaction of the Registrar of the incorporation of the existing body corporate, and
- (viii) any other particulars that the Registrar may require in a particular case.

**25 Requirements for registration** (cf Vic Act s 25)

- (1) When an application is made for registration of a co-operative under this Division, the Registrar must register the body corporate as a co-operative under this



Act and register its rules under this Act if the Registrar is satisfied that the requirements for registration of the co-operative have been met.

- (2) The requirements for registration of a co-operative under this Division are as follows:
  - (a) the proposed rules of the proposed co-operative must be the rules approved by the Registrar under section 18, and
  - (b) the requirements of this Act and the regulations must have been complied with in respect of the proposed co-operative and compliance must be likely to continue, and
  - (c) there must be no reasonable cause for refusing registration of the proposed co-operative.
- (3) If the Registrar is not satisfied that the requirements for registration of the co-operative have been met the Registrar may refuse to register the co-operative and its rules.
- (4) If the Registrar has determined under this section to register a body corporate under this Act, the body corporate must notify the authority responsible for registering the body corporate under the law under which it was previously registered of that determination.
- (5) Despite anything to the contrary in this Division, the registration of a body corporate as a co-operative does not take effect until the body corporate ceases to be registered under the law under which it was previously registered.
- (6) The body corporate must notify the Registrar in writing within 7 days after ceasing to be registered under that other law.

**26 Certificate of registration** (cf Vic Act s 26)

- (1) On the registration of the body corporate as a co-operative the Registrar must:
  - (a) issue a certificate of registration, and

- (b) publish notice of the issue of the certificate in the Gazette.
- (2) The corporate name of a body corporate registered as a co-operative is the name approved by the Registrar, as specified in the certificate of registration issued by the Registrar.

**27 Effect of registration** (cf Vic Act s 27)

- (1) The body corporate is to be taken to be incorporated under this Act on its registration.
- (2) Except as expressly provided in this Act or the regulations, the registration and incorporation of the body corporate as a co-operative does not prejudice any right of a member in respect of any shares held at the time of registration and incorporation.
- (3) The change of registration and incorporation does not affect the identity of the body corporate which is deemed to be the same body after registration as a co-operative as it was before and no act, matter or thing is affected by the change.

**Division 6 Conversion of co-operative**

**28 Conversion of co-operative** (cf Vic Act s 28)

- (1) A co-operative may, by alteration of its rules, convert from a trading co-operative to a non-trading co-operative or vice versa.
- (2) An alteration of the rules for the conversion of a co-operative must be approved by special resolution passed by means of a special postal ballot.

**Division 7 Appeals**

**28A Appeal against refusal to approve draft disclosure statement** (cf Vic Act s 29)

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

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

**28B Appeal against refusal to approve draft rules**

(cf Vic Act s 30)

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

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

**28C Appeal against refusal to register** (cf Vic Act s 31)

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

- (a) a decision of the Council to recommend the refusal of the registration of a co-operative, or
- (b) in the case of a body corporate converting to a co-operative, against a failure of the Registrar to register the co-operative.

**28D Registrar to comply with Court order** (cf Vic Act s 32)

The Registrar must comply with an order of the Court on an appeal under this Division.

**Division 8      General**

**28E Stamp duty exemption for certain co-operatives**

(cf Vic Act s 33)

- (1) This section applies to a co-operative that:
  - (a) has as its primary activity the providing of any community service or benefit, and
  - (b) was, before it was incorporated under this Act, an unincorporated club, association or body operating to provide sporting or recreational facilities for its members and not carried on for the pecuniary profit of its members.



- (2) An instrument or document transferring to such a co-operative any property which was, immediately before the co-operative was so incorporated, held by or on behalf of the unincorporated club, association or body is not chargeable with stamp duty.

**28F Acceptance of money by proposed co-operative**

(cf Vic Act s 34)

- (1) A proposed co-operative or any person on its behalf or otherwise which accepts any money for the proposed co-operative before the proposed co-operative is registered must hold that money on trust until the co-operative is registered.
- (2) If a co-operative is not registered within the period of 3 months after the acceptance of any money under subsection (1), the proposed co-operative or the person who accepted the money on its behalf must refund the money to the person who paid it.

Maximum penalty: 60 penalty units.

**28G Issue of duplicate certificate** (cf Vic Act s 35)

The Registrar must issue a duplicate certificate of registration:

- (a) if the Registrar is satisfied that the original certificate is lost or destroyed, and
- (b) on payment of the fee prescribed by the regulations.

**[13] Part 3 Legal capacity, powers etc, note**

Insert before Division 1:

**Note.** Each provision of Divisions 1–3, 6 and 7 is a core consistent provision.

**[14] Section 29**

Omit the section. Insert instead:

**29 Effect of incorporation** (cf Vic Act s 36)

As a body corporate, a co-operative:

- (a) has perpetual succession, and
- (b) has a common seal, and
- (c) may sue and be sued in its corporate name, and
- (d) subject to this Act, is capable of taking, purchasing, leasing, holding, selling and disposing of real and personal property, and
- (e) may do and suffer all acts and things that bodies corporate may by law do and suffer and which are necessary or expedient.

**[15] Section 33**

Omit the section. Insert instead:

**33 Legal capacity** (cf Vic Act s 40)

- (1) A co-operative has, both within and outside the State, the legal capacity of a natural person.
- (2) Without limiting subsection (1), a co-operative has, both within and outside the State, power:
  - (a) to issue and allot fully or partly paid shares in the co-operative, and
  - (b) to issue debentures of the co-operative, and
  - (c) to distribute any of the property of the co-operative among the members, in kind or otherwise, and
  - (d) to give security by charging uncalled capital, and
  - (e) to grant a charge on property of the co-operative, and
  - (f) to procure the co-operative to be registered or recognised as a body corporate in any place outside the State, and

- (g) to do any other act that it is authorised to do by any other law (including a law of a place outside the State).
- (3) Subsections (1) and (2) have effect in relation to a co-operative:
  - (a) subject to this Act and the regulations but despite section 34 (2), and
  - (b) if the co-operative's rules contain an express or implied restriction on, or an express or implied prohibition of, the exercise by the co-operative of any of its powers, despite that restriction or prohibition, and
  - (c) if the rules of the co-operative contain a provision stating the objects of the co-operative, despite that fact.
- (4) The fact that the doing of an act by a co-operative would not be, or is not, in its best interests does not affect its legal capacity to do the act.

**[16] Sections 36–39**

Omit the sections. Insert instead:

**36 Assumptions entitled to be made** (cf Vic Act s 43)

- (1) A person is entitled to make the assumptions in section 37 in relation to:
  - (a) dealings with a co-operative, and
  - (b) dealings with a person who has, or purports to have, directly or indirectly acquired title to property from a co-operative.
- (2) If a person is entitled to assume a matter, the co-operative or anyone referred to in subsection (1) is not entitled to assert in proceedings in relation to the dealings that the matter is incorrect.



**37 Assumptions** (cf Vic Act s 44)

- (1) **Rules complied with**  
A person may assume that the co-operative's rules have been complied with.
- (2) **Director or officer**  
A person may assume that anyone who appears, from information provided by the co-operative that is available to the public from the Registrar, to be a director or officer of the co-operative:
  - (a) has been duly appointed, and
  - (b) has authority to exercise the powers and perform the duties customarily exercised or performed by a director or officer of a similar co-operative.
- (3) **Officer or agent**  
A person may assume that anyone who is held out by the co-operative to be an officer or agent of the co-operative:
  - (a) has been duly appointed, and
  - (b) has authority to exercise the powers and perform the duties customarily exercised or performed by that kind of officer or agent of a similar co-operative.
- (4) **Officer or agent with authority to warrant that document is genuine or true copy**  
A person may assume that anyone who is, or may be assumed to be, an officer or agent of the co-operative who has the authority to issue a document or a certified copy of a document on its behalf also has authority to warrant that the document is genuine or is a true copy.
- (5) **Document duly executed**  
A person may assume that a document has been duly executed by the co-operative if it is signed by 2 people, one of whom is, or may be assumed to be, a director of the co-operative, and the other a director or officer of the co-operative.

(6) **Document duly sealed**

A person may assume that a document has been duly sealed by the co-operative if it bears what appears to be an impression of the co-operative's seal and the sealing of the document appears to be witnessed by 2 people, one of whom is, or may be assumed to be, a director of the co-operative, and the other a director or officer of the co-operative.

(7) **Proper performance of duties**

A person may assume that the officers and agents of the co-operative properly perform their duties to the co-operative.

**38 Person who knows or ought to know is not entitled to make assumptions** (cf Vic Act s 45)

This Division does not entitle a person to make an assumption, and does not prevent an assertion being made in relation to an assumption, if:

- (a) the person has actual knowledge that the assumption is not correct, or
- (b) the person's connection or relationship with the co-operative is such that the person ought to know that the assumption is not correct.

**[17] Part 3, Division 5 (section 44)**

Omit the Division.

**[18] Section 47**

Omit the section. Insert instead:

**47 Authentication need not be under seal** (cf Vic Act s 50)

A document or proceeding requiring authentication by a co-operative may be authenticated by the signature of 2 people, one of whom is a director of the co-operative and one of whom is a director or an officer of the co-operative and need not be authenticated under the seal of the co-operative.

**[19]    Section 48A**

Insert after section 48:

**48A Common seal**    (cf Vic Act s 48)

A document or proceeding requiring authentication by a co-operative may be authenticated under the common seal of the co-operative.

**[20]    Part 3, Division 7 (sections 52–61)**

Omit the Division. Insert instead:

**Division 7      Pre-registration contracts**

**52 Contracts before registration**    (cf Vic Act s 56)

- (1) If a person enters into, or purports to enter into, a contract on behalf of, or for the benefit of, a proposed co-operative, the co-operative becomes bound by the contract and entitled to its benefit if the co-operative, or a co-operative that is reasonably identifiable with it, is registered and ratifies the contract:
  - (a) within a reasonable period after the contract is entered into, or
  - (b) within any period agreed to by the parties to the contract.
- (2) The person is released from any liability under the pre-registration contract if the co-operative enters into another contract in substitution for it:
  - (a) within a reasonable period after the pre-registration contract is entered into, or
  - (b) within any period agreed to by the parties to the pre-registration contract.
- (3) The person is liable to pay damages to each other party to the pre-registration contract if a co-operative is not registered, or a co-operative is registered but does not ratify the contract or enter into a substitute for it:



- (a) within a reasonable period after the contract is entered into, or
  - (b) within any period agreed to by the parties to the contract.
- (4) The maximum amount of damages the person is liable to pay to a party is the amount the co-operative would be liable to pay to the party if the co-operative had been registered and had ratified the contract and then completely failed to perform it.
- (5) If proceedings are brought to recover damages under subsection (3) because the co-operative is registered but does not ratify the pre-registration contract or enter into a substitute for it, the Court may do anything that it thinks just in the circumstances, including ordering the co-operative:
  - (a) to pay all or part of the damages that the person is liable to pay, or
  - (b) to transfer property that the co-operative received because of the contract to a party to the contract, or
  - (c) to pay an amount to a party to the contract.
- (6) If the co-operative ratifies the pre-registration contract but fails to perform all or part of it, the Court may order the person to pay all or part of the damages that the co-operative is ordered to pay.

**53 Person may be released from liability but is not entitled to indemnity** (cf Vic Act s 57)

- (1) Any of the parties to the pre-registration contract may release the person who entered into, or purported to enter into, the contract from any liability in relation to the contract.
- (2) The release must be in writing.
- (3) The party giving the release is not entitled to recover damages under section 52 from the person.

- (4) Despite any rule of law or equity, the person does not have any right of indemnity against the co-operative in respect of the person's liability under this Division. This is so even if the person was acting, or purporting to act, as trustee for the co-operative.

**54 Division replaces other rights and liabilities**

(cf Vic Act s 58)

This Division replaces any rights or liabilities anyone would otherwise have in relation to the pre-registration contract.

**[21] Part 4 Membership, note**

Insert before Division 1:

**Note.** Each provision of Divisions 1–3 and 5 (other than sections 64 (2), 68 (5), 70 (1) (b), 73 (in so far as it applies to a co-operative with fewer than 5 members), 75, 79 (1) and (5), 87 and 104) is a core consistent provision.

**[22] Section 62 Becoming a member** (cf Vic Act s 64)

Insert after section 62 (2):

- (2A) A person under the age of 18 years may be admitted as a member of the co-operative unless the rules of the co-operative otherwise provide.

**[23] Sections 62 (4) and 339 (2)**

Omit “amalgamated” wherever occurring. Insert instead “merged”.

**[24] Section 62 (4) (a)**

Omit “amalgamating”. Insert instead “merging”.

**[25] Sections 65–69**

Omit the sections. Insert instead:

**65 Members under 18 years of age** (cf Vic Act s 69)

- (1) A member of a co-operative is not entitled to avoid any obligation or liability as a member under any contract, deed or other document entered into as a member on any ground relating to minority.
- (2) A person under the age of 18 years is not competent to hold any office in a co-operative.
- (3) A member of a co-operative who is under 18 years of age is entitled to vote.
- (4) This section applies only to natural persons.

**66 Members of associations** (cf Vic Act s 65)

- (1) The members of an association are:
  - (a) the component co-operatives by which the association is formed, and
  - (b) any other co-operative, admitted to membership in accordance with the rules of the association, and
  - (c) any other body corporate or other body admitted to membership in accordance with subsection (2).
- (2) A body corporate or other body (not being a co-operative) may be admitted to membership of the association as a component co-operative if:
  - (a) it is incorporated or registered under any other law, whether or not a law of New South Wales, and
  - (b) in the opinion of the board of the association, it is designed to function in accordance with co-operative principles, and
  - (c) it is eligible to be admitted to membership in accordance with the rules of the association.



**67 Members of federations**      (cf Vic Act s 66)

- (1) The members of a federation of associations are:
  - (a) the associations by which the federation is formed, and
  - (b) any other associations admitted to membership in accordance with the rules of the federation, and
  - (c) any other bodies corporate admitted to membership in accordance with subsection (2).
- (2) If the Registrar certifies that there is no association to which a particular body corporate could conveniently or appropriately be admitted to membership, the body corporate may be admitted to membership of a federation.

**68 Representatives of bodies corporate**      (cf Vic Act s 70)

- (1) If a body corporate is a member of a co-operative, it may by instrument served on the co-operative appoint a person to represent it in respect of its membership.
- (2) A body corporate must not appoint a person to represent the body corporate as a member of a co-operative, if he or she is currently a member of the co-operative or a representative of another body corporate member.

Maximum penalty: 10 penalty units.
- (3) The power to appoint a representative is subject to any restriction imposed by the rules of the co-operative as to the entitlement of a person to represent a body corporate.
- (4) A person is not qualified to be appointed as the representative of a company that is not a listed corporation (within the meaning of the *Corporations Law*) unless the person is an officer, member or employee of the company.
- (5) A person appointed in accordance with this section to represent a member who is a body corporate is to be considered to be that member for the purpose of voting at meetings of a co-operative.

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**69 Notification of shareholders and share holdings**

(cf Vic Act s 71)

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

- (a) a list of the names of all the shareholders of that body corporate and the number of shares held by each shareholder, or
- (b) in the case of a body corporate without share capital, a list of the members of the body corporate.

Maximum penalty: 20 penalty units.

**[26] Section 70 Circumstances in which membership ceases—all co-operatives** (cf Vic Act s 72)

Omit section 70 (1) (c). Insert instead:

- (c) if:
  - (i) the member becomes bankrupt, or
  - (ii) the member's property becomes subject to control under the law relating to bankruptcy, unless provision is made to the contrary in the rules of the co-operative,

**[27] Section 72**

Omit the section.

**[28] Section 73**

Omit the section. Insert instead:

**73 Carrying on business with too few members**

(cf Vic Act s 74)

- (1) If a co-operative continues to carry on business for more than 28 days after the number of members is reduced below the minimum number of members allowed, every person who is a director of the co-operative during the time when it so continues to carry on business and who

knows it is carrying on business with fewer than the minimum number of members allowed is guilty of an offence.

Maximum penalty: 20 penalty units.

- (2) Each person who is guilty of an offence under subsection (1) is also liable to satisfy all obligations of the co-operative incurred after the 28 days referred to in subsection (1), and may be sued without any other member being joined in the action.
- (3) The minimum number of members allowed is:
  - (a) for an association or federation—2 members, or
  - (b) for any other co-operative—5 members, or such lesser number as the Registrar may have approved on the formation of the co-operative.
- (4) The Registrar may, by order, extend and further extend in a particular case the period of 28 days referred to in subsection (1).
- (5) An application for an extension must be made:
  - (a) in a form approved by the Registrar, and
  - (b) before the period to be extended expires.

**[29] Section 74 Rights of membership not exercisable until registered etc** (cf Vic Act s 75)

Insert at the end of the section:

- (2) The board of a co-operative must ensure that the name of a person admitted to membership is recorded in the register of members within 28 days after the person is admitted to membership.

Maximum penalty: 20 penalty units.



**[30] Section 76A**

Insert after section 76:

**76A Co-operative to provide information to person intending to become member** (cf Vic Act s 77)

- (1) The board of a co-operative must provide each person intending to become a member of the co-operative with:
  - (a) a consolidated copy of the rules of the co-operative, and
  - (b) a copy of all special resolutions applicable to the member passed by the members of the co-operative, except special resolutions providing for an alteration of the rules of the co-operative, and
  - (c) a copy of the last annual report of the co-operative under section 252.
- (2) The board of a non-trading co-operative or, with the consent of the Registrar, the board of a trading co-operative may comply with subsection (1) by:
  - (a) giving the person intending to become a member notice that the documents referred to in that subsection may be inspected by the person at the registered office of the co-operative, and
  - (b) making those documents available for inspection.

**[31] Section 77**

Omit the section. Insert instead:

**77 Entry fees and regular subscriptions** (cf Vic Act s 78)

- (1) The rules of a co-operative may:
  - (a) require the payment by members of entry fees and regular subscriptions, and

- (b) provide for the repayment of those fees and subscriptions on a person ceasing to be a member.
- (2) A co-operative must give to any person intending to become a member written notice of any entry fees or regular subscriptions payable by a member to the co-operative.
- (3) A person who becomes a member of the co-operative is not liable to pay any entry fees or regular subscriptions except:
  - (a) those fees or subscriptions of which the person was given written notice before becoming a member, and
  - (b) any regular subscriptions which may be imposed by any subsequent alteration of the rules and of which the member has been given notice.

**[32] Section 80 Charge and set-off of co-operative** (cf Vic Act s 81)

Omit "and periodic fees" from section 80 (1) (c).

Insert instead "fees and regular subscriptions".

**[33] Section 82 Transfer of share or interest on death of member**  
(cf Vic Act s 84)

Omit "On". Insert instead "Subject to section 170A, on".

**[34] Section 84 Qualification for membership not to apply to transfer of deceased member's share or interest**

Omit the section.

**[35] Section 85 Meaning of "interest"**

Omit the section, renumber it as section 81A and insert it at the beginning of Division 3 of Part 4.

**[36] Sections 89–95**

Omit the sections. Insert instead:

**89 Grievance procedure** (cf Vic Act s 88)

- (1) The rules of a co-operative must set out a grievance procedure for dealing with any dispute under the rules between:
  - (a) a member and another member, or
  - (b) a member and the co-operative.
- (2) A member may appoint any person to act on behalf of the member in the grievance procedure.
- (3) The grievance procedure must allow for natural justice to be applied.
- (4) In this section and section 90, *member* includes any person who was a member not more than 6 months before the dispute occurred.

**90 Application to Court** (cf Vic Act s 89)

- (1) The Court may, on the application of a member or the co-operative, make an order declaring and enforcing:
  - (a) the rights or obligations of members of the co-operative between themselves, or
  - (b) the rights or obligations of the co-operative and any member between themselves.
- (2) An order may be made under this section whether or not a right of a proprietary nature is involved and whether or not the applicant has an interest in the property of the co-operative.
- (3) The Court may refuse to make an order on the application or may make an order for costs against a party, whether successful or not, if it is of the opinion that:



- (a) the issue raised in the application is trivial, or
- (b) having regard to the importance of the issue, the nature of the co-operative, any other available method of resolving the issue, the costs involved, lapse of time, acquiescence or any other relevant circumstance, it was unreasonable to make the application, or
- (c) the unreasonable or improper conduct of a party:
  - (i) has been responsible for the making of the application, or
  - (ii) has added to the cost of the proceedings.

**[37] Sections 95A and 95B**

Insert at the beginning of Division 5 of Part 4:

**95A Extended meaning of "member"** (cf Vic Act s 90)

In this Division, a reference to a *member* of a co-operative includes, in the case of a co-operative that has a share capital, a reference to a person to whom a share in the co-operative has been transmitted by will or by operation of law.

**95B Application of Division** (cf Vic Act s 91)

This Division does not apply in respect of anything done under or for the purposes of Part 6.

**[38] Section 97 Active membership requirements not oppressive conduct**

Omit the section.

**[39] Section 98 Orders that Court may make** (cf Vic Act s 93)

Insert at the end of the section:

- (j) an order directing a co-operative to become registered as a company under the *Corporations Law*,
- (k) an order as to costs.

**[40] Section 101 Application of winding up provisions**

(cf Vic Act s 96)

Omit "Supreme Court". Insert instead "Court".

**[41] Section 103 Copy of order to be lodged with Registrar**

(cf Vic Act s 98)

Omit "5 penalty units". Insert instead "10 penalty units".

**[42] Section 105 Extended meaning of "member"**

Omit the section.

**[43] Part 4, Division 6 (sections 105–105F)**

Insert after Division 5:

**Division 6 Proceedings on behalf of co-operative by members and others**

**105 Bringing, or intervening in, proceedings on behalf of co-operative** (cf Vic Act s 99)

- (1) A person may bring proceedings on behalf of a co-operative, or intervene in any proceedings to which a co-operative is a party, for the purpose of taking responsibility on behalf of the co-operative for those proceedings, or for a particular step in those proceedings, (for example, compromising or settling them), if:

(a) the person is:

- (i) a member, former member, or person entitled to be registered as a member, of the co-operative or of a related body corporate, or
- (ii) an officer or former officer of the co-operative, or
- (iii) the Registrar, and

- (b) the person is acting with leave granted under section 105A.
- (2) Proceedings brought on behalf of a co-operative may be brought in the co-operative's name.

**105A Applying for and granting leave** (cf Vic Act s 100)

- (1) A person referred to in section 105 (1) (a) may apply to the Court for leave to bring, or to intervene in, proceedings.
- (2) The Court may grant the application if it is satisfied that:
  - (a) it is probable that the co-operative will not itself bring the proceedings, or properly take responsibility for them, or for the step in them, and
  - (b) the applicant is acting in good faith, and
  - (c) it is in the best interests of the co-operative that the applicant be granted leave, and
  - (d) if the applicant is applying for leave to bring proceedings, there is a serious question to be tried, and
  - (e) either:
    - (i) at least 14 days before making the application, the applicant gave written notice to the co-operative of the intention to apply for leave and of the reasons for applying, or
    - (ii) it is appropriate to grant leave even if subparagraph (i) is not satisfied.

**105B Substitution of another person for person granted leave**  
(cf Vic Act s 101)

- (1) Any of the following persons may apply to the Court for an order that they be substituted for a person to whom leave has been granted under section 105A:
  - (a) a member, former member, or person entitled to be registered as a member, of the co-operative or a related body corporate, or



- (b) an officer, or former officer, of the co-operative, or
  - (c) the Registrar.
- (2) The application may be made whether or not the other person has already brought the proceedings or made the intervention.
- (3) The Court may make the order if it is satisfied that:
  - (a) the applicant is acting in good faith, and
  - (b) in all the circumstances, it is appropriate to make the order.
- (4) An order substituting one person for another person has the effect that:
  - (a) the grant of leave is taken to have been made in favour of the substituted person, and
  - (b) if the other person has already brought the proceedings or intervened, the substituted person is taken to have brought those proceedings or to have made that intervention.

