

2001

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Treasurer)

## Cooperatives Bill 2001

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2001

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Treasurer)

## **Cooperatives Bill 2001**

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### **A Bill for**

An Act to make provision in relation to cooperatives, and for other purposes

---

The Legislative Assembly for the Australian Capital Territory enacts as follows:

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2001 113B

1

2 **Part 1 Preliminary**

3 **Division 1.1 Introductory**

4 **1 Name of Act**

5 This Act is the *Cooperatives Act 2001*.

6 **2 Commencement**

7 This Act commences on a day fixed by the Minister by notice in the  
8 Gazette.

9 *Note 1* The naming and commencement provisions automatically commence on  
10 the notification day (see *Legislation Act 2001*, s 75).

11 *Note 2* A single day or time may be fixed, or different days or times may be  
12 fixed, for the commencement of different provisions (see *Legislation*  
13 *Act 2001*, s 77 (1)).

14 *Note 3* If a provision has not commenced within 6 months beginning on the  
15 notification day, it automatically commences on the first day after that  
16 period (see *Legislation Act 2001*, s 79).

17 **3 Objects**

18 The objects of this Act are to—

19 (a) enable the formation, registration and operation of  
20 cooperatives; and

21 (b) promote cooperative philosophy, principles, practices and  
22 objectives; and

23 (c) protect the interests of cooperatives, their members and the  
24 public in the operations and activities of cooperatives; and

25 (d) ensure that the directors of cooperatives are accountable for  
26 their actions and decisions to the members of cooperatives; and

27 (e) encourage and facilitate self-management by cooperatives at  
28 all levels; and



- 1 (f) encourage the development, integration and strengthening of  
2 cooperatives at local, regional, national and international levels  
3 by supporting and fostering Territory, State and national peak  
4 organisations and cooperative instrumentalities.

## 5 **Division 1.2 Interpretation**

### 6 **4 Dictionary**

7 The dictionary at the end of this Act is part of this Act.

8 *Note 1* The dictionary at the end of this Act defines certain words and  
9 expressions used in this Act, and includes references (*signpost*  
10 *definitions*) to other words and expressions defined elsewhere in this  
11 Act or in other legislation.

12 For example, the signpost definition '*company*—see the Corporations  
13 Act, section 9' means that the word '*company*' is defined in that section  
14 and the definition applies to this Act.

15 *Note 2* A definition in a dictionary (including a signpost definition) applies to  
16 an entire Act unless the definition or another provision of the Act  
17 provides otherwise or the contrary intention otherwise appears (see  
18 *Legislation Act 2001*, s 155 and 156 (1)).

### 19 **5 Notes**

20 A note included in this Act is explanatory and is not part of this Act.

21 *Note* See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of  
22 notes.

### 23 **6 Qualified privilege**

24 (1) A provision of this Act that provides to the effect that a person has  
25 qualified privilege in relation to something means that the person, in  
26 relation to the thing—

27 (a) has qualified privilege in a proceeding for defamation; or

28 (b) is not, in the absence of malice on the person's part, liable to  
29 an action for defamation.

- 1 (2) In subsection (1):  
2 *malice* includes—  
3 (a) ill will towards the person concerned; and  
4 (b) any other improper motive.  
5 (3) Nothing in this section or in a provision of a kind mentioned in  
6 subsection (1) limits or affects any right, privilege or immunity that  
7 a person has, apart from this section or such a provision, as  
8 defendant in an action, or other proceeding, for defamation.

9 **7 Interpretation to promote cooperative principles**

10 In the interpretation of a provision of this Act, a construction that  
11 would promote cooperative principles is to be preferred to a  
12 construction that would not promote cooperative principles.

13 **Division 1.3 Cooperative principles**

14 **8 Cooperative principles**

15 The cooperative principles are the following principles:

16 **1 Voluntary and open membership**

17 Cooperatives are voluntary organisations, open to all people able to  
18 use their services and willing to accept the responsibilities of  
19 membership, without gender, social, racial, political or religious  
20 discrimination.

21 **2 Democratic member control**

22 Cooperatives are democratic organisations controlled by their  
23 members, who actively participate in setting their policies and  
24 making decisions. Men and women serving as elected  
25 representatives are accountable to the membership. In primary  
26 cooperatives, members have equal voting rights (1 member, 1 vote)  
27 and cooperatives at other levels are organised in a democratic  
28 manner.