**105C Effect of ratification by members** (cf Vic Act s 102)

- (1) A ratification or approval of conduct by members of a co-operative:
  - (a) does not prevent a person from bringing or intervening in proceedings with leave under section 105A or from applying for leave under that section, and
  - (b) does not have the effect that proceedings brought or intervened in with leave under section 105A must be determined in favour of the defendant, or that an application for leave under that section must be refused.
- (2) The Court may take into account a ratification or an approval of the conduct by members of a co-operative in deciding what order or judgment (including as to damages) to make in proceedings brought or intervened in with leave under section 105A or in relation to an application for leave under that section.

- (3) In taking a ratification or approval into account under subsection (2), the Court may have regard to:
- (a) how well-informed about the conduct the members were when deciding whether to ratify or approve the conduct, and
  - (b) whether the members who ratified or approved the conduct were acting for proper purposes.

**105D Leave to discontinue, compromise or settle proceedings brought, or intervened in, with leave** (cf Vic Act s 103)

Proceedings brought or intervened in with leave must not be discontinued, compromised or settled without the leave of the Court.

**105E General powers of the Court** (cf Vic Act s 104)

- (1) The Court may make any orders, and give any directions, that it thinks just in relation to proceedings brought or intervened in with leave, or in relation to an application for leave, including:
- (a) interim orders, and
  - (b) directions about the conduct of the proceedings, including requiring mediation, and
  - (c) an order directing the co-operative, or an officer of the co-operative, to do, or not to do, any act, and
  - (d) an order appointing an independent person to investigate, and report to the Court, on:
    - (i) the financial affairs of the co-operative, or
    - (ii) the facts or circumstances which gave rise to the cause of action the subject of the proceedings, or
    - (iii) the costs incurred in the proceedings and the person granted leave.
- (2) A person appointed by the Court under subsection (1) (d) is entitled, on giving reasonable notice to the co-operative, to inspect and make copies of any books of the co-operative for any purpose connected with their appointment.

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**105F Power of Court to make costs order** (cf Vic Act s 105)

At any time, the Court may, in relation to proceedings brought or intervened in with leave under section 105A or an application for leave under that section, make any orders it thinks just about the costs of the person who applied for or was granted leave, of the co-operative or of any other party to the proceedings or application, including an order requiring indemnification for costs.

**[44] Part 5 Rules, note**

Insert before Division 1:

**Note.** Each provision of this Part (other than sections 112 (1) (b) and 113A–113C) is a core consistent provision.

**[45] Sections 107–109**

Omit the sections. Insert instead:

**107 Content of rules** (cf Vic Act s 107)

- (1) The rules of a co-operative must set out or otherwise make provision for the matters specified in Schedule 1.
- (2) The rules must be divided into paragraphs numbered consecutively.
- (3) The rules may state the objects of the co-operative.
- (4) The rules may incorporate any provision of the model rules approved under section 109A.
- (5) The rules may provide for the imposition of a fine on a member for any infringement of the rules.
- (6) If the rules provide for the imposition of a fine, the rules must specify the maximum fine that may be imposed on a member.
- (7) The maximum fine fixed by the rules must not exceed any amount that may be prescribed as the maximum fine.
- (8) The rules may contain other provisions not inconsistent with this Act or the regulations.



**108 Purchase and inspection of copy of rules**

(cf Vic Act s 108)

- (1) Any member is entitled to obtain from a co-operative a copy of its rules on payment of the amount required by the rules of the co-operative or, if the rules do not prescribe an amount, on payment of \$5.
- (2) The amount required by the rules must not exceed the fee prescribed by the regulations for obtaining a copy of the rules from the Registrar.
- (3) Any person is entitled to obtain from the Registrar a copy of the rules of a co-operative on payment of the fee prescribed by the regulations.

**109 False copies of rules** (cf Vic Act s 109)

- (1) A person who gives to a member of a co-operative or to a person intending or applying to become a member of a co-operative a copy of any rules or alterations of rules, other than those which have been duly registered, representing that they are binding on the members of the co-operative is guilty of an offence.

Maximum penalty: 10 penalty units.

- (2) A person who alters any of the rules of a co-operative after they have been registered and circulates them representing that they have been duly registered when they have not been is guilty of an offence.

Maximum penalty: 10 penalty units.

**109A Model rules** (cf Vic Act s 110)

- (1) The Registrar may by notice published in the Government Gazette approve model rules for co-operatives or for any class of co-operatives and alter or repeal the model rules from time to time.
- (2) The model rules may make provision for anything for which the rules of a co-operative may make provision.
- (3) If the model rules provide for a matter and the rules of a co-operative of the class to which the model rules apply do not provide for that matter, the provision of the model rules relating to that matter is deemed to be included in the rules of the co-operative.

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**[46] Section 110 Rules can only be altered in accordance with this Part** (cf Vic Act s 111)

Omit "Part" from section 110 (1). Insert instead "Act".

**[47] Section 110 (2)**

Omit the subsection.

**[48] Section 111**

Omit the section. Insert instead:

**111 Alteration by special resolution** (cf Vic Act s 113)

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

**[49] Sections 113–113B**

Omit section 113. Insert instead:

**113 Alteration does not take effect until registered**

(cf Vic Act s 115)

- (1) An alteration of the rules of a co-operative does not take effect unless and until it is registered by the Registrar.
- (2) An application for registration of an alteration must:
  - (a) be made in a form approved by the Registrar, and
  - (b) be made within 28 days, or such other period as may be prescribed by the regulations, after the alteration is made, and
  - (c) be accompanied by a consolidated copy of the rules of the co-operative, including the alteration.
- (3) The Registrar must register the alteration unless:
  - (a) the Registrar is satisfied that the alteration is contrary to this Act or the regulations, or
  - (b) the Registrar has other reasonable cause to refuse to register the alteration.
- (4) The Registrar may refer any alteration to the Council for advice and report but is not required to follow the advice of the Council on the alteration.

- (5) A certificate of registration of any alteration of the rules of a co-operative given by the Registrar is, in favour of any person giving financial accommodation to the co-operative on the faith of the certificate or in favour of any guarantor of that financial accommodation, conclusive evidence that the alteration in the rules was duly made.

**113A Appeal against refusal to register alteration**

(cf Vic Act s 117)

A co-operative may appeal to the Court against:

- (a) a decision of the Registrar to refuse to register an alteration of its rules, or
- (b) a failure of the Registrar to register an alteration of its rules.

**113B Registrar to comply with Court order** (cf Vic Act s 118)

The Registrar must comply with an order of the Court on an appeal under this Part.

**[50] Part 6 Active membership requirements, note**

Insert before Division 1:

**Note.** Each provision of Divisions 1–4 (other than sections 119 (2), 120, 123 (2) (b) and (3), 124, 125, 129, 134 (2) (b), 135 and 136 (in so far as the latter 2 sections apply to and in respect of the Council and CCUs) and 143) is a core consistent provision.

**[51] Section 121 Factors and considerations for determining primary activities etc** (cf Vic Act s 124)

Insert after section 121 (4):

- (5) Nothing in this section limits the right of active members other than the board of the co-operative to propose an active membership resolution.



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**[52] Section 122 Regular subscription—active membership of non-trading co-operative** (cf Vic Act s 126)

Insert “for a non-trading co-operative” after “membership provisions” in section 122 (1).

**[53] Section 123 Active membership provisions—trading co-operatives** (cf Vic Act s 125)

Omit section 123 (1).

**[54] Section 123 (2)**

Omit “in the rules of such a”. Insert instead “in the rules of a trading”.

**[55] Sections 126A–126C**

Insert after section 126:

**126A Eligibility to vote on active membership resolution**  
(cf Vic Act s 128)

The only members of a co-operative who are eligible to vote on an active membership resolution when the rules do not contain active membership provisions are those members who would be active members if the resolution had already taken effect.

**126B Eligibility of directors to vote on proposal at board meeting** (cf Vic Act s 129)

If the board of a co-operative is meeting to consider a proposal to submit an active membership resolution to a meeting of the co-operative:

- (a) subject to paragraph (b), a director is only eligible to vote on that proposal if he or she would be eligible to vote on the resolution at the meeting of the co-operative, or

- (b) if less than 2 directors (whether or not they are present at the meeting of the board of directors) would be eligible to vote on the resolution at the meeting of the co-operative, all the directors are eligible to vote on that proposal at the meeting of the board of directors.

**126C Other entitlements of members not affected**

(cf Vic Act s 130)

A provision of this Division which renders a member of a co-operative ineligible to vote on a resolution does not affect any other right, entitlement, obligation or duty of the member as a member.

**[56] Section 127**

Omit the section. Insert instead:

**127 Cancellation of membership of inactive member**

(cf Vic Act s 131)

- (1) The board of a co-operative must declare the membership of a member cancelled if:
  - (a) the whereabouts of the member are not presently known to the co-operative and have not been known to the co-operative for at least the required period before that time, or
  - (b) the member is not presently an active member of the co-operative and has not been an active member of the co-operative at any time during the required period immediately before that time.
- (2) This section applies to a member only if he or she was a member of the co-operative throughout the required period.
- (3) The question of whether a member was an active member at a particular time in the past is to be determined as if the active membership provisions concerned had been in force at that time.

- 
- (4) The board's declaration under this section has the effect of cancelling the membership concerned.
  - (5) A person may apply to the Council for an order under section 129 in respect of the cancellation of the person's membership under this section.
  - (6) In this section *the required period* in relation to a co-operative, means:
    - (a) 3 years, or
    - (b) if a shorter period is provided for in the rules of the co-operative, that shorter period.

**[57] Section 128 Shares to be forfeited if membership cancelled**

(cf Vic Act s 134)

Insert after section 128 (2):

- (3) Nothing in this section affects the operation of section 134.

**[58] Section 130**

Omit the section. Insert instead:

**130 Deferral of forfeiture by board** (cf Vic Act s 134)

- (1) The board of a co-operative may by resolution defer cancellation of a member's membership for a period of up to 12 months:
  - (a) if the board has reasonable grounds to believe that a member has ceased to be an active member due to unusual circumstances which prevent the member fulfilling his or her active membership obligations, or
  - (b) if:
    - (i) the board thinks that during that period an active membership resolution may be put to the members of the co-operative, and



- (ii) the effect of the resolution would be relevant to the question of whether the member is an active member.
- (2) The board of the co-operative must review the resolution to defer before the end of the deferral period to determine if a further resolution should be made under subsection (1).

**[59] Section 131 Cancellation of membership prohibited in certain circumstances** (cf Vic Act s 135)

Insert before section 131 (a):

- (aa) if the co-operative is insolvent or there are reasonable grounds for suspecting that the co-operative is insolvent, or

**[60] Section 133 Failure to cancel membership—offence by director** (cf Vic Act s 133)

Omit “10 penalty units”. Insert instead “20 penalty units”.

**[61] Section 134 Repayment of amounts due in respect of cancelled membership** (cf Vic Act s 138)

Omit section 134 (1) and (2). Insert instead:

- (1) If the membership of a member of a co-operative is cancelled under this Part, the co-operative must, within 12 months after the date of cancellation:
  - (a) repay to the former member the amount due to the member in respect of that cancellation, or
  - (b) apply that amount in accordance with subsection (2) if:
    - (i) the board is of the opinion that repayment would adversely affect the financial position of the co-operative, or
    - (ii) the board and the former member so agree.

- (2) The amount due may be applied as follows:
- (a) if the co-operative is a deposit-taking co-operative, the co-operative may apply the amount as a deposit by the former member with the co-operative (subject to the requirements of section 135 as to interest on the deposit),
  - (b) the co-operative may allot or issue debentures or CCUs of the co-operative to the former member in satisfaction of the amount,
  - (c) the co-operative may appropriate the amount due as a donation to the co-operative, but only if the former member consents in writing to the donation.

**[62] Section 135**

Omit the section. Insert instead:

**135 Interest on deposits, debentures and CCUs**

(cf Vic Act s 139)

- (1) This section applies when the amount due to a former member under section 134 is applied as a deposit with the co-operative or the co-operative allots or issues debentures or CCUs to the former member in satisfaction of the amount.
- (2) The deposit, debenture or CCU bears interest during any period:
  - (a) in the case of a co-operative with share capital:
    - (i) at the rate (or, if there is more than one rate, at the higher or highest rate) of dividend payable in respect of that period on the share capital of the co-operative, or
    - (ii) if the rate of dividend payable in respect of that period has not been determined, at the rate (or the higher or highest rate) payable in respect of the immediately preceding period for which a rate has been determined, or

- (iii) if a rate of dividend has never been determined in respect of the share capital of the co-operative, at the rate that the board of the co-operative considers reasonable, or
  - (b) in the case of a co-operative without share capital, at the rate that the board of the co-operative considers reasonable, or
  - (c) if the rules provide for a rate to be payable that is higher than the rate applicable under paragraph (a) or (b), at that higher rate.
- (3) A former member may agree to the rate of interest being less than that which would otherwise be payable under this section and may agree to no interest being paid.
- (4) The provisions of Part 7.12 (Offering securities for subscription or purchase) of the *Corporations Law* adopted under section 266 of this Act do not apply to an allotment or issue of debentures under this section.

**[63] Sections 139 (4), 140 (1) (b) and 339 (1) and (2)**

Omit "an amalgamation" wherever occurring.  
Insert instead "a merger".

**[64] Section 140 Entitlements of former shareholders on mergers etc**  
(cf Vic Act s 144)

Omit "Division 2" from section 140 (1) (c).  
Insert instead "Division 1".

**[65] Section 141 Set-off of amounts repaid etc on forfeited shares**  
(cf Vic Act s 145)

Omit "30 days" from section 141 (4) (a). Insert instead "28 days".



**[66] Part 7 Shares, note**

Insert before Division 1:

**Note.** Each provision of the Part (other than sections 145, 148, 153, 154, 172 (3) and (6) and 173 (except in so far as it applies to and in respect of CCUs)) is a core consistent provision.

**[67] Section 144 Share capital required except for non-profit co-operatives**

Omit section 144 (1).

**[68] Section 145 Restrictions on conversion of non-trading co-operative to co-operative without share capital**

(cf Vic Act s 28)

Omit "An alteration of the rules for the conversion cannot be passed" from section 145 (2).

Insert instead "Despite compliance with the notice requirements of section 194, a special postal ballot cannot be held for the purposes of this section".

**[69] Part 7, Division 1A (section 146A)**

Insert after section 146:

**Division 1A Disclosure**

**146A Disclosure to members** (cf Vic Act s 149)

- (1) In addition to any information required under Part 4 to be provided, the board of a trading co-operative must provide a member of the co-operative with a disclosure statement before shares are issued to the member.
- (2) The disclosure statement must contain:
  - (a) a statement of the rights and liabilities attaching to shares, and

- (b) a copy of the last annual report of the co-operative under section 252, and
- (c) any other relevant information concerning the financial position and prospects of the co-operative if there has been a significant change since the date of the last annual report, and
- (d) any other information that the Registrar directs.

**[70] Section 147 Shares—general** (cf Vic Act s 150)

Omit section 147 (3). Insert instead:

- (3) A co-operative may have more than one class of shares provided the share holding and the rights of shareholders comply with the co-operative principles.
- (4) Subject to this Part and Part 4, shares must not be issued to a non-member.

**[71] Section 149 Minimum paid up amount** (cf Vic Act s 151)

Omit “(other than a bonus share issued under section 156)” from section 149 (1).

**[72] Section 149 (3)**

Insert after section 149 (2):

- (3) This section does not apply to a bonus share issued under section 151 (4) (a), 156 or 282.

**[73] Section 151**

Omit the section. Insert instead:

**151 Issue of shares at a premium** (cf Vic Act s 153)

- (1) A trading co-operative may issue shares at a premium.
- (2) A premium may be in the form of cash or other valuable consideration.

- (3) If a trading co-operative issues shares for which it receives a premium, a sum equal to the aggregate amount or value of the premiums on those shares must be transferred to a share premium account.
- (4) The share premium account is to be regarded as paid up share capital of the trading co-operative and may be applied in any one or more of the following ways:
  - (a) in paying up unissued shares to be issued to members of the co-operative as fully paid bonus shares,
  - (b) in paying up in whole or in part the balance unpaid on shares previously issued to members of the co-operative,
  - (c) in the payment of dividends, if those dividends are satisfied by the issue of shares to members of the co-operative,
  - (d) in writing off the preliminary expenses of the co-operative,
  - (e) in providing for the premium payable on redemption of shares, debentures or CCUs.

**[74] Section 153 Dividends etc**

Omit section 153 (1) and (2).

**[75] Section 155**

Omit the section. Insert instead:

**155 Members may be required to take up additional shares**

(cf Vic Act s 155)

- (1) If authorised by the rules of the co-operative, the board of a trading co-operative may require a member to take up or subscribe for additional shares in accordance with a proposal approved by a special resolution of the co-operative.



- (2) The board of a trading co-operative may deduct amounts in payment for additional shares from money due to members in respect of dealings with the co-operative, in accordance with a proposal approved by a special resolution of the co-operative.
- (3) Any proposal to require a member to take up or subscribe for additional shares must:
  - (a) be accompanied by a disclosure statement, approved by the Registrar, that explains the purpose for which the funds raised by the issue of the additional shares are to be used, and
  - (b) clearly show the total number of additional shares to be issued and the basis on which the shares are to be apportioned amongst members, and
  - (c) be accompanied by a statement informing the member that the member may inform the board by notice on or before the date specified in the statement (being a date before the passing of the special resolution) that the member resigns on the passing of the special resolution.
- (4) Any proposal to deduct amounts in payment for additional shares from money due to members in respect of their dealings with the trading co-operative must clearly show:
  - (a) the basis on which the deductions are to be made, and
  - (b) the time and manner of making those deductions.
- (5) A proposal approved under this section is binding on:
  - (a) all members of the trading co-operative at the date of the passing of the special resolution other than a member who has given a notice of resignation in accordance with subsection (3) (c), and
  - (b) all persons who become members of the trading co-operative after that date and before the total number of shares to be issued pursuant to the proposal has been issued.

- (6) Sections 17 (except subsections (2), (4) and (11)) and 28A apply to the approval of a disclosure statement under this section with any necessary modifications and in particular as if any reference in section 17 to a formation meeting were a reference to the special resolution.

**[76] Section 156 Bonus share issues** (cf Vic Act ss 156 and 158)

Insert "trading" after "rules of a" in section 156 (1).

**[77] Section 156 (2) (d)**

Insert "under this section" after "co-operative" where firstly occurring.

**[78] Section 156 (3) (e)**

Omit "place, and". Insert instead "place".

**[79] Section 156 (3) (f)**

Omit the paragraph.

**[80] Section 158 Notice of non-beneficial ownership not notified at time of transfer** (cf Vic Act s 160)

Insert after section 158 (4):

- (5) This section does not apply in respect of any shares for which particulars were set out in a non-beneficial ownership notice under section 157 included in the instrument of transfer.

**[81] Section 160 Notification of change in nature of shareholding** (cf Vic Act s 162)

Omit section 160 (1). Insert instead:

- (1) A person must notify the co-operative in accordance with this section of the change in the person's shareholding in the co-operative if the person:
- (a) commences to hold any shares beneficially that the person currently holds non-beneficially, or

- (b) commences to hold any shares non-beneficially that the person currently holds beneficially.

Maximum penalty: 10 penalty units or imprisonment for 3 months, or both.

**[82] Section 160 (3)**

Omit "Maximum penalty: 10 penalty units or imprisonment for 3 months, or both."

**[83] Section 170 Sale or transfer of shares** (cf Vic Act s 172)

Insert "and section 170A" after "Part 4" in section 170 (a).

**[84] Section 170 (2)**

Insert at the end of the section:

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

**[85] Sections 170A and 170B**

Insert after section 170:

**170A Transfer on death of member** (cf Vic Act s 173)

- (1) On the death of a member, the member's share in the co-operative cannot be transferred to a person other than an administrator or executor except with the consent of the board of the co-operative.
- (2) The board may only give its consent under subsection (1) if there are reasonable grounds for believing that the person will be an active member of the co-operative.

**170B Restriction on total shareholding** (cf Vic Act s 174)

The board of a co-operative must not consent under section 170 or 170A to the sale or transfer of a share if as a result of the sale or transfer the nominal value of the shares held by the purchaser or transferee would exceed:

- (a) 20% of the nominal value of the share capital of the co-operative, or



- (b) if a lower percentage is specified in the rules of the co-operative, that lower percentage of the nominal value of the share capital of the co-operative.

**[86] Section 172 Purchase and repayment of shares** (cf Vic Act s 176)

Omit section 172 (4). Insert instead:

- (4) The amount paid for a share when it is repurchased may be an amount determined by the board that is less than the nominal value of the share but only:
  - (a) if the books of the co-operative disclose that the amount paid is the net shareholder's equity per share in the undertaking of the co-operative, or
  - (b) in accordance with the rules of the co-operative.
- (5) This section does not apply if the member has been expelled from the co-operative or the member's membership has been otherwise cancelled under Part 6.
- (6) A co-operative must not repurchase shares or repay amounts paid up on shares if:
  - (a) the co-operative is likely to become insolvent because of the repurchase of the shares or because of the repayment of amounts paid up on the shares, or
  - (b) the co-operative is insolvent.

**[87] Section 173**

Omit the section. Insert instead:

**173 Deposits, debentures or CCUs in lieu of payment when share repurchased** (cf Vic Act s 177)

- (1) If a co-operative repurchases a share of a member, the co-operative may instead of paying the purchase price to the member:
  - (a) in the case of a deposit-taking co-operative, apply the amount as an interest bearing deposit by the member with the co-operative, or

- (b) allot or issue debentures or CCUs of the co-operative to the member in satisfaction of the amount.
- (2) Subsection (1) applies only:
  - (a) if the board is of the opinion that payment of the repurchase price would adversely affect the financial position of the co-operative, or
  - (b) if the board and the member so agree.
- (3) The deposit, debenture or CCU bears interest during any period:
  - (a) in the case of a co-operative with share capital:
    - (i) at the rate (or, if there is more than one rate, at the higher or highest rate) of dividend payable in respect of that period on the share capital of the co-operative, or
    - (ii) if the rate of dividend payable in respect of that period has not been determined, at the rate (or the higher or highest rate) payable in respect of the immediately preceding period for which a rate has been determined, or
    - (iii) if a rate of dividend has never been determined in respect of the share capital of the co-operative, at the rate that the board of the co-operative considers reasonable, or
  - (b) in the case of a co-operative without share capital, at the rate that the board of the co-operative considers reasonable, or
  - (c) if the rules provide for a rate to be payable that is higher than the rate applicable under paragraph (a) or (b), at that higher rate.
- (4) The deposit, debenture or CCU must be repaid to the member as soon as repayment would not, in the opinion of the board, adversely affect the financial position of the co-operative.

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- (5) The deposit, debenture or CCU must in any case be repaid within 10 years (or within any shorter period that the rules of the co-operative may require) after the repurchase of the shares concerned.

**[88] Part 8 Voting, note**

Insert before Division 1:

**Note.** Each provision of this Part (other than sections 177, 178 (2) and (3), 180, 182, 190B (2) (c), 196, 197 and 200) is a core consistent provision.

**[89] Section 176**

Omit the section. Insert instead:

**176 Voting** (cf Vic Act s 180)

- (1) The right to vote attaches to membership and not share holding.
- (2) Except as provided in subsections (3) and (4), each member has only one vote at a meeting of the co-operative.
- (3) Except as specifically authorised by this Act, the rules of a co-operative must not contain a provision that restricts the voting rights of members.
- (4) If the rules so provide, the chairperson has a second vote at a board meeting or general meeting.
- (5) In the case of joint membership:
  - (a) the joint members have only one vote between them, and
  - (b) that vote may be exercised (subject to the grant of a proxy or power of attorney) only by the joint member determined in accordance with the rules.
- (6) If shares are held jointly, each member (other than a joint member) holding the share is entitled to vote at a general meeting.



**[90]    Section 179**

Omit the section. Insert instead:

**179 Voting by proxy**    (cf Vic Act s 181)

- (1) If the rules so provide, voting may be by proxy at a general meeting.
- (2) The instrument of proxy may specify the manner in which a proxy is to vote in respect of a particular resolution.
- (3) The proxy must vote in the manner authorised by an instrument of proxy referred to in subsection (2).
- (4) A person must not act as a proxy unless he or she:
  - (a) is an active member of the co-operative, or
  - (b) in the case of an association or a federation, is entitled to represent a component co-operative or association of the association or federation on the association or federation.
- (5) A person must not act as proxy for more than 10 persons (or any lesser number of persons specified in the rules of the co-operative) on any one occasion.
- (6) Subsection (5) does not apply if the proxy acts under an instrument of proxy referred to in subsection (2).

**[91]    Section 181A**

Insert after section 181:

**181A Control of the right to vote**    (cf Vic Act s 185)

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

Maximum penalty: 60 penalty units or imprisonment for 6 months, or both.

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- (2) If a person controls the exercise of the right to vote of a member at a meeting of a co-operative:
- (a) the vote of that member, and
  - (b) the vote of that person, if that person is a member,
- are invalid.
- (3) Nothing in this section prevents the exercise of a vote by means of a proxy or power of attorney.

**[92] Section 183A**

Insert after section 183:

**183A Restriction on voting by representatives of bodies corporate** (cf Vic Act s 183)

A person is not entitled to exercise, as the representative of a body corporate, the power of a body corporate member of the co-operative to vote if the person has that power as the representative of another body corporate member of the co-operative.

**[93] Section 184 Rights of representatives to vote etc**

Omit the section.

**[94] Section 189**

Omit the section. Insert instead:

**189 Special resolutions** (cf Vic Act s 192)

- (1) A special resolution is a resolution of a co-operative which is passed:
- (a) by a two-thirds majority at a general meeting of members, or
  - (b) by a two-thirds majority in a postal ballot (other than a special postal ballot) of members, or
  - (c) by a three-quarters majority in a special postal ballot of members.

- (2) A special resolution may be passed by a postal ballot only if the rules of the co-operative so permit or this Act requires the special resolution to be passed by postal ballot (including a special postal ballot).
- (3) A resolution is not to be considered to have been passed as a special resolution unless not less than 21 days' notice has been given to the members of the co-operative specifying:
  - (a) the intention to propose the special resolution, and
  - (b) the reasons for the making of the special resolution, and
  - (c) the effect of the special resolution being passed.
- (4) A failure to give notice to the Registrar under subsection (4) does not affect the validity of the resolution.

**[95] Section 190 How majority obtained is ascertained**  
(cf Vic Act s 193)

Omit section 190 (3).

**[96] Sections 190A and 190B**

Insert after section 190:

**190A Disallowance by Registrar** (cf Vic Act s 194)

The Registrar may disallow a proposed special resolution before it is passed by written notice to the co-operative if the Registrar is of the opinion that the effect of the special resolution if passed would be in contravention of this Act or the regulations or any other law.

**190B Effect of special resolution** (cf Vic Act s 196)

- (1) Subject to subsection (2), a special resolution has effect from the date that it is passed.



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- (2) A special resolution relating to any of the following has no effect until it is registered:
- (a) the removal of an auditor,
  - (b) the expulsion of a member,
  - (c) any matter for which a special resolution is required to be passed by special postal ballot (other than a special postal ballot in favour of a voluntary winding up).

**[97] Section 192**

Omit section 192. Insert instead:

**192 Lodgment of special resolution** (cf Vic Act s 197)

- (1) A co-operative must lodge 2 copies of each special resolution passed by the co-operative with the Registrar in accordance with this section for registration.
- (2) The copies must:
  - (a) be lodged within 28 days after the passing of a special resolution or such further period as the Registrar allows, and
  - (b) be signed by a director and the secretary of the co-operative, and
  - (c) be accompanied by the lodgment fee prescribed by the regulations.
- (3) A co-operative and any officer of the co-operative that knowingly fails to lodge the required copies in accordance with this section is guilty of an offence.  
Maximum penalty: 20 penalty units.
- (4) This section and section 192A do not apply to a special resolution altering the rules of a co-operative.

**192A Decision of Registrar on application to register special resolution** (cf Vic Act s 198)

- (1) If the Registrar is satisfied that the co-operative has complied with the provisions of this Act and the regulations, and that the resolution is not contrary to this

Act or the regulations, the Registrar must register the resolution.

- (2) If the Registrar is of the opinion that the effect of a special resolution lodged for registration would be in contravention of this Act or the regulations or any other law, the Registrar may:
  - (a) refuse to register the special resolution, and
  - (b) give written notice to the co-operative that the special resolution:
    - (i) has no effect, in the case of a special resolution referred to in section 190B (2), and
    - (ii) has no effect as from the date that it was passed, in any other case.
- (3) A certificate of registration of a special resolution given by the Registrar is, in favour of any person giving financial accommodation to the co-operative on the faith of the certificate or in favour of any guarantor of that advance, conclusive evidence that the resolution was duly passed.

**[98] Section 194 Special postal ballots** (cf Vic Act s 200)

Omit "1 month" from section 194 (2). Insert instead "21 days".

**[99] Section 194 (5)**

Insert after section 194 (4):

- (5) Sections 17 (except subsections (2), (4) and (11)) and 28A apply to the approval of a disclosure statement under this section with any necessary modifications and in particular as if any reference in section 17 to a formation meeting were a reference to the notice of the special postal ballot.

**[100] Section 194A**

Insert after section 194:

**194A When is a special postal ballot required?**

(cf Vic Act s 201)

In addition to any requirement of this Act, the rules of a co-operative must require a special postal ballot to be conducted for the purpose of passing a special resolution in relation to any of the following matters relating to a co-operative:

- (a) a conversion of a trading co-operative to a non-trading co-operative,
- (b) transfer of incorporation,
- (c) an acquisition or disposal of assets referred to in section 285,
- (d) the maximum permissible level of share interest in the co-operative,
- (e) takeover,
- (f) merger,
- (g) transfer of engagements,
- (h) members' voluntary winding up.

**[101] Section 195**

Omit the section. Insert instead:

**195 Holding of postal ballot on requisition** (cf Vic Act s 202)

- (1) The board of a co-operative must conduct a postal ballot (including a special postal ballot) for the passing of a special resolution on the written requisition of such number of members who together are able to cast at least 20% (or any lesser percentage specified in the rules of the co-operative) of the total number of votes able to be cast at a meeting of the co-operative.



- (2) A member is not entitled to be a requisitioning member unless the member is an active member.
- (3) The following provisions apply to a requisition for a postal ballot:
  - (a) it must specify:
    - (i) the proposed special resolution to be voted on, and
    - (ii) the reasons for the making of the special resolution, and
    - (iii) the effect of the special resolution being passed,
  - (b) it must be signed by the requesting members (and may consist of several documents in like form each signed by one or more requisitioning members),
  - (c) it must be served on the co-operative by being lodged at the registered office of the co-operative.
- (4) The postal ballot must be conducted as soon as practicable and in any case must be conducted within 2 months after the requisition is served.
- (5) If the special resolution for which the requisitioned postal ballot is conducted is not passed, the co-operative may recover the expenses of the postal ballot from the members who requisitioned the postal ballot as a debt due to the co-operative.

**[102] Section 195A**

Insert after section 195:

**195A Expenses involved in postal ballots on requisition**

(cf Vic Act s 203)

- (1) All reasonable expenses incurred by a co-operative in and in connection with preparing for and holding a special postal ballot are to be considered to constitute the *expenses of the postal ballot* for the purposes of section 195.

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- (2) Those expenses include (but are not limited to) the following expenses:
- (a) the cost of obtaining expert advice (including legal and financial advice) and of commissioning expert reports,
  - (b) costs attributable to the use of staff of the co-operative in connection with preparing for and holding the ballot,
  - (c) the cost of producing, printing and posting the ballot papers and other material associated with the ballot.

**[103] Sections 198–199B**

Omit sections 198 and 199. Insert instead:

**198 Annual general meetings** (cf Vic Act s 204)

- (1) The first annual general meeting of a co-operative must be held at any time within 19 months after the incorporation of the co-operative.
- (2) The second or any subsequent annual general meeting of a co-operative must be held within:
  - (a) 5 months after the close of the financial year of the co-operative, or
  - (b) any further time that may be allowed by the Registrar or is prescribed by the regulations.

**199 Special general meetings** (cf Vic Act s 205)

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

**199A Notice of meetings** (cf Vic Act s 206)

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

**199B Quorum at meetings** (cf Vic Act s 207)

- (1) The quorum for a meeting of a co-operative must be specified in the rules.
- (2) An item of business must not be transacted at a meeting of a co-operative unless a quorum of members entitled to vote is present during the transaction of that item.

**[104] Section 202 Convening of general meeting on requisition**

(cf Vic Act s 209)

Omit section 202 (1). Insert instead:

- (1) The board of a co-operative must convene a general meeting of the co-operative on the written requisition of such number of members who together are able to cast at least 20% (or any lesser percentage specified in the rules of the co-operative) of the total number of votes able to be cast at a meeting of the co-operative.

**[105] Section 203**

Omit the section. Insert instead:

**203 Minutes** (cf Vic Act s 210)

- (1) Minutes of each general meeting, board meeting and sub-committee meeting must be entered in the appropriate records and confirmed at and signed by the chairperson of the next succeeding meeting.
- (2) The minutes of each general meeting must be available for inspection by members.
- (3) The rules may provide that the minutes of board meetings and sub-committee meetings be available for inspection by members.
- (4) Minutes must be kept in the English language.



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**[106] Part 9 Management and administration of co-operatives, note**

Insert before Division 1:

**Note.** Each provision of this Part (other than sections 204 (4) and (5), 205 (5) and (9), 206 (2) and (3), 206A, 215–217, 218 (2) (h), 234 (9) and (10), 252 (1) (e), 255 (4)–(8), 256 and 258 (4)) is a core consistent provision.

**[107] Section 204 Board of directors** (cf Vic Act s 211)

Omit section 204 (1) and (2). Insert instead:

- (1) Subject to this Act and the rules of a co-operative, the business of a co-operative is to be managed by a board of directors.
- (2) The board of directors may exercise all the powers of the co-operative that are not, by this Act or the rules of the co-operative, required to be exercised by the co-operative in general meeting.

**[108] Section 205**

Omit the section. Insert instead:

**205 Election of directors** (cf Vic Act s 212)

- (1) Except as provided in subsections (2), (3) and (4), the directors of a co-operative are to be elected in the manner specified in the rules of the co-operative.
- (2) The first directors of:
  - (a) a co-operative formed under this Act are to be elected at its formation meeting, and
  - (b) a co-operative which was a body corporate incorporated under another Act are to be the directors in office at the date of registration under this Act.

- (3) If so authorised by the rules of the co-operative, a board of directors may appoint a person to fill a casual vacancy in the office of a director until the next annual general meeting.
- (4) A motion approving or nominating for election 2 or more persons as directors by a single resolution must not be made at a meeting of a co-operative unless a resolution that it be so made has first been agreed to by the meeting without any vote being given against it.
- (5) If a resolution is passed following a motion in contravention of subsection (4):
  - (a) the resolution is void, and
  - (b) there is no provision for the automatic re-election of retiring directors in default of another election.
- (6) This section does not apply to a resolution altering the rules to prevent the election of 2 or more directors by ballot.
- (7) A nomination for election or appointment to the office of a director must provide details of the qualifications and experience of the person nominated.
- (8) Except as specified in this Act or in the rules of a co-operative, a director is eligible for re-election at the expiration of his or her term of office.
- (9) The Registrar is not to register a rule that specifies the manner of election of directors or any alteration of such a rule unless the Registrar approves of the manner of electing directors that will result from the rule or alteration.

**[109] Section 206 Qualification of directors** (cf Vic Act s 213)

Omit section 206 (1) and (2). Insert instead:

- (1) A person is not qualified to be a director of a co-operative unless he or she is:

- (a) an active member of the co-operative or a representative of a body corporate which is an active member of the co-operative (*active member director*), or
- (b) an employee of the co-operative or a person qualified as provided by the rules (*independent director*).

**[110] Section 206 (5)**

Omit the subsection.

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

Omit "and (5)" from section 206A (6).

**[112] Sections 208–210**

Omit the sections. Insert instead:

**208 Disqualified persons** (cf Vic Act s 214)

- (1) A person must not act as a director or directly or indirectly take part in or be concerned with the management of a co-operative if the person:
  - (a) is the auditor of the co-operative or a partner, employee or employer of the auditor, or
  - (b) has been convicted, whether before or after the commencement of this section, within or outside New South Wales:
    - (i) on indictment of an offence in connection with the promotion, formation or management of a body corporate, or
    - (ii) of an offence involving fraud or dishonesty punishable on conviction by imprisonment for a period of not less than 3 months, or



- (iii) of any offence under section 232, 590, 591, 592, 704, 705 or 996 of the *Corporations Law* or under any provision of a law in force in another State or in a Territory that corresponds with any of those sections, or
- (iv) of any offence under any provision of a previous law of New South Wales or of another State or Territory, with which any of the provisions referred to in subparagraph (iii) corresponds,

within a period of 5 years after the conviction or, if sentenced to imprisonment, after his or her release from prison, except with the leave of the Court.

Maximum penalty: 240 penalty units or imprisonment for 2 years, or both.

- (2) A person must not act as a director or directly or indirectly take part in or be concerned with the management of a co-operative if the person:
  - (a) has been convicted of any offence under this Act, within a period of 5 years after the conviction, except with the leave of the Court, or
  - (b) is prohibited from being a director of a company under section 599 of the *Corporations Law*, or
  - (c) is an insolvent under administration (as defined in the *Corporations Law*), or
  - (d) is prohibited from managing a co-operative by an order under section 1317EA of the *Corporations Law*, as adopted under this Act.

Maximum penalty: 240 penalty units or imprisonment for 2 years, or both.

- (3) In any proceeding for an offence against subsection (1), a certificate by an authority prescribed by the regulations stating that a person was released from prison on a specified date, is in the absence of evidence to the contrary, proof that that person was released from prison on that date.

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- (4) A person who intends to apply for leave of the Court must give the Registrar at least 21 days notice of his or her intention.
  - (5) The Court may grant leave subject to any condition or limitation it considers appropriate.
  - (6) A person must comply with any condition or limitation subject to which leave is granted.  
Maximum penalty: 240 penalty units or imprisonment for 2 years, or both.
  - (7) On the application of the Registrar, the Court may revoke its leave.
  - (8) Subject to this section, section 599 of the *Corporations Law* is adopted as far as is applicable to co-operatives and applies with any modifications that are necessary and any other modifications that are prescribed by the regulations.

**209 Meeting of the board of directors** (cf Vic Act s 215)

- (1) Meetings of the board of directors must be held at least once every 3 months and may be held as often as may be necessary.
- (2) A meeting of the board of directors may be called by a director giving notice individually to every other director.
- (3) A meeting of the board of directors may be called or held using any technology consented to by the board. The consent may be a standing one.
- (4) A quorum of a meeting of the board of directors is 50 per cent of the number of directors or such greater number of the directors as is specified in the rules.
- (5) The chairperson of the board may be elected either by the board or at a general meeting of the co-operative, and is to be elected, hold office, and retire, and may be removed from office, as provided by the rules of the co-operative.

**210 Transaction of business outside meetings**

(cf Vic Act s 216)

- (1) The board of a co-operative may, if it thinks fit, transact any of its business by the circulation of papers among all of the directors of the board.
- (2) A resolution in writing approved in writing by a majority of the directors of the board is to be taken to be a decision of the board.
- (3) Separate copies of a resolution may be distributed for signing by the directors if the wording of the resolution and approval is identical in each copy.
- (4) For the purpose of the approval of a resolution under this section, the chairperson of the board and each director of the board have the same voting rights as they have at an ordinary meeting of the board.
- (5) The resolution is approved when the last director required for the majority signs.
- (6) A resolution approved under this section must be recorded in the minutes of the meetings of the board.
- (7) Papers may be circulated among directors of the board for the purposes of this section by facsimile or other transmission of the information in the papers concerned.

**[113] Section 212 Filling of vacancies on board**

Omit section 212 (1). Insert instead:

- (1) A casual vacancy on the board of a co-operative (being a vacancy under section 218) is to be filled:
  - (a) by election by the members held:
    - (i) at a meeting of the co-operative, or
    - (ii) by means of a postal ballot, or
    - (iii) in the manner specified in the rules of the co-operative for the ordinary election of directors, or
  - (b) as provided for by section 205 (3), or
  - (c) in such other manner as the Registrar may approve in a particular case.



**[114] Section 212 (4)**

Omit the subsection. Insert instead:

- (4) The term of office of a director appointed by the board to fill a vacancy under this section is until the next annual general meeting of the co-operative.

**[115] Section 213 Delegation by board** (cf Vic Act s 218)

Omit section 213 (1). Insert instead:

- (1) If the rules of a co-operative so provide, the board may, by resolution, delegate the exercise of such of the board's functions (other than this power of delegation) as are specified in the resolution:
  - (a) to a director, or
  - (b) to a committee of 2 or more directors, or
  - (c) to a committee of members of the co-operative, or
  - (d) to a committee of members of the co-operative and other persons if members comprise the majority of persons on the committee.

**[116] Section 219**

Omit the section.

**[117] Section 221 Officers must act honestly** (cf Vic Act s 221)

Omit "200 penalty units or imprisonment for 5 years, or both" from section 221 (2) (a).

Insert instead "240 penalty units or imprisonment for 5 years, or both".

**[118] Section 221 (2) (b)**

Omit "50 penalty units". Insert instead "60 penalty units".

**[119] Section 222 Standard of care and diligence required**

(cf Vic Act s 222)

Omit "10 penalty units" from section 222 (1).

Insert instead "20 penalty units".

**[120] Section 223**

Omit the section. Insert instead:

**223 Improper use of information or position**

(cf Vic Act s 223)

- (1) An officer or employee or former officer or former employee of a co-operative or a member of a committee referred to in section 213 (1) must not make improper use of information acquired by reason of his or her position as such an officer or employee or member to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the co-operative.
- (2) An officer or employee of a co-operative or a member of a committee referred to in section 213 (1) must not make improper use of his or her position as an officer or employee or member, to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the co-operative.
- (3) The penalty applicable to a contravention of this section is:
  - (a) if the contravention was committed with intent to deceive or defraud the co-operative, members or creditors of the co-operative or creditors of any other person or for any other fraudulent purpose—a penalty not exceeding 240 penalty units or imprisonment for 2 years, or both, or
  - (b) in any other case—a penalty not exceeding 60 penalty units.

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**[121] Section 229 Adoption of Corporations Law provisions concerning officers of co-operatives** (cf Vic Act s 228)

Omit "the commencement of section 343B of this Act" from section 229 (2) (d).

Insert instead "15 December 1995".

**[122] Section 230**

Omit the section. Insert instead:

**230 Directors' remuneration** (cf Vic Act s 229)

A director of a co-operative must not be paid any remuneration for services as a director other than fees, concessions and other benefits that are approved at a general meeting of the co-operative.

**[123] Section 231**

Omit the section.

**[124] Section 232**

Omit the section. Insert instead:

**232 Financial accommodation to directors and associates**

(cf Vic Act s 231)

(1) In this section:

*associate* of a director means:

- (a) the director's spouse, or
- (b) a person when acting in the capacity of trustee of a trust under which:
  - (i) the director or director's spouse has a beneficial interest, or
  - (ii) a body corporate mentioned in paragraph (c) has a beneficial interest, or



- (c) a body corporate if:
  - (i) the director or director's spouse has a material interest in shares in the body corporate, and
  - (ii) the nominal value of the shares is not less than 10% of the nominal value of the issued share capital of the body corporate.
- (2) For the purposes of this section, a person has a ***material interest*** in a share in a body corporate if:
  - (a) the person has power to withdraw the share capital subscribed for the share or to exercise control over the withdrawal of that share capital, or
  - (b) the person has power to dispose of or to exercise control over the disposal of the share, or
  - (c) the person has power to exercise or to control the exercise of any right to vote conferred on the holder of the share.
- (3) A co-operative must not provide financial accommodation to a director, or to a person the co-operative knows or should reasonably know is an associate of a director, unless:
  - (a) the accommodation is:
    - (i) approved under subsection (4), or
    - (ii) given under a scheme approved under subsection (4), or
    - (iii) provided on terms no more favourable to the director or associate than the terms on which it is reasonable to expect the co-operative would give if dealing with the director or associate at arm's length in the same circumstances, and
  - (b) the directors have approved the accommodation, at a meeting of the board at which a quorum was present, by a majority of at least two-thirds of the directors present and voting on the matter.

Maximum penalty: 500 penalty units.

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- (4) For the purposes of subsection (3) (a) (i) and (ii), financial accommodation or a scheme is approved if:
- (a) it is approved by a resolution passed at a general meeting,
  - (b) the full details of the accommodation or scheme were made available to members at least 21 days before the meeting.
- (5) A director or an associate of a director who obtains financial accommodation given in contravention of subsection (3) is guilty of an offence.
- Maximum penalty: 240 penalty units or 2 years imprisonment, or both.
- (6) For the purposes of this section, a concessional rate of interest for a borrower from a co-operative is a normal term only if the borrower is entitled to the concession by being a member of a class of borrowers from the co-operative specified in its rules as being entitled to the concession.
- (7) If a director of a co-operative or an associate of a director accepts in payment of a debt owed by a member of the co-operative to the director or associate, any proceeds of financial accommodation provided to the member by the co-operative, this section has effect as if the financial accommodation has been provided to the director or associate.
- (8) In this section, a reference to:
- (a) the provision of financial accommodation to a director or an associate of a director, or
  - (b) the obtaining of financial accommodation by a director or an associate of a director, or
  - (c) a debt owed to a director or an associate of a director,
- includes a reference to a provision of financial accommodation to, or an obtaining of financial accommodation by, the director or associate, or a debt owed to the director or associate, jointly with another person.
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**[125] Section 233A**

Insert after section 233:

**233A Management contracts** (cf Vic Act s 233)

- (1) In this section, *management contract* means a contract or other arrangement under which:
  - (a) a person who is not an officer of the co-operative agrees to perform the whole, or a substantial part, of the functions of the co-operative, whether under the control of the co-operative or not, or
  - (b) a co-operative agrees to perform the whole or a substantial part of its functions:
    - (i) in a particular way, or
    - (ii) in accordance with the directions of any person, or
    - (iii) subject to specified restrictions or conditions.
- (2) A co-operative must not enter into a management contract unless that contract has first been approved by special resolution.
- (3) A management contract entered into in contravention of subsection (2) is void.

**[126] Sections 234–237**

Omit the sections. Insert instead:

**234 Declaration of interest** (cf Vic Act s 234)

- (1) A director of a co-operative who is or becomes in any way (whether directly or indirectly) interested in a contract, or proposed contract with the co-operative must declare the nature and extent of the interest to the board of directors under this section.

Maximum penalty: 240 penalty units or imprisonment for 2 years, or both.