- 1       3   Member economic participation
- 2           Members contribute equitably to, and democratically control, the
- 3           capital of their cooperative. At least part of that capital is usually the
- 4           common property of the cooperative. They usually receive limited
- 5           compensation (if any) on capital subscribed as a condition of
- 6           membership. Members allocate surpluses for any or all of the
- 7           following purposes:
- 8           (a) developing the cooperative, possibly by setting up reserves,
- 9           part of which at least would be indivisible;
- 10          (b) benefiting members in proportion to their transactions with the
- 11          cooperative;
- 12          (c) supporting other activities approved by the membership.
- 13       4   Autonomy and independence
- 14           Cooperatives are autonomous, self-help organisations controlled by
- 15           their members. If they enter into agreements with other
- 16           organisations (including governments) or raise capital from external
- 17           sources, they do so on terms that ensure democratic control by their
- 18           members and maintain their cooperative autonomy.
- 19       5   Education, training and information
- 20           Cooperatives provide education and training for their members,
- 21           elected representatives, managers and employees so they can
- 22           contribute effectively to the development of their cooperatives.
- 23           They inform the general public, particularly young people and
- 24           opinion leaders, about the nature and benefits of cooperation.
- 25       6   Cooperation among cooperatives
- 26           Cooperatives serve their members most effectively and strengthen
- 27           the cooperative movement by working together through local,
- 28           national, regional and international structures.

1       7    Concern for the community

2           While focusing on members' needs, cooperatives work for the  
3           sustainable development of their communities through policies  
4           accepted by their members.

5   **Division 1.4           Application of Corporations Act**  
6                               **generally**

7   **9       Regulations may apply certain provisions of**  
8           **Corporations Act**

9           The regulations may apply, with any prescribed modifications, a  
10          provision of the Corporations Act to cooperatives if the provision  
11          does not apply to cooperatives of its own force or by operation of  
12          this Act.

13   **10     Corporations Act provisions applied by this Act**

14       (1) A provision of the Corporations Act applied by this Act in relation  
15       to cooperatives is to be read as forming part of this Act.

16       *Note*     A reference to an Act includes a reference to the statutory instruments  
17                   made or in force under the Act, including regulations (see *Legislation*  
18                   *Act 2001*, s 104).

19       (2) If—

20           (a) a provision of this Act (the *application provision*) applies  
21           provisions of the Corporations Act (the *applied provisions*) to  
22           cooperatives; and

23           (b) some parts of the applied provisions apply to cooperatives of  
24           their own force; and

25           (c) other parts of the applied provisions do not apply to  
26           cooperatives of their own force;

27       the application provision is to be read as applying only the parts  
28       mentioned in paragraph (c).

1 (3) Subsection (2) is additional to the *Legislation Act 2001*, section 120  
2 (Act to be interpreted not to exceed legislative powers of  
3 Assembly).

4 (4) If a provision of the Corporations Act is applied by any provision of  
5 this Act, neither the applied provision nor the applying provision  
6 gives power to the Australian Securities and Investments  
7 Commission to administer the applied provision for this Act.

8 **11 Interpretation of applied provisions of Corporations Act**

9 (1) A provision of the Corporations Act applied by this Act is taken to  
10 apply with—

11 (a) any modifications provided by this Act; and

12 (b) any other modifications that may be necessary or desirable for  
13 the effective application of the Act.

14 *Note* A reference to an Act includes a reference to the statutory instruments  
15 made or in force under the Act, including regulations (see *Legislation*  
16 *Act 2001*, s 104).