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- (2) In the case of a proposed contract, the declaration must be made:
- (a) at the meeting of the board at which the question of entering into the contract is first considered, or
  - (b) if the director was not at that time interested in the proposed contract, at the next meeting of the board held after the director becomes interested in the proposed contract.
- (3) If a director becomes interested in a contract with the co-operative after it is made, the declaration must be made at the next meeting of the board held after the director becomes interested in the contract.
- (4) For the purposes of this section, a general written notice given to the board by a director to the effect that the director:
- (a) is a member of a specified entity, and
  - (b) is to be regarded as interested in any contract which may, after the giving of the notice, be made with the entity,
- is a sufficient declaration.
- (5) A director of a co-operative who holds an office or has an interest in property whereby, whether directly or indirectly, duties or interests might be created that could conflict with the director's duties or interests as director must, under subsection (6), declare at a meeting of the board of directors the fact and the nature, character and extent of the conflict.
- Maximum penalty: 240 penalty units or imprisonment for 2 years, or both.
- (6) A declaration required by subsection (5) in relation to holding an office or having an interest must be made by a person:
- (a) if the person holds the office or has the interest when he or she becomes a director, at the first meeting of the board held after:
    - (i) the person becomes a director, or
-

- (ii) the relevant facts as to holding the office or having the interest come to the person's knowledge,  
  
whichever is the later, or
  - (b) if the person starts to hold the office or acquires the interest after the person becomes a director, at the first meeting of the board held after the relevant facts as to holding the office or having the interest come to the person's knowledge.
- (7) If a director has made a declaration under this section, then unless the board otherwise determines, the director must not:
  - (a) be present during any deliberation of the board in relation to the matter, or
  - (b) take part in any decision of the board in relation to the matter.
- (8) For the purposes of the making of a determination of the board under subsection (7) in relation to a director who has made a declaration under this section, the director must not:
  - (a) be present during any deliberation of the board for the purpose of making the determination, or
  - (b) take part in the making by the board of the determination.
- (9) This section does not extend to or in respect of a vote relating to a transaction referred to in section 241.
- (10) Any vote cast in contravention of this section is not to be counted.

**[127] Section 240 Penalty**

Omit the section.

**[128] Section 241 Certain interests need not be declared**

(cf Vic Act s 237)

Insert after section 241 (a):

- (a1) a lease of land to the director by the co-operative,  
or

**[129] Section 242 Pecuniary interest disentitles director from voting**

Omit the section.

**[130] Section 249 Registers to be kept by co-operatives**

(cf Vic Act s 244)

Insert after section 249 (1) (f):

- (f1) a register of notifiable interests in accordance with  
section 294,

**[131] Sections 250 and 251**

Omit the sections. Insert instead:

**250 Location of registers** (cf Vic Act s 245)

- (1) A register kept under this Division must be kept at:
  - (a) the co-operative's registered office, or
  - (b) an office at the co-operative's principal place of business, or
  - (c) an office (whether of the co-operative or of someone else) where the work involved in maintaining the register is done, or
  - (d) another office approved by the Registrar.
- (2) The office must be in New South Wales.



- (3) The co-operative must lodge with the Registrar a notice of the address at which the register is kept within 28 days after the register is:
- (a) established at an office that is not the co-operative's registered office, or
  - (b) moved from one office to another.

Maximum penalty: 10 penalty units or imprisonment for 3 months, or both.

**251 Inspection of registers etc** (cf Vic Act s 246)

- (1) A co-operative must have at the office where the registers are kept and available during all reasonable hours for inspection by any member free of charge the following:
- (a) a copy of this Act and the regulations,
  - (b) a copy of the rules of the co-operative,
  - (c) a copy of the minutes of each general meeting of the co-operative,
  - (d) a copy of the last annual report of the co-operative under section 252,
  - (e) the register of directors, members and shares,
  - (f) the register of names of persons who have given loans or deposits to or hold securities or debentures given or issued by the co-operative,
  - (g) such other registers as the regulations provide are to be open for inspection under this section.

Maximum penalty: 20 penalty units.

- (2) If a register is not kept on a computer, the person inspects the register itself.
- (3) If the register is kept on a computer, the person inspects a hard copy of the information on the register unless the person and the co-operative agree that the person can access the information by computer.

- (4) A member is entitled to make a copy of entries in a register specified in subsection (1) and to do so free of charge unless the rules of the co-operative require a fee to be paid, in which case on payment of the required fee.
- (5) The fee required by the rules must not exceed the fee prescribed by the regulations for a copy of any entry in the Register.
- (6) A co-operative must:
  - (a) permit a member to inspect a document or make a copy of a document that the member is entitled to inspect or make under this section, and
  - (b) give the member all reasonable assistance to inspect the document or make the copy.

Maximum penalty: 20 penalty units.

- (7) A co-operative must have at the place where the registers are kept and available during all reasonable hours for inspection by any person such documents in relation to the co-operative as are prescribed by the regulations.

Maximum penalty: 20 penalty units.

**251A Use of information on registers** (cf Vic Act s 247)

- (1) A person must not:
  - (a) use information about a person obtained from a register kept under this Division to contact or send material to the person, or
  - (b) disclose information of that kind knowing that the information is likely to be used to contact or send material to the person,

unless the requirements of subsection (2) are met.

Maximum penalty: 50 penalty units or imprisonment for one year, or both.

- (2) The requirements of this section for use or disclosure of the information are that the use or disclosure of the information is:
  - (a) relevant to the holding of the directorship, membership, shares, loans, securities, debentures or deposits concerned or the exercise of the rights attaching to them, or
  - (b) approved by the board, or
  - (c) necessary to comply with a requirement of this Act.
- (3) A person who contravenes subsection (1) is liable to compensate anyone else who suffers loss or damage because of the contravention.
- (4) A person who makes a profit from a contravention of subsection (1) owes a debt to the co-operative. The amount of the debt is the amount of the profit.

**251B Notice of appointment etc of directors and officers**

(cf Vic Act s 248)

- (1) A co-operative must give notice to the Registrar in accordance with this section of the appointment of a person as a director, principal executive officer or secretary of the co-operative or any subsidiary of the co-operative, and of the cessation of any such appointment.
- (2) The notice must:
  - (a) be in the form approved by the Registrar, and
  - (b) be given within 28 days after the appointment or cessation of appointment, and
  - (c) specify the particulars prescribed by the regulations of the appointment or cessation of appointment.

Maximum penalty: 20 penalty units.



**[132] Section 252**

Omit the section. Insert instead:

**252 Annual report** (cf Vic Act s 249)

- (1) A co-operative must send to the Registrar within the required period in each year an annual report containing each of the following:
  - (a) a list in the form approved by the Registrar specifying the directors and the principal executive officers of the co-operative and of each subsidiary of the co-operative, as at the date that the annual report is sent to the Registrar,
  - (b) a copy of the accounts of the co-operative in respect of its financial year then last past,
  - (c) a copy of the accounts of each subsidiary of the co-operative in respect of the financial year of the subsidiary then last past,
  - (d) a copy of any report by the auditors or directors of the co-operative or subsidiary on the accounts referred to in paragraphs (b) and (c),
  - (e) a return in the form prescribed by the regulations containing such other particulars as may be so prescribed.

Maximum penalty: 20 penalty units.

- (2) For the purposes of subsection (1) *the required period* is:
  - (a) 28 days after the annual general meeting of the co-operative, or
  - (b) if the annual general meeting of the co-operative is not held within the period specified in section 198 (2) (a), 28 days after the end of that period.

**[133] Section 255 Name to include certain matter**      (cf Vic Act s 252)

Insert after section 255 (3):

- (4) A body corporate which is formed or incorporated under any Act other than this Act must not register under that other Act by any name which includes the word "Co-operative" or the abbreviation "Co-op." or any word or words importing a similar meaning.

Maximum penalty: 20 penalty units.

- (5) Subsection (4) does not apply to:
  - (a) a co-operative housing society within the meaning of the *Co-operation Act 1923*, or
  - (b) a credit union or foreign society within the meaning of the *Financial Institutions (NSW) Code*, or
  - (c) a company or society formed or incorporated under any other Act before the commencement of the *Co-operation Act 1923*, or
  - (d) the Farmers and Settlers Co-operative Insurance Company of Australia Limited, or
  - (e) a foreign co-operative registered under Part 13A, or
  - (f) a co-operative exempted by the regulations from the operation of that subsection and that complies with any conditions to which the exemption is made subject, or
  - (g) a co-operative exempted by the Registrar in writing from the operation of that subsection and that complies with any conditions to which the exemption is made subject.
- (6) The Registrar is not to grant an exemption under this section unless satisfied that the body or organisation concerned is trading or carrying on business for the purpose of promoting the economic interests of its members in accordance with co-operative principles or

for any charitable purpose. The expression *charitable purpose* includes any benevolent, philanthropic or patriotic purpose.

- (7) An exemption granted by the Registrar may be limited as to time.
- (8) The Registrar may vary the conditions of an exemption or revoke an exemption by giving notice in writing of the variation or revocation to the body or any member of the controlling body of the organisation.

**[134] Section 258 Name to appear on business documents etc**

(cf Vic Act s 254)

Omit section 258 (6). Insert instead:

- (6) In this section:

*business document*, in relation to a co-operative, means a document that is issued, signed or endorsed by or on behalf of the co-operative and is:

- (a) a business letter, statement of account, invoice or order for goods or services, or
- (b) a bill of exchange, promissory note, cheque or other negotiable instrument, or
- (c) a receipt or letter of credit issued by the co-operative, or
- (d) a document of a class prescribed by the regulations as a class of business documents.

**[135] Section 259 Change of name of co-operative** (cf Vic Act s 255)

Omit section 259 (6). Insert instead:

- (6) The Registrar may direct a co-operative to change its name if the Registrar is of the opinion that the name is such as is likely to be confused with the name of a body corporate or a registered business name.



**[136] Section 260 Restrictions on use of "co-operative" by other bodies**

Omit the section.

**[137] Section 261 Registered office of co-operative** (cf Vic Act s 256)

Omit "and the rules of the co-operative must state the address of the registered office" from section 261 (1).

**[138] Section 261 (3)**

Omit "14 days". Insert instead "28 days".

**[139] Part 10 Funds, property etc, note**

Insert before Division 1:

**Note.** Each provision of Divisions 1 and 3–5 (other than sections 267 (in so far as it relates to employees), 284 and 285 (2) and (3)) is a core consistent provision.

**[140] Section 262 Meaning of obtaining financial accommodation**

(cf Vic Act s 257)

Insert "the obtaining of credit and" after "reference to" in section 262.

**[141] Section 263 Fund raising to be in accordance with Act and regulations** (cf Vic Act s 258)

Omit section 263 (3).

**[142] Section 263A**

Insert after section 263:

**263A Limits on deposit taking** (cf Vic Act s 259)

A co-operative must not accept money on deposit unless:

- (a) the co-operative was authorised by its rules immediately before the commencement of this Act to accept money on deposit, or

- (b) the co-operative was a deposit-taking body corporate immediately before it became a co-operative and it is authorised by its rules to accept money on deposit, or
- (c) in the case of a merged co-operative, one or more of the co-operatives involved in the merger was a deposit-taking co-operative immediately before the registration of the merged co-operative and the merged co-operative is authorised by its rules to accept money on deposit.

**263B Members etc not required to see to application of money** (cf Vic Act s 260)

A member or other person from whom a co-operative obtains financial accommodation is not required to see to its application and is not affected or prejudiced by the fact that in doing so the co-operative contravened any provision of this Act or the regulations or the rules of the co-operative.

**[143] Section 266**

Omit the section. Insert instead:

**266 Application of Corporations Law to issues of debentures**  
(cf Vic Act s 263)

- (1) The provisions of Parts 1.2A (Disclosing entities), 7.11 (Conduct in relation to securities) and 7.12 (Offering securities for subscription or purchase) of the *Corporations Law* are adopted by this section and apply to and in respect of debentures of a co-operative.
- (2) Those provisions apply with any modifications that are prescribed and as if:
  - (a) a co-operative were a company, and
  - (b) a reference in those provisions to a corporation included a co-operative,
  - (c) a reference in those provisions to the Commission were a reference to the Registrar.

- (3) The provisions of the *Corporations Law* adopted by this section do not apply to a loan to which section 268 applies.
- (4) The provisions of the *Corporations Law* adopted by this section do not apply to an issue of debentures of a co-operative which is made:
  - (a) solely to members, or
  - (b) solely to members and employees of the co-operative, or
  - (c) to a person who on becoming an inactive member of the co-operative has had his or her share capital converted to debt.
- (5) Expressions used in this section which are not defined in this Act have the same meaning as in the *Corporations Law*.
- (6) The Registrar may exempt a co-operative from any of the requirements of the *Corporations Law* adopted by this section or by section 11.

**266A Disclosure statement** (cf Vic Act s 264)

- (1) This section applies to the issue of debentures of a co-operative where the issue is made:
  - (a) solely to members, or
  - (b) solely to members and employees of the co-operative.
- (2) Before issuing to the person debentures to which this section applies, a co-operative must provide a person with a disclosure statement, approved by the Registrar, and containing such information as is reasonably necessary to enable a person to make an informed assessment of the financial prospects of the co-operative, including:
  - (a) the purpose for which the money raised by the co-operative by the issue of debentures is to be used, and
  - (b) the rights and liabilities attaching to the debentures, and



- (c) the financial position of the co-operative, and
  - (d) the interests of the directors of the co-operative in the issue of the debentures, and
  - (e) any compensation or consideration to be paid to officers or members of the co-operative in connection with the issue of debentures, and
  - (f) such other matters as the Registrar directs.
- (3) Sections 17 (except subsections (2), (4) and (11)) and 28A apply to the approval of a disclosure statement under this section with any necessary modifications and in particular as if any reference in section 17 to a formation meeting were a reference to the issue of debentures.

**266B Approval of board for transfer of debentures**

(cf Vic Act s 265)

A debenture of a co-operative cannot be sold or transferred except with the consent of the board and in accordance with the rules of the co-operative.

**[144] Section 267 Application of Corporations Law—re-issue of redeemed debentures** (cf Vic Act s 266)

Insert “or employees” after “members”.

**[145] Section 268**

Omit the section. Insert instead:

**268 Compulsory loan by member to co-operative**

(cf Vic Act s 267)

- (1) If the rules of the co-operative so provide, the co-operative may require its members to lend money, with or without security, to the co-operative, in accordance with a proposal approved by special resolution of the co-operative.

- (2) The proposal must not require a loan to be for a term exceeding 7 years or such other term as is prescribed by the regulations.
- (3) The proposal must:
  - (a) be accompanied by a disclosure statement, approved by the Registrar, that explains the purpose for which the money raised by the co-operative pursuant to the proposal is to be used and includes any other information that the Registrar directs, and
  - (b) clearly show the total amount of the loan to be raised by the co-operative and the basis on which the money required to be lent by each member is to be calculated, and
  - (c) be accompanied by a statement informing the member that the member may inform the board by notice on or before the date specified in the statement (being a date before the passing of the special resolution) that the member resigns on the passing of the special resolution.
- (4) If the proposal so allows, the board of the co-operative may, in accordance with the terms of the proposal, deduct the money required to be lent by a member to the co-operative from money due from the co-operative to the member in respect of his or her dealings with the co-operative.
- (5) A proposal to deduct money referred to in subsection (4) must, in addition, clearly show:
  - (a) the basis on which the money is to be deducted, and
  - (b) the time and manner of making the deductions.
- (6) When approved, the proposal is binding on:
  - (a) all members of the co-operative at the date of passing of the special resolution other than a member who has given a notice of resignation in accordance with subsection (3) (c), and

- (b) all persons who become members of the co-operative after that date and before the total amount of the loan to be raised pursuant to the proposal has been raised.
- (7) Sections 17 (except subsections (2), (4) and (11)) and 28A apply to the approval of a disclosure statement under this section with any necessary modifications and in particular as if any reference in section 17 to a formation meeting were a reference to the special resolution.

**268A Interest payable on compulsory loan** (cf Vic Act s 268)

- (1) The rate of interest payable by a co-operative in respect of a loan under section 268 during any period is:
  - (a) in the case of a co-operative with share capital:
    - (i) the rate (or, if there is more than one rate, at the higher or highest rate) of dividend payable in respect of that period on the share capital of the co-operative, or
    - (ii) if the rate of dividend payable in respect of that period has not been determined, at the rate (or the higher or highest rate) payable in respect of the immediately preceding period for which a rate has been determined, or
    - (iii) if a rate of dividend has never been determined in respect of the share capital of the co-operative, at the rate that the board of the co-operative considers reasonable, or
  - (b) in the case of a co-operative without share capital, at the rate that the board of the co-operative considers reasonable, or
  - (c) if the rules provide for a rate to be payable that is higher than the rate applicable under paragraph (a) or (b), at that higher rate.
- (2) A member may agree to the rate of interest being less than that which would otherwise be payable under this section and may agree to no interest being paid.



**[146] Sections 280–283**

Omit the sections. Insert instead:

**280 Retention of surplus for benefit of co-operative**

(cf Vic Act s 271)

The board of a co-operative may resolve to retain all or any part of the surplus arising in any year from the business of the co-operative to be applied for the benefit of the co-operative.

**281 Application for charitable purposes or members' purposes**

(cf Vic Act s 272)

- (1) The rules of a co-operative may authorise the co-operative to apply a part of the surplus arising in any year from the business of the co-operative for any charitable purpose. The expression *charitable purpose* includes any benevolent, philanthropic or patriotic purpose.
- (2) The rules of a trading co-operative may authorise the co-operative to apply a part of the surplus arising in any year from the business of the co-operative for supporting any activity approved by the co-operative.
- (3) The rules must limit the amount that may be applied under subsection (1) or (2) to a specified proportion of the surplus.
- (4) A co-operative may apply part of the surplus for a purpose and to the extent authorised by rules under subsection (1) or (2).

**282 Distribution of surplus or reserves to members**

(cf Vic Act s 273)

- (1) The rules of a trading co-operative may authorise the co-operative to apply a part of the surplus arising in any year from the business of the co-operative or a part of the reserves of the co-operative by:
  - (a) distribution to members as a rebate on the basis of business done with the co-operative, or

- (b) the issue of bonus shares to members, or
  - (c) the issue to members of a limited dividend.
- (2) The amount of any rebate or dividend payable to a member under subsection (1) may, with the consent of the member, be applied:
  - (a) in payment for the issue to the member of bonus shares, or
  - (b) as a loan to the co-operative.
- (3) In this section *limited dividend* means a dividend that does not exceed the amount prescribed by the regulations or such other amount or rate as the Registrar may approve in any particular case.

**283 Application of surplus to other persons**

(cf Vic Act s 274)

- (1) If authorised by its rules, any part of the surplus arising in any year from the business of a trading co-operative may be credited to any person who is not a member, but is qualified to be a member, by way of rebate in proportion to the business done by him or her with the co-operative, if:
  - (a) the person was a member at the time the business was done and the membership has lapsed, or
  - (b) the person has applied for membership after the business was done.
- (2) Nothing in this section precludes the payment of a bonus to an employee in accordance with the terms of his or her employment.

**[147] Section 285 Acquisition and disposal of assets** (cf Vic Act s 275)

Omit section 285 (1). Insert instead:

- (1) A co-operative must not do any of the following things except as approved by special resolution by means of a special postal ballot:

- (a) sell or lease as a going concern, the undertaking of the co-operative or a part of the undertaking that relates to its primary activities the value of which represents 5% or more of the total value of the undertaking,
- (b) acquire from or dispose to a director or employee of the co-operative, or a relative (within the meaning of the *Corporations Law*) of such a director or employee or of the spouse of such a director or employee, of any property the value of which represents 5% or more of the total value of all the assets of the co-operative that relate to its primary activities,
- (c) acquire an asset the value of which exceeds 5% or more of the assets of the co-operative if the acquisition would result in the co-operative commencing to carry on an activity that is not one of its primary activities,
- (d) dispose of an asset if the disposal would result in the co-operative ceasing to carry on any primary activity of the co-operative, or in the ability of the co-operative to carry on any primary activity of the co-operative being substantially impaired either generally or in a particular geographical region.

**[148] Section 285 (3)**

Omit "50 penalty units". Insert instead "60 penalty units".

**[149] Part 11 Restrictions on acquisition of interests in co-operatives, note**

Insert before Division 1:

**Note.** Each provision of this Part (other than sections 300 (1) and 308) is a core consistent provision.

**[150] Section 288 Requirements for notices** (cf Vic Act s 279)

Omit "prescribed form" from section 288 (a).

Insert instead "form approved by the Registrar".



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**[151] Section 295 Unlisted companies to provide list of shareholders etc** (cf Vic Act s 286)

Omit "1 month" wherever occurring in section 295 (3).  
Insert instead "28 days".

**[152] Sections 303 and 304**

Omit the sections.

**[153] Part 12, heading**

Omit "Amalgamation". Insert instead "Merger".

**[154] Part 12, note**

Insert before Division 1:

**Note.** Each provision of the Part (other than sections 311A (3), 312, 314, 315, 316 (4), 332A and 338) is a core consistent provision.

**[155] Part 12, Division 1, heading**

Omit "Amalgamation".  
Insert instead "Merger and transfer of engagements".

**[156] Sections 309–311C**

Omit sections 309–311. Insert instead:

**309 Application of Division** (cf Vic Act s 298)

This Division does not apply to a merger or transfer of engagements to which Part 13A applies.

**310 Mergers and transfers of engagements of local co-operatives** (cf Vic Act s 299)

Any 2 or more co-operatives may consolidate all or any of their assets, liabilities and undertakings by way of merger or transfer of engagements approved under this Division.

**311 Requirements before application can be made**

(cf Vic Act s 300)

- (1) Before co-operatives can apply for approval under this Division of a merger or transfer of engagements, the proposed merger or transfer must have been approved by each of the co-operatives by:
  - (a) a special resolution passed by means of a special postal ballot, or
  - (b) if permitted by subsection (2)—a resolution of the board of the co-operative.
- (2) The proposed merger or transfer of engagements may be approved by resolution of the board of a co-operative if the Registrar consents to that procedure applying in the particular case.

**311A Disclosure statement required**      (cf Vic Act s 301)

- (1) A resolution of a co-operative is not effective for the purposes of this Division unless this section and section 194 (1), (2) and (4) has been complied with.
- (2) Each co-operative must send to each of its members a disclosure statement approved by the Registrar specifying:
  - (a) the financial position of the each co-operative concerned in the proposed merger or transfer of engagements as shown in financial statements that have been prepared as at a date that is not more than 6 months before the date of the statement, and
  - (b) any interest that any officer of each co-operative has in the proposed merger or transfer of engagements, and
  - (c) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to any officer or member of each co-operative in relation to the proposed merger or transfer of engagements, and

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- (d) whether the proposal is a merger or transfer of engagements and the reason for the merger or transfer of engagements, and
  - (e) in the case of a transfer of engagements, whether it is a total or partial transfer of engagements, and
  - (f) any other information that the Registrar directs.
- (3) The disclosure statement must be sent to the members of each co-operative so that it will in the ordinary course of post reach each member who is entitled to vote on the special resolution not later 21 days before the day on which the ballot commences.

**311B Making an application** (cf Vic Act s 302)

- (1) An application for approval of a merger or transfer of engagements under this Division must be made to the Registrar in the manner and form required by the Registrar.
- (2) An application for approval of a merger must be accompanied by 2 copies of the proposed rules of the merged co-operative and any other particulars required by the Registrar.

**311C Approval of merger** (cf Vic Act s 303)

- (1) The Registrar must approve a merger pursuant to an application under this Division if satisfied that:
  - (a) this Division has been complied with in relation to the application, and
  - (b) the proposed rules of the merged co-operative are consistent with this Act and the regulations and are such that may reasonably be approved, and
  - (c) the certificates of registration of the co-operatives have been surrendered to the Registrar, and
  - (d) there is no good reason why the merged co-operative and its rules should not be registered.



- (2) On approving an application for merger, the Registrar must:
  - (a) cancel the registration of the co-operatives involved in the merger, and
  - (b) register the merged co-operative and its rules, and
  - (c) issue to the merged co-operative a certificate of registration under this Act.
- (3) A merger takes effect on the issue of the certificate of registration for the merged co-operative.

**[157] Section 312 Exemptions concerning mergers**

Insert "concerning mergers" after "any matter" in section 312 (1).

**[158] Section 312 (2) and (3)**

Omit the subsections.

**[159] Division 2**

Omit the heading.

**[160] Section 313**

Omit the section. Insert instead:

**313 Approval of transfer of engagements** (cf Vic Act s 304)

- (1) The Registrar must approve a transfer of engagements pursuant to an application under this Division if satisfied that:
  - (a) this Division has been complied with in relation to the application, and
  - (b) the rules or proposed rules of the transferee co-operative are adequate, and
  - (c) in the case of a total transfer of engagements from a co-operative, the certificate of registration of the co-operative has been surrendered to the Registrar, and
  - (d) there is no good reason why the transfer of engagements should not take effect.

- (2) A transfer of engagements takes effect on the day specified in the approval of the Registrar.

**[161] Section 314 Transfer of engagements by direction of Registrar**  
(cf Vic Act s 305)

Omit "10 penalty units" from section 314 (7).  
Insert instead "20 penalty units".

**[162] Section 316 Application for transfer** (cf Vic Act s 307)

Omit section 316 (2). Insert instead:

- (2) Before an application is made, the co-operative must by special resolution passed by means of a special postal ballot:
- (a) approve the proposed application, and
  - (b) determine under what name the co-operative is to apply to be incorporated or registered, and
  - (c) adopt any memorandum or articles of association or rules that may be necessary or considered desirable.

**[163] Sections 321 (2), 339 (1) (except where firstly occurring) and (2) (except where firstly occurring), 351 (1) and 357 (2) (a) and (3) (g)**

Omit "amalgamation" wherever occurring. Insert instead "merger".

**[164] Section 325 Application of Corporations Law to winding up**  
(cf Vic Act s 316)

Insert after section 325 (3) (b):

- (b1) section 513B (Voluntary winding up) were amended by inserting after paragraph (d):
- “(da) if the winding up is on the certificate of the Registrar—on the date that the certificate is given, or”,

**[165] Section 328 Distribution of surplus—non-trading co-operatives**  
(cf Vic Act s 319)

Omit section 328 (1). Insert instead:

- (1) On a winding up of a non-trading co-operative, the surplus property of the co-operative must be distributed as required by the rules of the co-operative.

**[166] Section 330**

Omit the section. Insert instead:

**330 Review of liquidator's remuneration** (cf Vic Act s 321)

Any member or creditor of a co-operative or the liquidator may at any time before the completion of the winding up of the co-operative apply to the Court to review the amount of the remuneration of the liquidator.

**[167] Section 332 Adoption of Part 5.3A of Corporations Law**  
(cf Vic Act s 323)

Omit "sections 36–39" from section 332 (2) (b).  
Insert instead "sections 36–38".

**[168] Sections 333–337**

Omit the sections. Insert instead:

**333 Appointment of administrator of co-operative**  
(cf Vic Act s 324)

- (1) The Registrar may, by written notice, appoint an administrator to conduct the affairs of a co-operative.
- (2) A notice of appointment of an administrator must specify:
  - (a) the date of appointment, and
  - (b) the appointee's name, and
  - (c) the appointee's business address.



- (3) If the appointee's name or business address changes, the appointee must immediately give written notice of the change to the Registrar.
- (4) The Registrar must not appoint an administrator unless the necessary grounds for the taking of that action exist, as referred to in section 343.

**334 Effect of appointment of administrator** (cf Vic Act s 325)

- (1) On the appointment of an administrator of a co-operative:
  - (a) the directors of the co-operative cease to hold office, and
  - (b) all contracts of employment with the co-operative are terminated, and
  - (c) all contracts for the provision of secretarial or administrative services for the co-operative are terminated, and
  - (d) the administrator may terminate any contract for providing other services to the co-operative.
- (2) An administrator of a co-operative has the functions of the board of the co-operative, including the board's powers of delegation.
- (3) A director of a co-operative must not be appointed or elected while the administrator is in office except as provided by this Division.

**335 Revocation of appointment** (cf Vic Act s 326)

- (1) An administrator holds office until the administrator's appointment is revoked or the administrator dies.
- (2) The Registrar may, by written notice, revoke the appointment of an administrator.
- (3) When a liquidator of a co-operative is appointed, the appointment of any administrator of the co-operative is automatically revoked.

- (4) Immediately on the revocation of an administrator's appointment, the administrator must prepare and submit a report to the Registrar showing how the administration was carried out, and for that purpose an administrator has access to the co-operative's records and documents.
- (5) On providing the report and accounting fully in relation to the administration of the co-operative to the satisfaction of the Registrar, the administrator is released from any further duty to account in relation to the administration of the co-operative other than on account of fraud, dishonesty, negligence or wilful failure to comply with this Act or the regulations.
- (6) Before revoking the appointment of an administrator of a co-operative, the Registrar must:
  - (a) appoint another administrator, or
  - (b) appoint a liquidator, or
  - (c) ensure that directors of the co-operative have been elected in accordance with the rules of the co-operative at a meeting convened by the administrator in accordance with those rules, or
  - (d) appoint directors of the co-operative.
- (7) Directors elected or appointed under subsection (6):
  - (a) take office on revocation of the administrator's appointment, and
  - (b) in the case of directors appointed under subsection (6), hold office until the next annual general meeting of the co-operative after the revocation of that appointment.

**336 Expenses of administration** (cf Vic Act s 327)

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

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- (2) The expenses of conducting a co-operative's affairs include:
- (a) if the administrator is not an officer or employee of the public service, remuneration of the administrator at a rate approved by the Registrar, or
  - (b) if the administrator is an officer or employee of the public service, the amount that the Registrar certifies should be paid to the credit of the public service as repayment of the administrator's remuneration.
- (3) An amount certified under subsection (2) (b) may be recovered in a court of competent jurisdiction as a debt due to the Crown.
- (4) An administrator has, in relation to the expenses specified in subsection (1), the same priority on the winding up of a co-operative as the liquidator of the co-operative has.

**337 Liabilities arising from administration** (cf Vic Act s 328)

- (1) If a co-operative incurs any loss because of any fraud, dishonesty, negligence or wilful failure to comply with this Act or the regulations or the rules of the co-operative by an administrator, the administrator is liable for the loss.
- (2) An administrator is not liable for any loss that is not a loss to which subsection (1) applies but must account for the loss in a report given under section 335.

**337A Additional powers of Registrar** (cf Vic Act s 329)

- (1) If the Registrar appoints directors of a co-operative under section 335, the Registrar may, by written notice given to the co-operative, specify:
  - (a) a time during which this section is to apply in relation to the co-operative, and
  - (b) the terms and conditions on which all or any of the directors hold office, and
  - (c) the rules that are to be the co-operative's rules.



- (2) While this section applies to a co-operative, the Registrar may:
  - (a) from time to time remove and appoint directors, and
  - (b) from time to time, vary, revoke or specify new terms and conditions in place of all or any of the terms and conditions specified under subsection (1), and
  - (c) amend all or any of the rules specified under subsection (1).
- (3) The Registrar may, by written notice given to the co-operative, extend the time for which this section is to apply in relation to a co-operative.
- (4) A rule specified by the Registrar under this section as a rule of a co-operative:
  - (a) is not to be altered except in the way set out in this section, and
  - (b) if it is inconsistent with any other rule of the co-operative, prevails over the other rule, and the other rule is to the extent of the inconsistency invalid, and
  - (c) has the same evidentiary value as is by this Act accorded to the co-operative's rules and to copies of them.

**337B Stay of proceedings** (cf Vic Act s 330)

- (1) If the Registrar appoints an administrator to conduct a co-operative's affairs, a person must not begin or continue any proceeding in a court against the co-operative until the administrator's appointment is revoked except with the leave of the Court and, if the Court grants leave, in accordance with any terms and conditions that the Court imposes.
- (2) A person intending to apply for leave of the Court under subsection (1) must give the Registrar not less than 10 days' notice of intention to apply.

- (3) On the hearing of an application under subsection (1), the Registrar may be represented and may oppose the granting of the application.

**337C Administrator to report to Registrar** (cf Vic Act s 331)

On the receipt of a request from the Registrar, the administrator of a co-operative must, without delay, prepare and give to the Registrar a report showing how the administration is being carried out.

**[169] Part 12, Division 7, heading**

Omit "amalgamation". Insert instead "merger".

**[170] Section 339 How this Division applies to a merger**

(cf Vic Act s 332)

Omit "(including when a foreign co-operative is involved)" from section 339 (1).

**[171] Section 339 (2), definitions of "new body" and "original body"**

Omit "or foreign co-operative" wherever occurring.

**[172] Section 339 (2), definition of "relevant day"**

Omit "or the amalgamated foreign co-operative is registered, incorporated or established under the law of the place outside the State".

**[173] Section 340 How this Division applies to transfer of engagements** (cf Vic Act s 333)

Omit "Division 2" from section 340 (1). Insert instead "Division 1".

**[174] Section 342, heading**

Omit the heading. Insert instead:

**342 Effect of merger on property, liabilities etc**  
(cf Vic Act s 335)

**[175] Section 342 (1)**

Omit "clause". Insert instead "section".

**[176] Section 342 (4)**

Omit the subsection.

**[177] Part 13 Arrangements and reconstructions, note**

Insert before Division 1:

**Note.** Each provision of this Part is a core consistent provision.

**[178] Section 351 Directors to arrange for reports** (cf Vic Act s 346)

Omit "10 penalty units" from section 351 (2).  
Insert instead "20 penalty units".

**[179] Section 353 Court need not approve compromise or arrangement takeovers** (cf Vic Act s 348)

Omit "is not to" from section 353 (1). Insert instead "need not".

**[180] Section 357, heading**

Omit the heading. Insert instead:

**357 Provisions for facilitating reconstructions and mergers**  
(cf Vic Act s 352)

**[181] Section 360 Acquisition of shares pursuant to notice to dissenting shareholder** (cf Vic Act s 355)

Omit "1 month" from section 360 (4). Insert instead "28 days".



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**[182] Section 362 Remaining shareholders may require acquisition**  
(cf Vic Act s 357)

Omit "1 month" from section 362 (1) (a). Insert instead "28 days".

**[183] Section 363 Transfer of shares pursuant to compulsory acquisition** (cf Vic Act s 358)

Omit "1 month" from section 363 (2) (a). Insert instead "28 days".

**[184] Section 365 Notification of appointment of scheme manager**  
(cf Vic Act s 360)

Omit "5 penalty units". Insert instead "10 penalty units".

**[185] Part 13A (sections 369A–369W)**

Insert after Part 13:

**Part 13A Foreign co-operatives**

**Note.** Each provision in this Part is a core consistent provision.

**Division 1 Introductory**

**369A Definitions** (cf Vic Act s 365)

In this Part:

*co-operatives law* means a law that under an order in force under section 369B is declared to be a co-operatives law for the purposes of this Part.

*non-participating co-operative* means a foreign co-operative other than a participating co-operative.

*participating co-operative* means a foreign co-operative that is registered, incorporated or formed under, or subject to, a co-operatives law.

***participating State*** means any State in which a co-operatives law is in force.

***State*** includes the Australian Capital Territory and the Northern Territory.

**369B Co-operatives law** (cf Vic Act s 366)

- (1) Subject to subsection (2), the Governor may, by order published in the Gazette, declare that a law of a State other than New South Wales is a co-operatives law for the purposes of this Part.
- (2) An order must not be made under subsection (1) in respect of the law of another State unless the Governor is satisfied that the law:
  - (a) substantially corresponds to the provisions of this Act, and
  - (b) contains provisions that are referred to in this Part as provisions of a co-operatives law that correspond to specified provisions of this Act.

**Division 2 Registration of foreign co-operatives**

**369C Operation of foreign co-operatives in New South Wales**  
(cf Vic Act s 367)

A foreign co-operative must not carry on business in New South Wales unless it is registered under this Part.

Maximum penalty: 240 penalty units.

**369D What constitutes carrying on business** (cf Vic Act s 368)

- (1) A foreign co-operative carries on business in New South Wales if it:
  - (a) solicits for members in New South Wales, or
  - (b) seeks share capital in New South Wales, or
  - (c) provides any goods or services within New South Wales.

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- (2) A foreign co-operative is not to be regarded as carrying on business in New South Wales only by reason that in New South Wales it:
- (a) is or becomes a party to any action or suit or arbitration proceeding or effects settlement of an action, suit or proceeding or of any claim or dispute, or
  - (b) holds meetings of its directors or members or carries on other activities concerning its internal affairs, or
  - (c) maintains any bank account, or
  - (d) effects any sale through an independent contractor, or
  - (e) solicits or procures any offer that becomes a binding contract only if the offer is accepted outside New South Wales, or
  - (f) creates evidence of any debt or creates a charge on real and personal property, or
  - (g) secures or collects any of its debts or enforces its rights in regard to any securities relating to the debts, or
  - (h) conducts an isolated transaction that is completed within a period of 31 days not being one of a number of similar transactions repeated from time to time.

**369E Application for registration of participating co-operative**  
(cf Vic Act s 369)

- (1) A participating co-operative that proposes to carry on business as a co-operative in New South Wales may apply to the Registrar in the manner prescribed by the regulations to be registered as a foreign co-operative.
- (2) An application by a participating co-operative must be accompanied by:



- (a) a certificate, not more than 2 months old, from the Registrar of the participating State, in which the participating co-operative is registered, incorporated or formed stating that the co-operative is complying with the provisions of the co-operatives law of that State prescribed for the purpose of the section of that law that corresponds with section 369N, and
- (b) the documents prescribed for the purpose of the section of the co-operatives law of that State that corresponds with section 369N, and
- (c) a copy of the current rules of the co-operative, and
- (d) a statement, verified as prescribed by the regulations, setting out:
  - (i) the full name and address of each person who will act as agent of the co-operative in New South Wales, and
  - (ii) the address of the proposed registered office of the co-operative in New South Wales, and
  - (iii) a copy of an instrument appointing a person resident in New South Wales (other than a body corporate incorporated outside New South Wales) as a person on whom all notices and legal process may be served on behalf of the co-operative, and
- (e) any other documents or information that are prescribed by the regulations, and
- (f) the fee prescribed by the regulations.

**369F Application for registration of non-participating co-operative** (cf Vic Act s 370)

- (1) A non-participating co-operative that proposes to carry on business as a co-operative in New South Wales may apply to the Registrar in the manner prescribed by the regulations to be registered as a foreign co-operative.

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- (2) An application by a non-participating co-operative must be accompanied by:
- (a) a copy of the current rules of the co-operative, and
  - (b) a statement, verified as prescribed by the regulations, setting out:
    - (i) the full name and address of each person who will act as agent of the co-operative in New South Wales, and
    - (ii) the address of the proposed registered office of the co-operative in New South Wales, and
    - (iii) a copy of an instrument appointing a person resident in New South Wales (other than a body corporate incorporated outside New South Wales) as a person on whom all notices and legal process may be served on behalf of the co-operative, and
  - (c) any other documents or information that are prescribed by the regulations, and
  - (d) the fee prescribed by the regulations.

**369G Registrar to approve rules of non-participating co-operative** (cf Vic Act s 371)

A non-participating co-operative is not eligible for registration unless the Registrar is satisfied that the rules of the co-operative:

- (a) comply with co-operative principles, and
- (b) include acceptable active membership provisions, and
- (c) provide procedures acceptable to the Registrar for disclosure of information, and
- (d) provide that a member has one vote only, and
- (e) make adequate provision for the duties of directors, and
- (f) provide for acceptable accounting standards for the co-operative.

**369H Name of foreign co-operative** (cf Vic Act s 372)

- (1) A foreign co-operative is eligible for registration under this Part if the name under which it proposes to carry on business in New South Wales is not such as is likely to be confused with the name of a body corporate or a registered business name.
- (2) If the Registrar advises the foreign co-operative that the name under which it proposes to carry on business in New South Wales is likely to be confused with the name of a body corporate or registered business name, the co-operative may amend its application by substituting another name.

**369I Registration of foreign co-operative** (cf Vic Act s 373)

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

**369J Application of Act and regulations to foreign co-operatives** (cf Vic Act s 374)

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

**369K Registrar to be notified of certain changes**  
(cf Vic Act s 375)

Within 28 days of any alteration affecting:

- (a) the rules or constitution of a foreign co-operative registered under this Part, or
- (b) the directors of the foreign co-operative, or
- (c) the agents (or their addresses) of the foreign co-operative, or



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- (d) the person appointed as the person on whom notices and legal process may be served on behalf of the foreign co-operative, or
  - (e) the address of the registered office in New South Wales of the foreign co-operative, or
  - (f) the address of the registered office in the participating State of a participating co-operative registered under this Part, or
  - (g) the name under which the participating co-operative carries on business in the participating State,

the foreign co-operative must lodge with the Registrar particulars of the alteration accompanied by any documents prescribed by the regulations.

**369L Balance sheets** (cf Vic Act s 376)

- (1) A foreign co-operative registered under this Part must, within 6 months (or such longer period as the Registrar may allow) of the end of each of its financial years, lodge with the Registrar:
  - (a) in the case of a participating co-operative, a copy of the balance sheet relating to its financial affairs as at the end of the financial year, in the form and with any accompanying documents required by the co-operatives law of the participating State concerned, and
  - (b) in the case of a non-participating co-operative, a copy of the balance sheet relating to its financial affairs as at the end of the financial year, in the form and with any accompanying documents required by the Registrar.

Maximum penalty: 20 penalty units.

- (2) If the Registrar is of the opinion that a balance sheet lodged with the Registrar under this section does not sufficiently disclose the financial affairs of the foreign

co-operative, the Registrar may, by written notice, require the foreign co-operative to give the Registrar further information or documents.

- (3) A foreign co-operative must comply with a notice given to it under subsection (2) within the period specified in the notice.

Maximum penalty: 60 penalty units.

**369M Cessation of business** (cf Vic Act s 377)

- (1) A foreign co-operative registered under this Part must, within 7 days of ceasing to carry on business as a co-operative in New South Wales, notify the Registrar in writing of that fact.

Maximum penalty: 60 penalty units.

- (2) On notifying the Registrar that it has ceased to carry on business as a co-operative in New South Wales, a foreign co-operative is no longer obliged to comply with this Part.
- (3) Unless the Registrar has been notified in writing that the foreign co-operative has resumed carrying on business as a co-operative in New South Wales, the Registrar must, one year after receiving a notification under subsection (1), cancel the registration of the foreign co-operative.

**369N Co-operative proposing to register as a foreign co-operative** (cf Vic Act s 378)

- (1) A co-operative that proposes to apply to be registered as a foreign co-operative in another participating State may apply to the Registrar for a certificate that it is complying with all provisions of this Act prescribed by the regulations including, if the Registrar has varied a requirement in relation to that co-operative, the provision as varied.
- (2) The Registrar must issue the certificate to the co-operative unless he or she is of the opinion that the co-operative is not complying with the provisions so prescribed.

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

### **Division 3 Mergers and transfers of engagements**

#### **369O Who is the appropriate Registrar? (cf Vic Act s 379)**

In this Division:

*appropriate Registrar* in relation to a proposed merger or transfer of engagements means:

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

#### **369P Authority for merger or transfer of engagements**

(cf Vic Act s 380)

- (1) A New South Wales co-operative and a participating co-operative may consolidate all or any of their assets, liabilities and undertakings by way of merger or transfer of engagements approved under this Division.
- (2) A New South Wales co-operative and a non-participating co-operative may consolidate all or any of their assets, liabilities and undertakings by way of merger or transfer of engagements approved under this Division if:
  - (a) the merger is to result in a New South Wales co-operative, or
  - (b) the transfer is to a New South Wales co-operative.

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

(cf Vic Act s 381)

- (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 by:

- (a) a special resolution passed by special postal ballot, or
  - (b) if permitted by subsection (3), 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 have been 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 postal ballot, or
  - (b) if permitted by subsection (3), must have been approved by a resolution of the board of each of the co-operatives.
- (3) The proposed merger or transfer of engagements may be approved by resolution of the board of a 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.

**369R Disclosure statement required** (cf Vic Act s 382)

- (1) A special resolution of the New South Wales co-operative or foreign co-operative is not effective for the purposes of this Division unless this section has been complied with.

- (2) Each co-operative must send to each of its members a disclosure statement approved by the appropriate Registrar specifying:
- (a) the financial position of the New South Wales co-operative and the foreign co-operative as shown in financial statements that have been prepared as at a date that is not more than 6 months before the date of the statement, and
  - (b) any interest that any officer of the New South Wales co-operative or the foreign co-operative has in the proposed merger or transfer of engagements, and
  - (c) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to any officer or member of the New South Wales co-operative or foreign co-operative in relation to the proposed merger or transfer of engagements, and
  - (d) whether the proposal is a merger or transfer of engagements and the reason for the merger or transfer of engagements, and
  - (e) in the case of a transfer of engagements—whether it is a total or partial transfer of engagement, and
  - (f) in the case of a merger—whether the merged co-operative will result in a New South Wales co-operative or a co-operative under the co-operatives law of the participating State concerned, and
  - (g) any other information that the Registrar directs.
- (3) The disclosure statement must be sent to the members of the New South Wales co-operative or foreign co-operative so that it will in the ordinary course of post reach each member who is entitled to vote on the special resolution not later than:
- (a) where the resolution is to be decided at a meeting—21 days before the date of the meeting, or

- (b) where the resolution is to be decided by a postal ballot—21 days before the day on or before which the ballot papers must be returned by members voting in the ballot.
- (4) The appropriate Registrar may exempt the New South Wales co-operative or foreign co-operative from complying with this section.
- (5) The appropriate Registrar may grant an exemption, or approve a disclosure statement, subject to any conditions it considers appropriate.

**369S Making an application** (cf Vic Act s 383)

- (1) An application for approval of a merger or transfer of engagements under this Division must be made to the New South Wales Registrar and, if the merger or transfer of engagements affects a participating co-operative, to the Registrar for the participating State concerned in the manner and form required by the Registrar concerned.
- (2) An application for approval of a merger must be accompanied by:
  - (a) 2 copies of the proposed rules of the merged co-operative, and
  - (b) in the case of a non-participating co-operative, details of voting on the special resolution (if any) of the co-operative, and
  - (c) any other information required by the Registrar to whom the application is made.

**369T Approval of merger** (cf Vic Act s 384)

- (1) If the New South Wales Registrar is the appropriate Registrar, he or she must approve a merger pursuant to an application under this Division if satisfied that:
  - (a) this Division has been complied with in relation to the application, and
  - (b) the proposed rules of the merged co-operative are adequate, and



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- (c) the certificate of registration of the New South Wales co-operative has been surrendered to the New South Wales Registrar, and
  - (d) in the case of a merger with a participating co-operative, the certificate of registration of the participating co-operative has been surrendered to the Registrar for the participating State concerned, and
  - (e) in the case of a merger with a non-participating co-operative, the merged co-operative will comply with this Act, and
  - (f) there is no good reason why the merged co-operative and its rules should not be registered.
- (2) If the New South Wales Registrar is not the appropriate Registrar, he or she must approve a merger pursuant to an application under this Division if satisfied that the merger has been approved under the provision of the co-operatives law of the participating State that corresponds with subsection (1).
  - (3) On approving an application for merger, the New South Wales Registrar must:
    - (a) cancel the registration of the New South Wales co-operative involved in the merger, and
    - (b) if the merger is to result in a New South Wales co-operative, register the merged co-operative and its rules and issue to it a certificate of registration under this Act.
  - (4) A merger takes effect on the issue of the certificate of registration for the merged co-operative (whether under this Act or under the co-operatives law of the participating State concerned).