17 (2) In particular—

18 (a) a reference to—

19 (i) articles or memorandum of association; or

20 (ii) constitution; or

21 (iii) replaceable rules;

22 is to be read as a reference to rules; and

23 (b) a reference to a company is to be read as a reference to a  
24 cooperative; and

25 (c) a reference to ASIC is to be read as a reference to the registrar;  
26 and

- 1 (d) a cross-reference to another provision of the Corporations Act  
2 is, if the cross-reference is not appropriate (because, for  
3 example, the provision cross-referred to is not among the  
4 provisions applied), to be—  
5 (i) if there is a corresponding provision of this Act—read as  
6 a cross-reference to that provision; or  
7 (ii) in any other case—disregarded; and  
8 (e) a reference to notification (however described) in the Gazette  
9 is to be read as a reference to notification under the *Legislation*  
10 *Act 2001*; and  
11 (f) a reference to the Commonwealth is to be read as a reference to  
12 the Territory; and  
13 (g) any provision of the Corporations Act applied by this Act that  
14 is not relevant to cooperatives, or that cannot be applied to  
15 cooperatives, is to be ignored.  
16 (3) In applying subsection (2) (e) to an instrument, the instrument is  
17 taken to be a notifiable instrument.  
18 *Note* A notifiable instrument must be notified under the *Legislation Act 2001*.  
19 (4) The regulations may make modifications that are necessary or  
20 desirable for the effective operation of the applied provisions of the  
21 Corporations Act, and the modifications take effect accordingly  
22 (except to the extent of any inconsistency with this Act).  
23 (5) The definitions of words and expressions and other interpretative  
24 provisions contained in the Corporations Act apply in relation to  
25 provisions of the Corporations Act applied by this Act.  
26 (6) This section has effect subject to any specific requirements of  
27 provisions of this Act that apply provisions of the Corporations Act.

---

**12 Implied application of regulations and other provisions of Corporations Act**

(1) If a provision of this Act applies a provision (the *applied provision*) of the Corporations Act to cooperatives, the following provisions are also applied by force of this section and are to be read as forming part of this Act:

- (a) the provisions of any regulation (an *applied regulation*) from time to time in force under the applied provision;
- (b) any provision of the Corporations Act that creates an offence in relation to a contravention of the applied provision;
- (c) the provisions of the Corporations Act, part 9.4B (Civil consequences of contravening civil penalty provisions) for a provision of the Corporations Act applied by this Act that is a civil penalty provision within the meaning of that part.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act 2001*, s 104).

(2) The regulations may prescribe modifications to any of the provisions applied by subsection (1) for their application under this section, and the provisions apply subject to the prescribed modifications.

(3) If a provision of the Corporations Act or the regulations under that Act applied by this Act (including under this section) creates an offence and the penalty for that offence is provided in another provision (the *penalty provision*) of the Corporations Act or those regulations, the penalty provision is to be read as forming part of this Act for the purpose of deciding the maximum penalty applying to the offence.

**13 Effect of amendments to applied provisions of Corporations Act**

(1) A provision of the Corporations Act applied by this Act applies as in force from time to time.

- 1 (2) If a group of provisions of the Corporations Act is applied by this  
2 Act (whether by the application of a chapter, part, division or  
3 otherwise), and the Corporations Act is amended to insert a new  
4 provision into the group of provisions, the new provision forms part  
5 of the group of provisions applied by this Act.
- 6 (3) Subsection (2) is subject to any modifications prescribed under the  
7 regulations.

8 **14 Effect of applied provisions of Corporations Act**

9 For this Act, a provision of the Corporations Act applied by a  
10 provision of this Act (the *application provision*) is taken to be  
11 adopted by the application provision.

12 **Division 1.5 Application of Corporations Act—**  
13 **excluded matter**

14 **15 Excluded matter**

- 15 (1) A cooperative is declared to be an excluded matter for the  
16 Corporations Act, section 5F (Corporations legislation does not  
17 apply to matters declared by State or Territory law to be an excluded  
18 matter) in relation to the whole of the Corporations legislation other  
19 than to the extent specified in this section.

20 *Note* This section ensures that neither the Corporations Act nor the ASIC  
21 Act, part 3 will apply in relation to a cooperative, other than to the  
22 extent specified in this section. The Corporations Act, s 5F provides  
23 that, if a State or Territory law declares a matter to be an excluded  
24 matter in relation to the whole of the corporations legislation other than  
25 to a specified extent, that legislation does not apply, except to the  
26 specified extent, in relation to that matter in the State or Territory.  
27 However, other provisions of this Act apply certain provisions of the  
28 Corporations Act to cooperatives as ACT laws.

- 29 (2) Subsection (1) does not exclude the application of the following  
30 provisions of the Corporations legislation to cooperatives to the  
31 extent that those provisions would otherwise apply to them:



- 1 (a) provisions that relate to anything that the regulations provide is  
2 not to be excluded from the operation of the Corporations  
3 legislation;
- 4 (b) provisions that relate to the role of a cooperative in the  
5 formation of a company;
- 6 (c) provisions that relate to substantial shareholdings, by or  
7 involving a cooperative, in a company;
- 8 (d) provisions that give functions to, or impose functions on, a  
9 cooperative as a member, or former member, of a corporation;
- 10 (e) provisions relating to dealings by a cooperative in securities of  
11 a body corporate, other than securities of the cooperative itself;
- 12 (f) provisions that give functions to, or impose functions on, a  
13 cooperative in its dealings with a corporation, other than  
14 dealings in securities of the cooperative;
- 15 (g) provisions that relate to securities of a cooperative, other than  
16 shares in, debentures of or deposits with a cooperative;
- 17 (h) provisions relating to the futures industry;
- 18 (i) provisions relating to participants in the securities industry;
- 19 (j) provisions relating to the conduct of securities business;
- 20 (k) provisions relating to dealers' financial statements and audit;
- 21 (l) provisions relating to money and scrip of dealers' clients;
- 22 (m) provisions relating to registers of interests in securities.
- 23 (3) To remove doubt, subsection (1) does not operate to exclude the  
24 operation of the following provisions of the Corporations Act,  
25 except in relation to shares in, debentures of or deposits with a  
26 cooperative:
- 27 (a) part 1.2A (Disclosing entities);
- 28 (b) chapter 2L (Debentures);
- 29 (c) chapter 6D (Fundraising);
- 30 (d) part 7.11 (Conduct in relation to securities).
-

- 1 (4) If a cooperative is directed by an order of the Supreme Court under  
2 section 88 (i) (Orders that Supreme Court may make) to become  
3 registered as a company under the Corporations Act, subsection (1)  
4 does not exclude the application of that Act to the cooperative to the  
5 extent necessary for the cooperative to be registered as a company  
6 under that Act, chapter 5B (Bodies corporate registered as  
7 companies, and registrable bodies).

**Part 2 Formation**

**Division 2.1 Types of cooperatives**

**16 Types of cooperatives**

- (1) A society may be registered under this Act as a cooperative.
- (2) A cooperative may be—
  - (a) a trading cooperative; or
  - (b) a non-trading cooperative.

**17 Trading cooperatives**

- (1) A trading cooperative must have a share capital.
- (2) A trading cooperative is a cooperative whose rules allow it to give returns or distributions on surplus or share capital.
- (3) A trading cooperative must have a membership of—
  - (a) for an association—2 or more cooperatives; and
  - (b) for a federation—2 or more associations; and
  - (c) for any other trading cooperative—
    - (i) if a lesser number than 5 is prescribed under the regulations—at least that number of active members; or
    - (ii) in any other case—5 or more active members.

**18 Non-trading cooperatives**

- (1) A non-trading cooperative is a cooperative whose rules prohibit it from giving 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 cooperative may have a share capital.

- 1        (3) A non-trading cooperative must have a membership of—  
2            (a) for an association—2 or more cooperatives; and  
3            (b) for a federation—2 or more associations; and  
4            (c) for any other non-trading cooperative—  
5                (i) if a lesser number than 5 is prescribed under the  
6                regulations—at least that number of active members; or  
7                (ii) in any other case—5 or more active members.

8        **Division 2.2                      Formation meeting**

9        **19        Formation meeting**

- 10        (1) Before a proposed cooperative (other than an existing corporation)  
11        can be registered, a formation meeting is to be held in accordance  
12        with this section.  
13        (2) At the formation meeting—  
14            (a) subject to section 20 (8), a disclosure statement approved under  
15            section 20 is to be presented to the meeting; and  
16            (b) the proposed rules of the cooperative approved under  
17            section 21 in relation to the proposed cooperative, and  
18            including active membership provisions in accordance with  
19            part 6, are to be passed by  $\frac{2}{3}$  of the proposed members of the  
20            proposed cooperative attending the meeting; and  
21            (c) the proposed members of the proposed cooperative must sign  
22            the application for membership; and  
23            (d) the proposed members must elect the first directors of the  
24            proposed cooperative in accordance with the proposed rules;  
25            and  
26            (e) the proposed members must authorise a person—  
27                (i) to apply to the registrar for registration of the proposed  
28                cooperative; and

- 1 (ii) to do any act or thing necessary to have the proposed  
2 cooperative registered.