**369U Approval of transfer of engagements** (cf Vic Act s 385)

- (1) If the New South Wales Registrar is the appropriate Registrar, he or she must approve a transfer of engagements pursuant to an application under this Division if satisfied that:

- (a) this Division has been complied with in relation to the application, and
  - (b) the rules or proposed rules of the transferee co-operative are adequate, and
  - (c) in the case of a total transfer of engagements from a participating co-operative, the certificate of registration of the participating co-operative has been surrendered to the Registrar for the participating State concerned, and
  - (d) in the case of a total transfer of engagements from a non-participating co-operative, the certificate of registration of the non-participating co-operative has been surrendered to the Registrar, and
  - (e) in the case of a transfer of engagements by a non-participating co-operative, the transferee co-operative will comply with this Act, and
  - (f) there is no good reason why the transfer of engagements should not take effect.
- (2) If the New South Wales Registrar is not the appropriate Registrar, he or she must approve a transfer of engagements pursuant to an application under this Division if satisfied that the transfer has been approved under the provision of the co-operatives law of the participating State that corresponds with subsection (1).
- (3) A transfer of engagements takes effect on the day specified in the approval of the New South Wales Registrar.

**369V Effect of merger or transfer of engagements**

(cf Vic Act s 386)

- (1) In this section:

**assets** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money) and includes securities, choses in action and documents.

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**instrument** means an instrument (other than this Act) which creates, modifies, or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law) and includes any judgment, order and process of a court.

**liabilities** means liabilities, debts and obligations (whether present or future and whether vested or contingent).

**original co-operative** means:

- (a) in the case of a transfer of engagements, the transferor co-operative, or
- (b) in the case of a merger, each of the co-operatives that are merging.

**successor co-operative** means:

- (a) in the case of a transfer of engagements, the transferee co-operative, or
- (b) in the case of a merger, the co-operative formed by the merger.

- (2) When a merger or transfer of engagements takes effect under this Division (***the transfer day***), the following provisions apply to the extent necessary to give effect to the merger or transfer:

- (a) persons who were members of the original co-operative immediately before the transfer day are members of the successor co-operative in accordance with its rules, and
- (b) the assets of the original co-operative vest in the successor co-operative without the need for any conveyance, transfer, assignment or assurance, and
- (c) the rights and liabilities of the original co-operative become the rights and liabilities of the successor co-operative, and
- (d) all proceedings by or against the original co-operative that are pending immediately before the transfer day are taken to be proceedings pending by or against the successor co-operative, and



- (e) any act, matter or thing done or omitted to be done by, to or in respect of the original co-operative before the transfer day is (to the extent to which that act, matter or thing has any force or effect) to be taken to have been done or omitted by, to or in respect of the successor co-operative, and
  - (f) a reference in an instrument or in any document of any kind to the original body is to be read as, or as including, a reference to the new body.
- (3) The operation of this section is not to be regarded:
  - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (4) A document or an instrument executed or registered for or with respect to a transfer of any property to give effect to this section in respect of a transfer of engagements is not liable to stamp duty or to any fee chargeable under any Act for registration.
- (5) A document or an instrument executed or registered for or with respect to a transfer of any property to give effect to this section in respect of a merger is not liable to stamp duty or to any fee chargeable under any Act for registration if the co-operative formed by the merger is a non-trading co-operative.

**369W Division applies instead of certain other provisions of this Act** (cf Vic Act s 387)

- (1) This Division applies instead of Division 1 of Part 12, in respect of the merger of a New South Wales co-operative with a foreign co-operative.

- (2) This Division applies instead of Division 1 of Part 12, in respect of a transfer of engagements between a New South Wales co-operative and a foreign co-operative.

**[186] Part 14 Supervision and protection of co-operatives, note**

Insert before Division 1:

**Note.** Each provision of this Part (other than sections 374, 381, 399, 401 (4) and 408 (3)) is a core consistent provision.

**[187] Section 379 Offence—failing to comply with requirements of inspector** (cf Vic Act s 397)

Omit “50 penalty units” wherever occurring from section 379 (1), (2) and (3).

Insert instead “120 penalty units”.

**[188] Section 379 (4)**

Omit “25 penalty units”. Insert instead “50 penalty units”.

**[189] Section 382 Copies or extracts of records to be admitted in evidence** (cf Vic Act s 400)

Omit section 382 (3). Insert instead:

- (3) For the purposes of subsection (2), evidence that a copy of or extract from a record is a true copy of the record or of a part of the record may be given either orally or by an affidavit or statutory declaration by a person who has compared the copy or extract with the record or the relevant part of the record.

**[190] Section 383 Privilege** (cf Vic Act s 401)

Omit “Penalty: 20 penalty units or imprisonment for 3 months, or both.” from section 383 (4).

Insert instead “Maximum penalty: 60 penalty units.”.

**[191] Section 385 Definitions** (cf Vic Act s 403)

Insert in alphabetical order in section 385:

*investigator* means a person appointed under section 386.

**[192] Section 386 Appointment of investigators** (cf Vic Act s 404)

Omit "Such a person is referred to as an 'investigator'." from section 386 (1).

**[193] Section 389 Privilege** (cf Vic Act s 407)

Omit "Penalty: 20 penalty units or imprisonment for 3 months, or both." from section 389 (3).

Insert instead "Maximum penalty: 60 penalty units".

**[194] Section 390 Offences by involved person** (cf Vic Act s 408)

Omit "100 penalty units" from section 390 (1).

Insert instead "240 penalty units".

**[195] Section 391 Offences relating to documents** (cf Vic Act s 409)

Omit "50 penalty units". Insert instead "120 penalty units".

**[196] Section 392 Record of examination** (cf Vic Act s 410)

Omit "10 penalty units" from section 392 (4).

Insert instead "60 penalty units".

**[197] Section 397 Falsification of records** (cf Vic Act s 415)

Omit "20 penalty units". Insert instead "60 penalty units".

**[198] Section 398 Fraud or misappropriation** (cf Vic Act s 416)

Omit "20 penalty units" from section 398 (1).

Insert instead "60 penalty units".



**[199] Section 398 (2)**

Omit "imprisonment for 3 months".

Insert instead "60 penalty units or imprisonment for 6 months, or both".

**[200] Section 399 Offering or paying commission** (cf Vic Act s 417)

Omit "20 penalty units". Insert instead "60 penalty units".

**[201] Section 400 Accepting commission** (cf Vic Act s 418)

Omit "20 penalty units" from section 400 (1).

Insert instead "60 penalty units".

**[202] Section 401 False statements in loan application etc**

(cf Vic Act s 419)

Omit "50 penalty units or imprisonment for 12 months, or both" from section 401 (1).

Insert instead "60 penalty units or imprisonment for 6 months, or both".

**[203] Section 408 Extension or abridgment of time** (cf Vic Act s 426)

Omit "enlargement" wherever occurring in section 408.

Insert instead "extension".

**[204] Part 15 Administration of this Act, note**

Insert before Division 1:

**Note.** Each provision of Divisions 1 and 3 is a core consistent provision.

**[205] Sections 409 and 410**

Omit the sections. Insert instead:

**409 Registrar's functions** (cf Vic Act s 429)

- (1) Subject to this Act, the Registrar is responsible for the general administration of this Act.

- (2) The Registrar has the functions that are conferred on the Registrar by or under this Act.
- (3) The Registrar must have a seal of office.
- (4) The Registrar may enter into any arrangements or agreements with any person or body to act as the agent of the Registrar in the carrying out of his or her functions.

**410 Register of Co-operatives** (cf Vic Act s 432)

- (1) There is established a Register of Co-operatives for the purposes of this Act.
- (2) The Registrar must record in the Register those documents relating to co-operatives and proposed co-operatives lodged with the Registrar which the Minister requires by order published in the Gazette to be recorded in the Register.

**410A Keeping of registers** (cf Vic Act s 433)

- (1) The Registrar must keep the Register of Co-operatives and such other registers as the Registrar considers necessary or desirable for the purposes of this Act.
- (2) Subject to section 410, a register must be kept in the form and contain the particulars that the Registrar thinks fit.
- (3) Subject to section 413, any document lodged with, furnished to or registered by the Registrar under this Act must be kept in the office of the Registrar.

**[206] Section 413**

Omit the section. Insert instead:

**413 Disposal of records by Registrar** (cf Vic Act s 434)

The Registrar may, if in the opinion of the Registrar it is no longer necessary or desirable to retain them, destroy or dispose of any of the following:

- (a) any annual return or balance-sheet lodged more than 7 years ago,

- (b) any document creating or evidencing a charge, or the complete or partial satisfaction of a charge, if a memorandum of satisfaction of the charge was registered more than 7 years ago,
- (c) any other document (except the rules or any document affecting the rules of a co-operative) that was lodged, furnished or registered more than 15 years ago,
- (d) any document lodged, furnished or registered in relation to a co-operative that was dissolved or ceased to be registered more than 15 years ago,
- (e) any document a transparency or electronic image of which has been incorporated with a register kept by the Registrar or is otherwise kept in the office of the Registrar.

**[207] Sections 413A–413D**

Insert after section 413:

**413A Inspection of Register** (cf Vic Act s 435)

- (1) A person may:
  - (a) inspect the Register on payment of the fee (if any) prescribed by the regulations, and
  - (b) inspect documents prescribed by the regulations or documents of a class prescribed by the regulations kept by the Registrar relating to a co-operative on payment of the fee (if any) prescribed by the regulations, and
  - (c) obtain, on payment of the fee prescribed by the regulations, a certified copy of a document that the person may inspect under paragraph (b).
- (2) If a reproduction or transparency of a document or an extract of information contained in a document and recorded in the Register is produced for inspection, a person is not entitled under subsection (1) to require the production of the original of that document.



**413B Lodgment of documents**      (cf Vic Act s 437)

A document is not to be taken to have been lodged under this Act or the regulations unless:

- (a) all information required to be provided in or with the document is provided, and
- (b) the fee (if any) prescribed by the regulations has been paid.

**413C Method of lodgment**      (cf Vic Act s 438)

- (1) Subject to section 413B, it is sufficient compliance with a requirement under this Act or the regulations that a document be lodged with the Registrar if the Registrar receives a copy of the document by facsimile or electronic transmission.
- (2) If the Registrar receives from a person a copy of a document under subsection (1), the Registrar may require that person to produce and lodge the original within the time specified by the Registrar.
- (3) If the person does not comply with a requirement of the Registrar within the specified time, the person is to be taken not to have lodged the document.

**413D Power of Registrar to refuse to register or reject documents**      (cf Vic Act s 439)

- (1) The Registrar may refuse to register or may reject a document submitted to the Registrar if the Registrar considers that the document:
  - (a) contains matter contrary to law, or
  - (b) contains matter, that in a material particular, is false or misleading in the form or context in which it is included, or
  - (c) by reason of an omission or misdescription, has not been duly completed, or
  - (d) does not comply with the requirements of this Act, or
  - (e) contains any error, alteration or erasure.

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- (2) If the Registrar refuses to register or rejects a document under subsection (1), the Registrar may request:
- (a) that the document be appropriately amended, or
  - (b) that a fresh document be submitted in its place, or
  - (c) if the document has not been duly completed, that a supplementary document in the form approved by the Registrar be submitted.

**[208] Section 419 Appeal to Court from decision of Council**

Omit "Supreme Court". Insert instead "Court".

**[209] Section 421 Certificate evidence** (cf Vic Act s 441)

Insert after section 421 (1A):

- (1B) The Registrar may issue a certificate stating that on a date specified in the certificate a body specified in the certificate was not or had ceased to be registered as a co-operative under this Act.

**[210] Section 426, heading**

Omit the heading. Insert instead:

**426 The Registrar and proceedings** (cf Vic Act s 446)

**[211] Part 16 Offences and proceedings, note**

Insert at the beginning of the Part:

**Note.** Each provision of this Part (other than sections 428A, 435 and 435A–435D) is a core consistent provision.

**[212] Section 428A**

Insert before section 429 after the note inserted by this Act:

**428A Meaning of "co-operatives law" and "participating State"**

In this Part, *co-operatives law* and *participating State* have the same meaning as in section 369A.

**[213] Section 430 Notice to be given of conviction for offence**

(cf Vic Act s 450)

Omit "15 months" from section 430. Insert instead "28 days".

**[214] Section 431 Secrecy**      (cf Vic Act s 451)

Omit "50 penalty units" from section 431 (1). Insert instead "60 penalty units".

**[215] Section 431 (4) and (5)**

Omit the subsections. Insert instead:

- (4) Information may be divulged to:
  - (a) the Minister, or
  - (b) the Treasurer, or
  - (c) the Commissioner of State Revenue, or
  - (d) the Auditor-General, or
  - (e) the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation holding office under a law of the Commonwealth, or
  - (f) the Australian Securities Commission, or
  - (g) the person who, under a law of another State, or of a Territory, administers a law of the State or Territory that relates to taxation or the imposition of a duty, or
  - (h) any special commission (within the meaning of the *Special Commissions of Inquiry Act 1983*) if:
    - (i) the Registrar has received a written request in writing for information from the special commission, and
    - (ii) the Minister has given written approval to the Registrar of the communication of that information, and



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- (iii) the Registrar has given to that person written approval of the communication of that information, or
  - (i) a person seeking information under a reciprocal arrangement under section 441, or
  - (j) a police officer exercising functions as such, or
  - (k) a person nominated by a person referred to in paragraphs (a)–(g), or
  - (l) any person, to whom, in the opinion of the Registrar, it is in the public interest that the information be divulged.
- (5) For the purposes of this section, a person is, or was, engaged in the administration of this Act or the former Act if the person exercises, or at any time exercised, a function as:
- (a) the Registrar holding office under this Act or the former Act, or
  - (b) an inspector appointed under this Act or the former Act, or
  - (c) an investigator appointed under this Act, or
  - (d) a person appointed or employed for the purposes of this Act or the former Act.

**[216] Section 432 False or misleading statements** (cf Vic Act s 452)

Omit “100 penalty units” wherever occurring from section 432 (1) and (2).

Insert instead “120 penalty units”.

**[217] Section 432 (3) and (4)**

Omit “50 penalty units” wherever occurring.

Insert instead “60 penalty units”.

**[218] Sections 435A–435D**

Insert after section 435:

**435A Offences under this Act and co-operatives law**

If:

- (a) an act or omission constitutes an offence under this Act and under a co-operatives law of a participating State, and
- (b) the offender has been punished for that offence under the co-operatives law of the participating State,

the offender is not liable to be punished for the offence under this Act.

**435B Civil liability under this Act and co-operatives law**

In a proceeding under this Act in respect of loss or damage arising out of a contravention of this Act, it is a defence if it is proved:

- (a) that the plaintiff has recovered in respect of the loss or damage in an action brought under a co-operatives law of a participating State, or
- (b) that:
  - (i) the plaintiff has brought proceedings under a co-operatives law of a participating State to recover in respect of the loss or damage, and
  - (ii) judgment has been entered for the defendant in those proceedings.

**435C Offences committed partly in and partly outside jurisdiction**

If:

- (a) a person does or omits to do an act outside this State, and

- (b) if the person had done or omitted to do that act in this State, the person would, by reason of also having done or omitted to do an act in the State, have been guilty of an offence against this Act,
- the person is guilty of that offence.

**435D Reciprocity in relation to offences**

If:

- (a) a person does or omits to do an act within this State, and
- (b) if that person had done or omitted to do that act in a participating State, the person would have been guilty of an offence against a provision of a co-operatives law of the participating State,

the person is guilty of an offence against the corresponding provision of this Act.

**[219] Part 17 General, note**

Insert at the beginning of the Part:

**Note.** Each provision of this Part (other than sections 444–446) is a core consistent provision.

**[220] Sections 436 Interpretation of adopted provisions of Corporations Law (cf Vic Act s 10) 436A Implied adoption of regulations and other provisions of Corporations Law (cf Vic Act s 11) and 436B Effect of amendments to adopted provisions of Corporations Law (cf Vic Act s 12)**

Omit “applied” wherever occurring. Insert instead “adopted”.

**[221] Section 436 (4)**

Omit “apply”. Insert instead “adopt”.

**[222] Section 436A (3)**

Omit “applying”. Insert instead “adopting”.



**[223] Sections 436, 436A and 436B**

Omit the sections, renumber them as sections 10, 11 and 12 respectively and insert them in appropriate numerical order in Part 1.

**[224] Section 438 Inspection of documents**

Omit the section.

**[225] Section 440, heading**

Omit the heading. Insert instead:

**440 Service of documents on co-operative** (cf Vic Act s 459)

**[226] Section 440 (2)**

Omit the subsection. Insert instead:

- (2) A document may be served on a foreign co-operative:
  - (a) by post, or
  - (b) by leaving it with a person who appears to be aged 16 or more and is at a place where the foreign co-operative carries on business in New South Wales, or
  - (c) by leaving it at the registered office in New South Wales of the foreign co-operative registered under Part 13A.

**[227] Section 440A**

Insert after section 440:

**440A Service on member of co-operative** (cf Vic Act s 460)

- (1) A notice required under this Act to be given to a member of a co-operative must be in writing.

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- (2) A notice or other document required under this Act to be given to a member of a co-operative may be given:
- (a) personally, or
  - (b) by post, or
  - (c) by publishing the notice in a newspaper circulating generally in New South Wales or in the area served by the co-operative, if:
    - (i) the co-operative is a non-trading co-operative, or
    - (ii) the member's whereabouts are unknown to the co-operative, or
    - (iii) the Registrar permits notice to be given to members of that co-operative in that manner.

**[228] Section 443A**

Insert after section 443:

**443A Power of Court to punish for contempt**

Nothing in a provision of this Act affects the powers of the Court in relation to the punishment of contempts of the Court.

**[229] Section 446 Regulations** (cf Vic Act s 463)

Omit section 446 (2) (b). Insert instead:

- (b) the manner of lodgment of documents with the Registrar (including electronic lodgment and lodgment by facsimile),
- (c) fees to be paid in connection with the administration of this Act including fees for lodgment of any documents under this Act and additional fees for late lodgment of any documents under this Act.

(2A) Regulations relating to fees:

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

**[230] Section 446 (3)**

Omit “50 penalty units”. Insert instead “20 penalty units”.

**[231] Schedule 1**

Omit the Schedule. Insert instead:

**Schedule 1      Matters for which rules must make provision**

(Section 107)

**Note.** Each provision of this Schedule is a core consistent provision.

**1 Requirements for all co-operatives**

The rules of all co-operatives must set out or make provision for each of the following:

- 1 The name of the co-operative.
- 2 Active membership provisions (within the meaning of Part 6).
- 3 The mode and conditions of admission to membership, and the payment to be made or the share or interest to be acquired before rights of membership are exercised.
- 4 The rights and liabilities of members, and of the estates of deceased members, and the rights and liabilities of representatives of members under bankruptcy or mental incapacity.
- 5 The circumstances in which members may be expelled or suspended, and the rights and liabilities of expelled or suspended members.



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- 6 The circumstances in which membership ceases.
  - 7 Any charges or subscriptions which are to be payable by a member to the co-operative.
  - 8 The circumstances in which fines and forfeitures may be imposed on members of the co-operative, and the amount of the fines, not exceeding the prescribed maximum amount.
  - 9 The grievance procedures for settling disputes under the rules between the co-operative and any of its members as defined in section 89, or between a member and any other member.
  - 10 The restrictions, if any, on the powers of the co-operative and the board.
  - 11 The number of directors, the qualification of directors, and the manner of electing, remunerating and removing directors and filling vacancies, the period for which directors are to hold office, and whether directors are to retire by rotation or otherwise and for the holding of annual elections.
  - 12 The quorum for meetings, and the procedure at meetings, of the board.
  - 13 The device, custody and use of the seal of the co-operative.
  - 14 The manner in which the funds of the co-operative are to be managed, and in particular the mode of drawing and signing cheques, drafts, bills of exchange, promissory notes, and other negotiable instruments for and on behalf of the co-operative.
  - 15 Provision for the custody of securities belonging to the co-operative.
  - 16 The manner in which debentures may be transferred.
  - 17 The date on which the financial year of the co-operative concludes.
  - 18 Provision for the accounts of the co-operative to be audited annually or more frequently and the manner of appointment of the auditor.

- 19    The manner in which any loss which may result from the transactions of the co-operative is to be provided for.
- 20    The manner of calling general and special meetings, the requisite notices of meetings and the quorum for meetings of the co-operative.
- 21    The procedure at meetings of the co-operative, including the rights of members in voting at meetings, the manner of voting, and the majority necessary for carrying resolutions.
- 22    The method of conducting postal ballots, including special postal ballots, including the sending and lodgment of information and votes by facsimile or electronic means.
- 23    The manner of altering the rules.
- 24    The manner in which the co-operative may be wound up.
- 25    Any matters that may be prescribed by the regulations, whether in addition to or in substitution for any matter specified in this clause.
- 26    Any other matters that to the co-operative appear necessary or desirable.

## **2 Additional matters—co-operatives with share capital**

In addition to the matters specified in clause 1, the rules of a co-operative with a share capital must set out or make provision for each of the following:

- 1    The nominal value of each share in the co-operative.
- 2    The amount of the contingent liability, if any, attaching to shares.
- 3    The terms on which shares, not including bonus shares, but including shares, if any, with a contingent liability attached to them are to be issued.
- 4    The periodic subscriptions by which or the manner in which shares are to be paid for.

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- 5 In the case of a trading co-operative, the manner in which any surplus may be distributed.
  - 6 The allocation of a deficiency on the winding up of a co-operative.
  - 7 Provision for the forfeiture of shares on expulsion or on failure to pay any subscription or call, the extent to which members whose shares have been forfeited are to remain liable for any amount still unpaid in respect of them, and the sale or cancellation of forfeited shares.
  - 8 The manner in which shares may be transferred.
  - 9 Any matters that may be prescribed, whether in addition to or in substitution for any matter specified in this clause.

### **3 Additional matters—non-trading co-operatives**

In addition to the matters specified in clauses 1 and 2, the rules of a non-trading co-operative must provide:

- 1 that there must be no return or distribution on surplus or share capital to members other than the nominal value of shares (if any) at winding up, and
- 2 for the manner of distribution of the surplus property at winding up.

#### **[232] Schedule 2 Relevant interests, associates, related bodies, note**

Insert before Part 1:

**Note.** Each provision of this Schedule is a core consistent provision.

#### **[233] Schedule 3**

Omit the Schedule. Insert instead:

### **Schedule 3 Registration etc of charges**

(Section 278)

**Note.** Each provision of this Schedule is a core consistent provision.



## **Part 1      Preliminary**

### **1 Interpretation**

In this Schedule:

**co-operative** includes a foreign co-operative registered under Part 13A.

**document of title** means a document:

- (a) used in the ordinary course of business as proof of possession or control, or of the right to possession or control, of property other than land, or
- (b) authorising or purporting to authorise, whether by endorsement or delivery, the possessor of the document to transfer or receive property other than land,

and includes:

- (c) a bill of lading, and
- (d) a warehousekeeper's certificate, and
- (e) a wharfinger's certificate, and
- (f) a warrant or order for the delivery of goods, and
- (g) a document that is, or evidences title to, a marketable security.