3 *Note* If a form is approved under s 468 (Approved forms) for an application  
4 for membership, the form must be used.

- 5 (3) The formation meeting is to be held—

6 (a) for an association—by not fewer than 2 suitably qualified  
7 cooperatives; and

8 (b) for a federation—by not fewer than 2 suitably qualified  
9 associations; and

10 (c) for any other organisation—by not fewer than 5 people (or, if a  
11 lesser number is prescribed under the regulations, not fewer  
12 than that number of people), each of whom is suitably qualified  
13 to be a member of the proposed cooperative.

- 14 (4) For subsection (3), a person is *suitably qualified* to be a member  
15 if—

16 (a) there are reasonable grounds to believe the person will be an  
17 active member of the proposed cooperative; and

18 (b) for an individual—the person is at least 18 years old; and

19 (c) the person satisfies the requirements for membership set out in  
20 the proposed rules.

- 21 (5) Each cooperative forming a proposed association and each  
22 association forming a proposed federation may be represented at the  
23 formation meeting by a single person.

24 **Division 2.3** **Approval of disclosure statement**  
25 **and rules**

26 **20 Approval of disclosure statement**

- 27 (1) A draft disclosure statement of a proposed cooperative (the *draft*  
28 *statement*) is to be submitted to the registrar at least 28 days (or  
29 such shorter period as the registrar may allow in a particular case)

- 1            before the formation meeting of the proposed cooperative is  
2            proposed to be held.
- 3            (2) For a proposed trading cooperative, the draft statement must contain  
4            the information necessary to ensure that prospective members are  
5            adequately informed of the nature and extent of a person's financial  
6            involvement or liability as a member of the cooperative, including,  
7            so far as applicable—
- 8            (a) the estimated costs of formation; and  
9            (b) the nature of the proposed membership of the cooperative; and  
10           (c) the rights and liabilities attaching to shares in the proposed  
11           cooperative (including the capital required for the cooperative);  
12           and  
13           (d) the projected income and expenditure of the cooperative for its  
14           first year of operation; and  
15           (e) information about any contracts required to be entered into by  
16           the cooperative; and  
17           (f) any other information that the registrar, by notice, requires.
- 18           (3) For a proposed trading cooperative, the draft statement must not  
19           include a statement purporting to be made by an expert or to be  
20           based on a statement made by an expert unless—
- 21           (a) the expert has given, and has not withdrawn, the expert's  
22           written consent to the submission of the draft statement with  
23           the statement included in the form and context in which it is  
24           included; and  
25           (b) there appears in the draft statement a statement that, at the time  
26           of preparation of the statement, the expert has given, and has  
27           not withdrawn, the expert's consent.

- 1 (4) For a proposed non-trading cooperative, the draft statement must  
2 contain the information that the registrar, by written notice, requires.
- 3 *Note* If a form is approved under s 468 (Approved forms) for a draft  
4 statement, the form must be used.
- 5 (5) The registrar may, by notice—
- 6 (a) approve the draft statement as submitted; or
- 7 (b) amend the draft statement, or require a stated amendment of  
8 the draft statement and then approve the amended draft  
9 statement; or
- 10 (c) approve a statement different from the draft statement as  
11 submitted; or
- 12 (d) refuse to approve the draft statement; or
- 13 (e) require the person submitting the draft statement to give the  
14 registrar any additional information that the registrar  
15 reasonably requires and then act under paragraph (a), (b), (c) or  
16 (d).
- 17 (6) Approval under subsection (5) (a), (b) or (c) may be given—
- 18 (a) at any time before the formation meeting is held; and
- 19 (b) subject to such conditions (if any) as the registrar states in the  
20 notice of approval.
- 21 (7) The registrar is taken to have approved the draft statement as  
22 submitted to the registrar unless, at least 5 days before the formation  
23 meeting is proposed to be held, the registrar gives—
- 24 (a) a notice under subsection (5); or
- 25 (b) notice that the registrar is still considering the matter.
- 26 (8) For a particular proposed non-trading cooperative, the registrar may,  
27 by notice, and subject to the conditions (if any) that the registrar  
28 states in the notice, dispense with the requirement to present a  
29 disclosure statement to the formation meeting.