**marketable securities** has the same meaning as in the *Corporations Law*.

**present liability**, in relation to a charge, means a liability that has arisen, being a liability the extent or amount of which is fixed or capable of being ascertained, whether or not the liability is immediately due to be met.

**property**, in relation to a co-operative, means property within New South Wales held by the co-operative, whether or not as trustee.

**prospective liability**, in relation to a charge, means any liability that may arise in the future, or any other liability, but does not include a present liability.

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**Register** means the Register of Co-operative Charges referred to in clause 18.

**registrable charge** means a charge in relation to which, by virtue of clause 4, the provisions of this Schedule mentioned in clause 4 (1) apply.

## **2 Application to charges referred to in clause 17**

- (1) A charge referred to in clause 17 is, until the charge is registered, to be treated for the purposes of this Schedule as if it were not a registrable charge but, when the charge is so registered, it has the priority accorded to a registered charge as from the time of registration.
- (2) The registration of a charge referred to in clause 17 does not prejudice any priority that would have been accorded to the charge under any other law (whether or not a law of a place in Australia) if the charge had not been registered.

## **3 Lodgment of documents**

For the purposes of this Schedule, a notice or other document is taken to be lodged when it is received at the office of the Registrar by an officer authorised to receive it.

## **Part 2 Registration**

### **Division 1 Charges**

#### **4 To which charges does Schedule apply?**

- (1) Subject to this Division, the provisions of this Schedule relating to the giving of notice in relation to, the registration of, and the priorities of, charges:
  - (a) apply in relation to the charges referred to in subclause (2) (whether legal or equitable) on property of a co-operative, and
  - (b) do not apply in relation to any other charges.

- (2) Subclause (1) applies to the following charges:
- (a) a floating charge on the whole or a part of the property, business or undertaking of the co-operative,
  - (b) a charge on uncalled share capital or uncalled share premiums,
  - (c) a charge on a call, whether in respect of share capital or share premiums, made but not paid,
  - (d) a charge on a personal chattel, including a personal chattel that is unascertained or is to be acquired in the future, but not including a ship registered in an official register kept under a law of a place in Australia relating to title to ships,
  - (e) a charge on goodwill, on a patent or licence under a patent, on a trade mark or service mark or a licence to use a trade mark or service mark, on a copyright or a licence under a copyright or on a registered design or a licence to use a registered design,
  - (f) a charge on a book debt,
  - (g) a charge on a marketable security, not being:
    - (i) a charge created in whole or in part by the deposit of a document of title to the marketable security, or
    - (ii) a mortgage under which the marketable security is registered in the name of the chargee or a person nominated by the chargee,
  - (h) a lien or charge on a crop, a lien or charge on wool or a stock mortgage,
  - (i) a charge on a negotiable instrument other than a marketable security.



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## 5 Excluded charges

The provisions of this Schedule mentioned in clause 4 (1) do not apply in relation to:

- (a) a charge, or a lien over property, arising by operation of law, or
- (b) a pledge of a personal chattel or of a marketable security, or
- (c) a charge created in relation to a negotiable instrument or a document of title to goods, being a charge by way of pledge, deposit, letter of hypothecation or trust receipt, or
- (d) a transfer of goods in the ordinary course of the practice of any profession or the carrying on of any trade or business, or
- (e) a dealing, in the ordinary course of the practice of any profession or the carrying on of any trade or business, in respect of goods outside Australia.

## 6 Personal chattels

The reference in clause 4 (2) (d) to a charge on a personal chattel is a reference to a charge on any article capable of complete transfer by delivery, whether at the time of the creation of the charge or at some later time, and includes a reference to a charge on a fixture or a growing crop that is charged separately from the land to which it is affixed or on which it is growing, but does not include a reference to a charge on:

- (a) a document evidencing title to land, or
- (b) a chattel interest in land, or
- (c) a marketable security, or
- (d) a document evidencing a thing in action, or
- (e) stock or produce on a farm or land that by virtue of a covenant or agreement ought not to be removed from the farm or land where the stock or produce is at the time of the creation of the charge.

## **7 Book debts**

The reference in clause 4 (2) (f) to a charge on a book debt:

- (a) is a reference to a charge on a debt due or to become due to the co-operative at some future time on account of or in connection with a profession, trade or business carried on by the co-operative, whether entered in a book or not, and
- (b) includes a reference to a charge on a future debt of the same nature although not incurred or owing at the time of the creation of the charge,

but does not include a reference to a charge on a marketable security, on a negotiable instrument or on a debt owing in respect of a mortgage, charge or lease of land.

## **8 Crops or stock**

The reference in clause 4 (2) (h) to a lien or charge on a crop, a lien or charge on wool or a stock mortgage includes a reference to a security (however described) that is registrable under a law of a State or Territory prescribed by the regulations.

## **9 Deposit of documents of title**

For the purposes of this Division, a co-operative is to be considered to have deposited a document of title to property with another person (in this clause referred to as the *chargee*) in a case where the document of title is not in the possession of the co-operative if:

- (a) the person who holds the document of title acknowledges in writing that the person holds the document of title on behalf of the chargee, or
- (b) a government, an authority or a body corporate that proposes to issue a document of title in relation to the property agrees, in writing, to deliver the document of title, when issued, to the chargee.

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### **10 Charges on land or fixtures on land**

- (1) The provisions of this Schedule mentioned in clause 4 (1) do not apply in relation to a charge on land.
- (2) The provisions of this Schedule mentioned in clause 4 (1) do not apply in relation to a charge on fixtures given by a charge on the land to which they are affixed.

### **11 What if other property is also charged?**

For the purposes of this Division, a charge is to be considered to be a charge on property of a kind to which a particular paragraph of clause 4 (2) applies even though the instrument of charge also charges other property of the co-operative including other property that is of a kind to which none of the paragraphs of that subclause applies.

### **12 Effect of failure to lodge or give notice or document**

A charge on property of a co-operative is not invalid merely because of the failure to lodge with the Registrar, or give to the co-operative or another person, a notice or other document that is required by this Part to be so lodged or given.

## **Division 2 Notice of charge**

### **13 Lodgment of notice of charge and copy of instrument**

- (1) If a co-operative creates a charge, the co-operative must ensure that there is lodged with the Registrar within 45 days after the creation of the charge, a notice in the form approved by the Registrar setting out the following particulars:
  - (a) the name of the co-operative and the date of the creation of the charge,
  - (b) whether the charge is a fixed charge, a floating charge or both a fixed and floating charge,
  - (c) if the charge is a floating charge, whether there is any provision in the resolution or instrument creating or evidencing the charge that prohibits or restricts the creation of subsequent charges,



- (d) a short description of the liability (whether present or prospective) secured by the charge,
  - (e) a short description of the property charged,
  - (f) whether the charge is created or evidenced by a resolution, by an instrument or by a deposit or other conduct,
  - (g) if the charge is constituted by the issue of a debenture or debentures, the name of the trustee (if any) for debenture holders,
  - (h) if the charge is not constituted by the issue of a debenture or debentures or there is no trustee for debenture holders, the name of the chargee,
  - (i) any other information that is prescribed by the regulations.
- (2) If, pursuant to a resolution or resolutions passed by the co-operative, the co-operative issues a series of debentures constituting a charge to the benefit of which all the holders of debentures in the series are entitled in equal priority, and the charge is evidenced only by the resolution or resolutions and the debentures, the notice under subclause (1) must be accompanied by:
  - (a) a copy of the resolution or of each of the resolutions verified by a statement in writing to be a true copy, and
  - (b) a copy of the first debenture issued in the series and a statement in writing verifying the execution of that first debenture.
- (3) If, in a case to which subclause (2) does not apply, the charge created by the co-operative was created or evidenced by an instrument or instruments, the notice under subclause (1) must be accompanied by:
  - (a) the instrument or each of the instruments, or
  - (b) a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy, and a statement in writing verifying the execution of the instrument or of each of the instruments.

**14 Series of debentures**

In a case to which clause 13 (2) applies:

- (a) the charge is, for the purposes of clause 13, to be considered to be created when the first debenture in the series of debentures is issued, and
- (b) if, after the issue of the first debenture in the series, the co-operative passes a further resolution authorising the issue of debentures in the series, the co-operative must ensure that a copy of that resolution, verified by a statement in writing to be a true copy of that resolution, is lodged within 45 days after the passing of that resolution.

**15 Operation of priority provisions in respect of issue of debentures**

If a notice with respect to an instrument creating a charge has been lodged under clause 13 (1), being a charge in respect of an issue of several debentures the holders of which are entitled under the instrument in equal priority to the benefit of the charge, clauses 46–49 have effect as if any charges constituted by those debentures were registered at the time when the charge to which the notice relates was registered.

**16 Discounts**

- (1) If a payment or discount has been made or allowed, either directly or indirectly, by a co-operative to a person in consideration of the person's subscribing or agreeing to subscribe, whether absolutely or conditionally, for debentures, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for debentures, the notice required to be lodged under clause 13 (1) must include particulars as to the amount or rate per cent of the payment or discount.
- (2) If a co-operative issues debentures as security for a debt of the co-operative, the co-operative is not thereby to be regarded, for the purposes of subclause (1), as having allowed a discount in respect of the debentures.

## **17 Acquisition of property subject to charge**

- (1) If a co-operative acquires property that is subject to a charge, being a charge that would have been registrable when it was created if it had been created by a co-operative, the co-operative must, within 45 days after the acquisition of the property:
  - (a) ensure that there is lodged with the Registrar a notice in the form approved by the Registrar in relation to the charge, setting out:
    - (i) the name of the co-operative, and
    - (ii) the date on which the property was so acquired, and
    - (iii) any other particulars required by clause 13 (1), and
  - (b) give to the chargee notice that it has acquired the property and the date on which it was so acquired.
- (2) If the charge referred to in subclause (1) was created or evidenced as mentioned in clause 13 (2), the notice under subclause (1) (a) must be accompanied by:
  - (a) a copy of the resolution or of each of the resolutions referred to in clause 13 (2) verified by a statement in writing to be a true copy, and
  - (b) a copy of the first debenture issued in the series referred to in clause 13 (2) verified by a statement in writing to be a true copy.
- (3) If the charge referred to in subclause (1) was created or evidenced by an instrument or instruments (otherwise than as mentioned in clause 13 (2)), the notice under subclause (1) (a) must be accompanied by:
  - (a) the instrument or each of the instruments, or
  - (b) a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy.



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### **Division 3      Registration**

#### **18 Register of Co-operative Charges**

The Registrar must keep a register to be known as the Register of Co-operative Charges.

#### **19 Registration of documents relating to charge**

- (1) If a notice is lodged with the Registrar in accordance with Division 2, the Registrar must as soon as practicable cause to be entered in the Register the time and date when the notice was lodged and the following particulars in relation to the charge:
  - (a) if the charge is a charge created by the co-operative, the date of its creation,
  - (b) if the charge was a charge existing on property acquired by the co-operative, the date on which the property was so acquired,
  - (c) a short description of the liability (whether present or prospective) secured by the charge,
  - (d) a short description of the property charged,
  - (e) the name of the trustee for debenture holders or, if there is no such trustee, the name of the chargee.
- (2) Subclause (1) only applies if the notice contains the required particulars and is accompanied by the required documents.
- (3) Subclause (1) applies whether the notice is lodged during or after the period within which the notice is required to be lodged.
- (4) Subject to this Division, if particulars in respect of a charge are entered in the Register in accordance with subclause (1), the charge is to be considered to be registered, and to have been registered from and including the time and date entered in the Register under that subclause.

- (5) The Registrar may enter in the Register in relation to a charge, in addition to the particulars expressly required by this Division to be entered, such other particulars as the Registrar thinks fit.

**20 Provisional registration if stamp duty not paid**

- (1) If:
- (a) a notice in respect of a charge on property of a co-operative is lodged under Division 2, and
  - (b) the notice is not accompanied by a certificate to the effect that all documents accompanying the notice have been duly stamped as required by any applicable law relating to stamp duty,
- the Registrar must cause to be entered in the Register the time and date when the notice was lodged and the particulars referred to in clause 19 (1) (a)–(e), but must cause the word “provisional” to be entered in the Register next to the entry specifying that time and date.
- (2) Subclause (1) applies whether the notice was lodged during or after the period within which the notice was required to be lodged.
- (3) The Registrar must delete the word “provisional” entered in the Register under subclause (1) from an entry relating to a charge if a certificate to the effect set out in subclause (1) (b) has been produced to the Registrar:
- (a) within a period of 28 days, or
  - (b) within such longer period as is prescribed after the notice was lodged, or
  - (c) within such further period as the Registrar, if the Registrar considers it to be appropriate in a particular case, allows.
- (4) The Registrar must delete from the Register all the particulars that were entered in relation to a charge if:
- (a) the word “provisional” is entered in the Register under subclause (1) in relation to an entry relating to the charge, and

- (b) a certificate to the effect set out in subclause (1) (b) is not produced within the period, or the further period, referred to in subclause (3).

## **21 Provisional registration if required particulars not supplied**

- (1) If a defective notice in respect of a charge on property is lodged with the Registrar under clause 19, the Registrar must cause to be entered in the Register:
  - (a) the time and date when the document was lodged, and
  - (b) such of the particulars referred to in clause 19 (1) (a)–(e) as are ascertainable, and
  - (c) the word “provisional” next to the entry specifying the time and date.
- (2) If a defective notice in respect of a charge is lodged under clause 19, the Registrar must, by written notice to the person who lodged the defective notice, direct the person to ensure that there is lodged, on or before the day specified in the notice, a notice in relation to the charge that complies with the requirements of Division 2.
- (3) Subclauses (1) and (2) apply whether the defective notice was lodged during or after the period within which the notice was required to be lodged.
- (4) The giving by the Registrar of a direction to the person under subclause (2) does not affect any liability that the co-operative may have incurred or may incur by reason of a contravention of Division 2.
- (5) If the Registrar gives a direction to a person under subclause (2) in relation to a charge and the direction is complied with on or before the day specified in the notice containing the direction, the Registrar must:
  - (a) delete from the Register the word “provisional” that was inserted pursuant to subclause (1), and
  - (b) cause to be entered in the Register in relation to the charge any particulars referred to in clause 19 (1) that have not previously been entered.



- (6) If the Registrar gives a direction to a person under subclause (2) in relation to a charge and the direction is not complied with on or before the day specified in the notice, the Registrar must delete from the Register all the particulars that were entered in relation to the charge.
- (7) If the Registrar gives a direction to a person under subclause (2) in relation to a charge and the direction is complied with after the day specified in the notice, the Registrar must cause to be entered in the Register in relation to the charge:
  - (a) the time at which and day on which the direction was complied with, and
  - (b) the particulars referred to in clause 19 (1) (a)–(e).
- (8) In this clause *defective notice* means a document that:
  - (a) purports to be a notice in respect of a charge on property of a co-operative for the purposes of Division 2, and
  - (b) contains the name of the co-operative concerned and the particulars referred to in clause 13 (1) (g) or (h), as the case requires,but does not contain some or all of the other particulars that are required to be included in the notice or is otherwise defective.

## **22 Effect of provisional registration**

- (1) Subject to this clause, if the word “provisional” is entered in the Register next to an entry specifying a time and day in relation to a charge, the charge is to be considered not to have been registered.
- (2) If the word “provisional” is deleted from the Register pursuant to clause 20 or 21 (5), the charge is to be considered to be registered and to have been registered from and including the time and day specified in the Register pursuant to clause 20 or 21 (1), as the case may be.

- (3) If the particulars in relation to the charge are deleted from the Register pursuant to clause 21 (6) and those particulars and a time and day are subsequently entered in the Register in relation to the charge pursuant to clause 21 (7) the charge is to be considered to be registered from and including that last-mentioned time and day.

**23 What if 2 or more charges relate to the same property?**

- (1) If, pursuant to clause 17, a co-operative lodges notices relating to 2 or more charges on the same property acquired by the co-operative (being charges that are not already registered under this Division), the time and day that is to be entered in the Register in relation to each of those charges are the time and day when the first notice was lodged.
- (2) If, in accordance with subclause (1), the time and day that are entered in the Register are the same in relation to 2 or more charges on property acquired by a co-operative, those charges are to have, as between themselves, the respective priorities that they would have had if they had not been registered under this Division.

**24 Registration of assignment or variation of charge**

- (1) If a notice is lodged under clause 36, the Registrar must as soon as practicable cause to be entered in the Register the time and day when the notice was so lodged and the particulars set out in the notice.
- (2) Subclause (1) applies whether the notice was lodged during or after the period within which the notice was required to be lodged.

**25 Standard time for the purposes of this Division**

- (1) The Registrar may, by notice published in the Gazette, declare a specified standard time to be the standard time for the purposes of this Division.

- (2) If a notice is in force under subclause (1), a reference in this Division to entering the time when a particular event happened is a reference to entering that time as expressed in terms of the standard time specified in the notice.

#### **Division 4      Certain charges void against liquidator or administrator**

##### **26 Definitions**

In this Division:

*critical day*, in relation to a co-operative, means:

- (a) if the co-operative is being wound up, the day when the winding up began, or
- (b) if the co-operative is under administration, the relevant day in relation to the administration, or
- (c) if the co-operative has executed a deed of arrangement, the relevant day in relation to the administration that ended when the deed was executed.

*relevant day*, in relation to the administration of a co-operative, means:

- (a) if, when the administration began, a winding up of the co-operative was in progress, the day on which the winding up is taken because of Division 1A of Part 5.6 of the *Corporations Law* (as adopted and applying under this Act) to have begun, or
- (b) otherwise, the day on which the administration began.

##### **27 Certain charges void against liquidator or administrator**

- (1) Subject to this Division, if:
- (a) an order is made, or a resolution is passed, for the winding up of a co-operative, or
  - (b) the Registrar gives a certificate under section 324 for the winding up of the co-operative, or



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- (c) an administrator of a co-operative is appointed under Part 5.3A of the *Corporations Law* as adopted and applying under this Act, or
  - (d) a co-operative executes a deed of arrangement, a registrable charge on property of the co-operative is void as a security on that property as against the liquidator, the administrator of the co-operative, or the deed's administrator, as the case may be.
- (2) A charge is not void under subclause (1) if:
- (a) a notice in respect of the charge was lodged under clause 13 or 17, as the case requires:
    - (i) within the relevant period, or
    - (ii) at least 6 months before the critical day, or
  - (b) the period within which a notice in respect of the charge (other than a notice under clause 36) is required to be lodged, being the period specified in the relevant clause or that period as extended by the Court under clause 29, has not ended at the start of the critical day and the notice is lodged before the end of that period, or
  - (c) in relation to a charge to which clause 17 applies, the period of 45 days after the chargee becomes aware that the property charged has been acquired by a co-operative has not ended at the start of the critical day and the notice is lodged before the end of that period.
- (3) The reference in subclause (2) (a) to the relevant period is to be construed as a reference to:
- (a) in relation to a charge to which clause 13 applies—the period of 45 days specified in that clause, or that period as extended by the Court under clause 29, or
  - (b) in relation to a charge to which clause 17 applies—the period of 45 days after the chargee becomes aware that the property has been acquired by a co-operative.
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**28 Certain varied charges void against liquidator or administrator**

- (1) Subject to this Division, if, after there has been a variation in the terms of a registrable charge on property of a co-operative having the effect of increasing the amount of the debt or increasing the liabilities (whether present or prospective) secured by the charge:
  - (a) an order is made, or a resolution is passed, for the winding up of the co-operative, or
  - (b) an administrator of a co-operative is appointed under Part 5.3A of the *Corporations Law* (as adopted and applying under this Act), or
  - (c) a co-operative executes a deed of arrangement, the registrable charge is void as a security on that property to the extent that it secures the amount of the increase in that debt or liability.
- (2) A charge is not void under subclause (1) if:
  - (a) a notice in respect of the variation was lodged under clause 36:
    - (i) within the period of 45 days specified in clause 36 (2) or that period as extended by the Court under clause 29, or
    - (ii) not later than 6 months before the critical day, or
  - (b) the period of 45 days specified in clause 36 (2), or that period as extended by the Court under clause 29, has not ended at the start of the critical day and the notice is lodged before the end of that period.

**29 Supreme Court may extend required period**

The Court, if it is satisfied that the failure to lodge a notice in respect of a charge, or in respect of a variation in the terms of a charge, as required by any provision of this Schedule:

- (a) was accidental or due to inadvertence or some other sufficient cause, or
- (b) is not of a nature to prejudice the position of creditors or shareholders,

or that on other grounds it is just and equitable to grant relief, may, on the application of the co-operative or any person interested and on such terms and conditions as seem to the Court just and expedient, by order, extend the period for such further period as is specified in the order.

### 30 Certain later charges void

- (1) Subject to subclause (3), if:
  - (a) a registrable charge (in this clause referred to as the *later charge*) is created before the end of 45 days after the creation of an unregistered registrable charge (in this clause referred to as the *earlier charge*), and
  - (b) the later charge relates to all or any of the property to which the earlier charge related, and
  - (c) the later charge is given as a security for the same liability as is secured by the earlier charge or any part of that liability,

the later charge, to the extent to which it is a security for the same liability or part thereof, and so far as it relates to the property comprised in the earlier charge, is void as a security on that property as against a liquidator or administrator of the co-operative, or an administrator of a deed of arrangement executed by the co-operative.

- (2) Subclause (1) applies even if a notice in respect of the later charge was lodged under clause 13 within the period mentioned in clause 27 (2) (a).
- (3) Subclause (1) does not apply if it is proved to the satisfaction of the Court that the later charge was given in good faith for the purpose of correcting some material error in the earlier charge or under other proper circumstances and not for the purposes of avoiding or evading the provisions of this Division.



### **31 Effect of provisions on purchaser in good faith**

- (1) Nothing in clause 27 (1) or (2) or 28 operates to affect the title of a person to property purchased for value from a chargee or from a receiver appointed by a chargee in the exercise of powers conferred by the charge or implied by law if that person purchased the property in good faith and without notice of:
  - (a) the filing of an application for an order for the winding up of the co-operative, or
  - (b) the passing of the necessary resolution for the voluntary winding up of the co-operative, or
  - (c) an administrator of the co-operative being appointed under Part 5.3A of the *Corporations Law* (as adopted and applying under this Act), or
  - (d) the co-operative executing a deed of arrangement.
- (2) The onus of proving that a person purchased property in good faith and without notice of any of the matters referred to in subclause (1) (a), (b), (c) or (d) is on the person asserting that the property was so purchased.

## **Division 5      Certain charges in favour of persons void**

### **32 Definitions**

In this Division:

***chargee***, in relation to a charge, means:

- (a) in any case, the holder, or all or any of the holders, of the charge, or
- (b) in the case of a charge that is an agreement to give or execute a charge in favour of a person or persons, whether on demand or otherwise, that person, or all or any of those persons.

***officer***, in relation to a co-operative, includes, in the case of a foreign co-operative, a local agent of the foreign co-operative.

***receiver*** includes a receiver and manager.

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**relevant person**, in relation to a charge created by a co-operative, means:

- (a) a person who is at the time when the charge is created, or who has been at any time during the period of 6 months ending at that time, an officer of the co-operative, or
- (b) a person associated, in relation to the creation of the charge, with a person of a kind referred to in paragraph (a).

### **33 Charges in favour of certain persons void in certain cases**

(1) If:

- (a) a co-operative creates a charge on property of the co-operative in favour of a person who is, or in favour of persons at least one of whom is, a relevant person in relation to the charge, and
- (b) within 6 months after the creation of the charge, the chargee purports to take a step in the enforcement of the charge without the Court having, under clause 34, given leave for the charge to be enforced,

the charge, and any powers purported to be conferred by an instrument creating or evidencing the charge, are, and are to be considered always to have been, void.

(2) Without limiting the generality of subclause (1), a person who:

- (a) appoints a receiver of property of a co-operative under powers conferred by an instrument creating or evidencing a charge created by the co-operative, or
- (b) whether directly or by an agent, enters into possession or assumes control of property of a co-operative for the purposes of enforcing a charge created by the co-operative,

is to be taken, for the purposes of subclause (1), to take a step in the enforcement of the charge.

### **34 Court may give leave for enforcement of charge**

On application by the chargee under a charge, the Court may give leave for the charge to be enforced, if the Court is satisfied that:

- (a) immediately after the creation of the charge, the co-operative that created the charge was solvent, and
- (b) in all the circumstances of the case, it is just and equitable for the Court to do so.

### **35 Certain transactions excluded**

- (1) Nothing in clause 33 affects a debt, liability or obligation of a co-operative that would, if that clause had not been enacted, have been secured by a charge created by the co-operative.
- (2) Nothing in clause 33 operates to affect the title of a person to property (other than the charge concerned or an interest in the charge concerned) purchased for value from a chargee under a charge, from an agent of a chargee under a charge, or from a receiver appointed by a chargee under a charge in the exercise of powers conferred by the charge or implied by law, if that person purchased the property in good faith and without notice that the charge was created in favour of a person who is, or in favour of persons at least one of whom is, as the case may be, a relevant person in relation to the charge.
- (3) The onus of proving that a person purchased property in good faith and without notice that a charge was created as mentioned in subclause (2) is on the person asserting that the property was so purchased.

## **Division 6      Assignment, variation or satisfaction of charges**

### **36 Assignment and variation of charges**

- (1) If, after a registrable charge on property of a co-operative has been created, a person other than the original chargee becomes the holder of the charge, the



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person who becomes the holder of the charge must, within 45 days after he, she or it becomes the holder of the charge:

- (a) lodge a notice with the Registrar stating that he, she or it has become the holder of the charge, and
  - (b) give the co-operative a copy of the notice.
- (2) If, after a registrable charge on property of a co-operative has been created, there is a variation in the terms of the charge having the effect of:
- (a) increasing the amount of the debt or increasing the liabilities (whether present or prospective) secured by the charge, or
  - (b) prohibiting or restricting the creation of subsequent charges on the property,

the co-operative must, within 45 days after the variation occurs, ensure that there is lodged with the Registrar a notice setting out particulars of the variation and accompanied by the instrument (if any) effecting the variation or a certified copy of that instrument.

- (3) If a charge created by a co-operative secures a debt of an unspecified amount or secures a debt of a specified amount and further advances, a payment or advance made by the chargee to the co-operative in accordance with the terms of the charge is not to be taken, for the purposes of subclause (2), to be a variation in the terms of the charge having the effect of increasing the amount of the charge or the liabilities (whether present or prospective) secured by the charge.
- (4) A reference in this clause to the chargee in relation to a charge is, if the charge is constituted by a debenture or debentures and there is a trustee for debenture holders, to be construed as a reference to the trustee for debenture holders.
- (5) Nothing in clause 13 requires the lodgment of a notice under that clause in relation to a charge merely because of the fact that the terms of the charge are varied only in a manner mentioned in this clause.

### **37 Satisfaction of, and release of property from, charges**

- (1) If, with respect to a charge registered under this Part:
- (a) the debt or other liability the payment or discharge of which was secured by the charge has been paid or discharged in whole or in part, or
  - (b) the property charged or part of that property is released from the charge,

the person who was the holder of the charge at the time when the debt or other liability was so paid or discharged or the property or part of the property was released must, within 14 days after receipt of a request in writing made by the co-operative on whose property the charge exists, give to the co-operative a memorandum in the form approved by the Registrar acknowledging that the debt or other liability has been paid or discharged in whole or in part or that the property or that part of it is no longer subject to the charge, as the case may be.

- (2) The co-operative may lodge the memorandum with the Registrar and, on the memorandum being lodged, the Registrar must enter in the Register particulars of the matters stated in the memorandum.
- (3) The reference in subclause (1) to the person who was the holder of a charge at the time when the debt or other liability was so paid or discharged or the property or part of the property was released is, if the charge was constituted by a debenture or debentures and there was a trustee for debenture holders, to be construed as a reference to the person who was, at that time, the trustee of debenture holders.

## **Division 7      General**

### **38 Lodgment of notices**

- (1) If a notice in respect of a charge on property of a co-operative is required to be lodged under clause 13, 17 or 36 (2), the notice may be lodged by the co-operative or by any interested person.

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- (2) If a document required by this Part other than clause 36 (1) to be lodged with the Registrar is lodged by a person other than the co-operative concerned, that person:
- (a) must, within 7 days after the lodgment of the document, give to the co-operative a copy of the document, and
  - (b) is entitled to recover from the co-operative the amount of any fees properly paid by the person on lodgment of the document.

### **39 Lodgment offences**

- (1) If clause 13, 17 or 36 (2) is contravened in relation to a registrable charge on property of a co-operative, the co-operative and any officer of the co-operative who is knowingly concerned in or a party to the contravention is guilty of an offence.

Maximum penalty: 10 penalty units.

- (2) If a person who becomes the holder of a registrable charge fails to comply with clause 36 (1), the person and, if the person is a body corporate, any officer of the body corporate who is in default, each contravene this subclause.

### **40 Co-operative to keep documents relating to charges**

A co-operative must, at the place where the register referred to in clause 41 is kept, keep a copy of:

- (a) every document relating to a charge on property of the co-operative that is lodged with the Registrar under this Part, and
- (b) every document given to the co-operative under this Part.

Maximum penalty: 10 penalty units.

### **41 Co-operative to keep register**

- (1) A co-operative must keep a register.



- (2) On the creation of a charge (whether registrable or not) on property of the co-operative, or on the acquisition of property subject to a charge (whether registrable or not), the co-operative must as soon as practicable enter in the register particulars of the charge, giving in each case:
  - (a) if the charge is a charge created by the co-operative, the date of its creation or, if the charge was a charge existing on property acquired by the co-operative, the date on which the property was so acquired, and
  - (b) a short description of the liability (whether present or prospective) secured by the charge, and
  - (c) a short description of the property charged, and
  - (d) the name of the trustee for debenture holders or, if there is no such trustee, the name of the chargee, and
  - (e) the name of the person whom the co-operative believes to be the holder of the charge.
- (3) A register kept by a co-operative pursuant to subclause (1) must be open for inspection:
  - (a) by any creditor or member of the co-operative, without charge, and
  - (b) by any other person, on payment for each inspection of such amount, not exceeding the amount prescribed by the regulations, as the co-operative requires or, if the co-operative does not require the payment of an amount, without charge.
- (4) A person may request a co-operative to furnish the person with a copy of the register or any part of the register.
- (5) If a person makes a request under subsection (4), the co-operative must send the copy to that person:

- (a) if the co-operative requires payment of an amount not exceeding the amount prescribed by the regulations, within 21 days after payment of the amount is received by the co-operative or within such longer period as the Registrar approves, or
  - (b) in a case to which paragraph (a) does not apply, within 21 days after the request is made or within such longer period as the Registrar approves.
- (6) If default is made in complying with any provision of this clause, the co-operative is guilty of an offence.

Maximum penalty: 10 penalty units.

## **42 Certificates**

- (1) If particulars of a charge are entered in the Register in accordance with this Part, the Registrar must, on request by any person, issue to that person a certificate:
  - (a) setting out those particulars, and
  - (b) stating the time and day when a notice in respect of the charge containing those particulars was lodged with the Registrar, and
  - (c) if the word “provisional” appears in the Register next to the reference to that time and day, stating that fact.
- (2) A certificate issued under subclause (1) is evidence of the matters stated in the certificate.
- (3) If particulars of a charge are entered in the Register in accordance with this Part, and the word “provisional” does not appear in the Register next to the reference to the time and day when a notice in respect of the charge was lodged, the Registrar must, on request by any person, issue to that person a certificate stating that particulars of the charge are entered in the Register in accordance with this Part.

- (4) A certificate issued under subclause (3) is conclusive evidence that the requirements of this Part as to registration (other than the requirements relating to the period after the creation of the charge within which notice in respect of the charge is required to be lodged) have been complied with.

#### **43 Power of Court to rectify Register**

If the Court is satisfied:

- (a) that a particular with respect to a registrable charge on property of a co-operative has been omitted from, or mis-stated in, the Register or a memorandum referred to in clause 37, and
- (b) that the omission or mis-statement:
  - (i) was accidental or due to inadvertence or to some other sufficient cause, or
  - (ii) is not of a nature to prejudice the position of creditors or shareholders,or that on other grounds it is just and equitable to grant relief,

the Court may, on the application of the co-operative or any person interested and on such terms and conditions as seem to the Court just and expedient, order that the omission or mis-statement be rectified.

#### **44 Power to exempt from compliance with certain requirements of Part**

- (1) The Registrar may, by instrument in writing, exempt a person, as specified in the instrument and subject to the conditions (if any) that are specified in the instrument, from compliance with such of the requirements of clause 13, 17 or 36 relating to:
- (a) the particulars to be contained in a notice under the relevant clause, or
  - (b) the documents (other than the notice) to be lodged under the relevant clause, or



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- (c) the verification of any document required to be lodged under the relevant clause,
- as are specified in the instrument.
- (2) A person who is exempted by the Registrar, subject to a condition, from compliance with a requirement of clause 13, 17 or 36 must not contravene the condition.
- (3) If a person has contravened a condition to which an exemption under this clause is subject, the Court may, on the application of the Registrar, order the person to comply with the condition.

### **Part 3 Order of priority**

#### **Division 1 General**

##### **45 Definitions**

- (1) In this Part:

***prior registered charge***, in relation to another registered charge, means a charge the priority time of which is earlier than the priority time of the other charge.

***priority time***, in relation to a registered charge, means:

- (a) except as provided by paragraph (b) or (c), the time and date appearing in the Register in relation to the charge, being a time and day entered in the Register pursuant to Division 3 of Part 2, and
- (b) if a notice has been lodged under clause 17 in relation to a charge on property, being a charge that, at the time when the notice was lodged, was already registered under Part 2, the earlier or earliest time and day appearing in the Register in relation to the charge, being a time and day entered in the Register pursuant to clause 17, and
- (c) to the extent that the charge has effect as varied by a variation notice of which was required to be lodged under clause 36 (2), the time and day entered in the Register in relation to the charge pursuant to clause 24.

**registered charge** means a charge that is registered under Part 2.

**subsequent registered charge**, in relation to another registered charge, means a charge the priority time of which is later than the priority time of the other registered charge.

**unregistered charge** means a charge that is not registered under Part 2 but does not include a charge that is not a registrable charge.

- (2) A reference in this Part to a person having notice of a charge includes a reference to a person having constructive notice of the charge.
- (3) If, by virtue of the definition of **priority time** in subclause (1), a registered charge has 2 or more priority times each of which relates to a particular liability secured by the charge, each of those liabilities is, for the purposes of this Part, to be considered to be secured by a separate registered charge the priority time of which is the priority time of the first-mentioned registered charge that relates to the liability concerned.

#### **46 Priorities of charges**

- (1) Subject to this clause, Division 2 has effect with respect to the priorities, in relation to each other, of registrable charges on the property of a co-operative.
- (2) The application, in relation to particular registrable charges, of the order of priorities of charges set out in Division 2, is subject to:
  - (a) any consent (express or implied) that varies the priorities in relation to each other of those charges, being a consent given by the holder of one of those charges, being a charge that would otherwise be entitled to priority over the other charge, and
  - (b) any agreement between those chargees that affects the priorities in relation to each other of the charges in relation to which those persons are the chargees.

- (3) The holder of a registered charge, being a floating charge, on property of a co-operative is to be considered, for the purposes of subclause (2), to have consented to that charge being postponed to a subsequent registered charge, being a fixed charge that is created before the floating charge becomes fixed, on any of that property unless:
- (a) the creation of the subsequent registered charge contravened a provision of the instrument or resolution creating or evidencing the floating charge, and
  - (b) a notice in respect of the floating charge indicating the existence of the provision referred to in paragraph (a) was lodged with the Registrar under clause 13, 17 or 36 before the creation of the subsequent registered charge.
- (4) If a charge relates to property of a kind or kinds to which a particular paragraph or paragraphs of clause 4 (1) applies or apply and also relates to other property, Division 2 applies so as to affect the priority of the charge only in so far as it relates to the first-mentioned property and does not affect the priority of the charge in so far as it relates to the other property.

## **Division 2     Priority rules**

### **47 General priority rules in relation to registered charges**

- (1) A registered charge on property of a co-operative has priority over:
- (a) a subsequent registered charge on the property, unless the subsequent registered charge was created before the creation of the prior registered charge and the chargee in relation to the subsequent registered charge proves that the chargee in relation to the prior registered charge had notice of the subsequent registered charge at the time when the prior registered charge was created, and



- (b) an unregistered charge on the property created before the creation of the registered charge, unless the chargee in relation to the unregistered charge proves that the chargee in relation to the registered charge had notice of the unregistered charge at the time when the registered charge was created, and
  - (c) an unregistered charge on the property created after the creation of the registered charge.
- (2) A registered charge on property of a co-operative is postponed to:
  - (a) a subsequent registered charge on the property, if the subsequent registered charge was created before the creation of the prior registered charge and the chargee in relation to the subsequent registered charge proves that the chargee in relation to the prior registered charge had notice of the subsequent registered charge at the time when the prior registered charge was created, and
  - (b) an unregistered charge on the property created before the creation of the registered charge, where the chargee in relation to the unregistered charge proves that the chargee in relation to the registered charge had notice of the unregistered charge at the time when the registered charge was created.

#### **48 General priority rule in relation to unregistered charges**

An unregistered charge on property of a co-operative has priority over:

- (a) a registered charge on the property that was created after the creation of the unregistered charge and does not have priority over the unregistered charge under clause 47 (1), and
- (b) another unregistered charge on the property created after the first-mentioned unregistered charge.

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**49 Special priority rules**

- (1) Except as provided by this clause, any priority accorded by this Part to a charge over another charge does not extend to any liability that, at the priority time in relation to the first-mentioned charge, is not a present liability.
- (2) If a registered charge on property of a co-operative secures:
  - (a) a present liability and a prospective liability of an unspecified amount, or
  - (b) a prospective liability of an unspecified amount,any priority accorded by this Part to the charge over another charge of which the chargee in relation to the first-mentioned charge does not have actual knowledge extends to the prospective liability, whether the prospective liability became a present liability before or after the registration of the first-mentioned charge.
- (3) If a registered charge on property of a co-operative secures:
  - (a) a present liability and a prospective liability up to a specified maximum amount, or
  - (b) a prospective liability up to a specified maximum amount,and the notice lodged under clause 13 or 17 in relation to the charge sets out the nature of the prospective liability and the amount so specified, then any priority accorded by this Part to the charge over another charge extends to any prospective liability secured by the first-mentioned charge to the extent of the maximum amount so specified.
- (4) Subclause (3) applies whether the prospective liability became a present liability before or after the registration of the first-mentioned charge and despite the fact that the chargee in relation to the first-mentioned charge had actual knowledge of the other charge at the time when the prospective liability became a present liability.

- (5) Subclause (6) applies if:
- (a) a registered charge on property of a co-operative secures:
    - (i) a present liability and a prospective liability up to a specified maximum amount, or
    - (ii) a prospective liability up to a specified maximum amount,but the notice lodged under clause 13 or 17 in relation to the charge does not set out the nature of the prospective liability or the maximum amount so specified, or
  - (b) a registered charge on property of a co-operative secures a prospective liability of an unspecified amount.
- (6) In relation to a charge referred to in subclause (5):
- (a) any priority accorded by this Part to the charge over another charge of which the chargee in relation to the first-mentioned charge has actual knowledge extends to any prospective liability secured by the first-mentioned charge that had become a present liability at the time when the chargee in relation to the first-mentioned charge first obtained actual knowledge of the other charge, and
  - (b) any priority accorded by this Part to the charge over another charge of which the chargee in relation to the first-mentioned charge has actual knowledge extends to any prospective liability secured by the first-mentioned charge that became a present liability, as the result of the making of an advance, after the time when the chargee in relation to the first-mentioned charge first obtained actual knowledge of the other charge if,



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at that time, the terms of the first-mentioned charge required the chargee in relation to that charge to make the advance after that time.

- (7) Subclause (6) (b) extends to the prospective liability whether the advance was made before or after the registration of the first-mentioned charge and despite the fact that the chargee in relation to the first-mentioned charge had actual knowledge of the other charge at the time when the advance was made.

**[234] Schedule 4 Receivers, and other controllers, of property of co-operatives, note**

Insert before clause 1:

**Note.** Each provision of this Schedule is a core consistent provision.

**[235] Schedule 4, clause 1, definition of "co-operative"**

Insert "registered under Part 13A" after "foreign co-operative".

**[236] Schedule 4, clauses 12 (5), 15 (1) and 17 (2)**

Omit "prescribed form" wherever occurring.

Insert instead "form approved by the Registrar".

**[237] Schedule 5 Members and procedure of the Council, note**

Insert before Part 1:

**Note.** None of the provisions of this Schedule is a core consistent provision.

**[238] Schedule 6 Savings and transitional provisions, note**

Insert before Part 1:

**Note.** None of the provisions of this Schedule is a core consistent provision.

**[239] Schedule 6, clause 2**

Insert "*Co-operatives Amendment Act 1997*" at the end of clause 2 (1).

**[240] Schedule 6, Part 4**

Insert after Part 3:

**Part 4      Provisions consequent on Co-operatives  
Amendment Act 1997**

**18 Saving of registration of certain foreign co-operatives**

A foreign co-operative registered under Division 3 of Part 2 before the commencement of this clause is taken to be registered as a foreign co-operative under Division 2 of Part 13A.

**19 Saving of rules of certain foreign co-operatives**

An exemption granted to a foreign co-operative by the Registrar pursuant to clause 7 (2) (a) of the *Co-operatives (General) Regulation 1993* and in force immediately before the commencement of this clause is taken to be valid for a period of 2 years after that commencement.

**20 Pending applications for registration as co-operatives**

- (1) Part 2 as in force immediately before the commencement of this clause continues to apply to an application for registration of a co-operative received by the Registrar before that commencement.
- (2) On registration of a co-operative to which this clause applies, the co-operative is taken to be a co-operative registered under Part 2.

## **21 Pending amalgamations**

- (1) Division 1 of Part 12 as in force immediately before the commencement of this clause continues to apply to an application for amalgamation made by 2 or more co-operatives before the commencement of this clause.
- (2) On registration of an amalgamated co-operative under this clause, the co-operative is taken to be a merged co-operative registered under Division 1 of Part 12.

## **22 Pending transfers of engagements**

- (1) Division 2 of Part 12 as in force immediately before the commencement of this clause continues to apply to:
  - (a) a transfer of engagements being made by one co-operative to another co-operative, or
  - (b) a direction given by the Registrar to a co-operative to transfer its engagements to another co-operative,before the commencement of this clause.
- (2) On completion, any such transfer of engagements is taken to have been made under Division 1 of Part 12.

## **23 Rules of existing co-operatives to conform with Act and regulations**

- (1) A co-operative that was registered under this Act immediately before the commencement of this clause must bring its rules into conformity with this Act and the regulations:
  - (a) within 2 years after the commencement of this clause, or
  - (b) within such further period as may be approved by the Registrar in respect of a particular co-operative.
- (2) The rules of a co-operative to which this clause applies are taken to be valid until:
  - (a) the co-operative complies with subclause (1), or
  - (b) the expiry of the relevant period under subclause (1).



- (3) If there is any inconsistency between a provision of this Act or the regulations and the rules of the co-operative as to the procedure for alteration of the rules of the co-operative, the provisions of this Act and the regulations prevail.

#### **24 Modification of certain rules**

- (1) This clause applies if, in the opinion of the Registrar, the rules of a co-operative registered under this Act immediately before the commencement of this clause should be altered to achieve conformity with any requirement of this Act or the regulations.
- (2) The Registrar may, by instrument served on a co-operative to which this clause applies, require it within a period specified in the instrument to alter its rules:
  - (a) in a manner specified in the instrument, or
  - (b) in a manner approved by the Registrar.
- (3) If, within the period specified in the instrument, the co-operative fails to alter its rules as required by the instrument, the Registrar may, by notation on the registered copy of the rules, alter the rules.
- (4) The Registrar must give written notice to a co-operative of any alteration of its rules made by the Registrar under this clause.
- (5) Any alteration made by the Registrar to the rules under this clause is as valid and effectual as an alteration made and registered under Part 5.

#### **25 Registration of special resolutions**

- (1) Sections 113 and 192 as in force immediately before the commencement of this clause continue to apply in respect of a special resolution passed by a co-operative under Division 2 of Part 8 before that commencement.

- (2) Any such resolution is taken to be a resolution registered under Division 2 of Part 8.

**26 Preservation of rights of members of non-trading co-operatives in shares issued at premium**

A member of a non-trading co-operative who, immediately before the commencement of this clause, held shares issued at a premium in the co-operative retains all rights to a return of premium in relation to the shares that the member held immediately before that commencement.

**27 Exemptions relating to use of word "co-operative"**

An exemption granted to a co-operative under section 260 (3) (e) that is in force immediately before the repeal of that provision by the *Co-operatives Amendment Act 1997* is taken to be an exemption granted under section 255 (5) (g).

**28 Authentication of documents and proceedings**

The authentication of a document or proceeding in accordance with section 47 as in force immediately before the commencement of this clause is taken to be a valid authentication for the purposes of this Act after that commencement.

**29 Disputes involving members**

Division 4 of Part 4 as in force immediately before the commencement of this clause continues to apply in respect of the resolution of a dispute referred to arbitration or to the Registrar in accordance with that Division before that commencement.

**30 Pending applications concerning rate of dividend**

- (1) Section 153 (1) and (2) as in force immediately before the commencement of this clause continues to apply to an application to the Minister for approval of the rate of a dividend made before that commencement.

- (2) An order made by the Minister in respect of an application to which this clause refers has effect despite any provision of this Act.

### **31 Court may resolve transitional difficulties**

- (1) The Court may, on the application of an interested person, make such order as the Court thinks appropriate and necessary to give effect to this Act to remove a difficulty arising in applying a provision of this Act to a particular case because of the amendment of that or another provision of this Act by the *Co-operatives Amendment Act 1997*.
- (2) An order under this clause has effect despite anything in a provision of this Act or in a provision of this Act as in force immediately before the commencement of the *Co-operatives Amendment Act 1997*.

### **32 Transitional regulations**

- (1) If, on the commencement of this clause, regulations have not been made for or with respect to any matter that by this Act as amended by the *Co-operatives Amendment Act 1997* is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act as so amended, regulations may be made under clause 2 to provide that such of the regulations made under the *Co-operatives Act 1996* of Victoria as are identified in the regulations apply to co-operatives to which this Act applies with such modifications as are necessary and with such modifications (if any) as may be prescribed by the regulations.
- (2) Any regulation to which this clause applies expires 6 months after the date on which the regulation commences.

### **33 General saving**

- (1) If anything done or commenced under this Act before the commencement of this clause and still having effect or not completed immediately before that



commencement could have been done or commenced under this Act as amended by the *Co-operatives Amendment Act 1997* if this Act as so amended had been in force when the thing was done or commenced:

- (a) the thing continues to have effect, or
- (b) the thing commenced may be completed,

as if it had been done or commenced under this Act as so amended.

- (2) This clause is subject to any express provision of this Act on the matter.

[Minister's second reading speech made in—  
Legislative Assembly on 28 May 1997  
Legislative Council on 20 June 1997]