- 1        (9) Notice by the registrar under this section is to be given to the person  
2            who submitted the draft statement (the *applicant*), or to someone  
3            else nominated in writing to the registrar by the applicant for the  
4            purpose of receiving such notice.

5        **21      Approval of rules**

- 6        (1) A draft of the rules proposed for the cooperative (including active  
7            membership provisions in accordance with part 6) is to be submitted  
8            to the registrar at least 28 days (or such shorter period as the  
9            registrar may allow in a particular case) before the formation  
10          meeting is proposed to be held.

- 11       (2) The proposed rules must—

- 12            (a) comply with sections 102 and 103; and  
13            (b) if the rules contain any alterations of the model rules—be  
14                  accompanied by a statement setting out the alterations and the  
15                  reasons for the alterations.

16            *Note*        If a form is approved under s 468 (Approved forms) for proposed rules,  
17                  the form must be used.

- 18       (3) If the rules do not make provision for anything included in the  
19            model rules, the registrar may approve the relevant provisions of the  
20            model rules as rules of the cooperative.

- 21       (4) The registrar may—

- 22            (a) approve the rules as submitted; or  
23            (b) approve rules different from the rules as submitted; or  
24            (c) refuse to approve the rules.

- 25       (5) The registrar approves of the rules by giving notice of the approval  
26            of the rules to the person who submitted the draft alterations to the  
27            registrar.

- 28       (6) The registrar must give notice of the refusal to approve the rules to  
29            the person who submitted the rules to the registrar.



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**Division 2.4                      Registration of proposed  
cooperative**

**22      Application for registration of proposed cooperative**

(1) An application for registration of a proposed cooperative (other than an existing corporation) must—

(a) be signed by—

(i) for an association or federation—at least 2 directors; and

(ii) for any other organisation—at least 5 suitably qualified members (including 2 directors elected at the formation meeting); and

(b) be accompanied by—

(i) 2 copies of the proposed rules signed and certified by the people who acted as chairperson and secretary at the formation meeting; and

(ii) for a proposed trading cooperative—a copy of the disclosure statement presented to the formation meeting signed and certified by the people 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, in a particular case, the registrar may require.

*Note 1* A fee may be determined under s 467 (Determination of fees) for this subsection.

*Note 2* If a form is approved under s 468 (Approved forms) for an application, the form must be used.

(2) The application is to be lodged with the registrar within—

(a) 2 months after closure of the formation meeting for the proposed cooperative; or

- 1                      (b) if the registrar, in writing, allows a longer period—that longer  
2                      period.

3        **23      Registration of cooperative and its rules**

- 4        (1) The registrar must register a proposed cooperative as a cooperative,  
5        and register its rules, if—  
6                      (a) an application is made under this division for registration of the  
7                      proposed cooperative; and  
8                      (b) the registrar is satisfied it meets the requirements for  
9                      registration mentioned in subsection (2).  
10       (2) The requirements for registration of the proposed cooperative under  
11       this division are as follows:  
12                      (a) the proposed rules of the proposed cooperative are to be the  
13                      rules approved by the registrar under section 21;  
14                      (b) the requirements of this Act must have been complied with in  
15                      relation to the proposed cooperative and compliance must be  
16                      likely to continue;  
17                      (c) the proposed cooperative must be designed to function in  
18                      accordance with the cooperative principles or, if it is not  
19                      designed to function entirely in accordance with the  
20                      cooperative principles, the registrar must be satisfied that there  
21                      are special reasons why the cooperative should be registered  
22                      under this Act;  
23                      (d) there must be no reasonable cause for refusing registration of  
24                      the proposed cooperative.  
25       (3) If the registrar is not satisfied that the requirements for registration  
26       of the proposed cooperative as a cooperative have been met, the  
27       registrar must—  
28                      (a) refuse to register the proposed cooperative and its rules; and  
29                      (b) give to the applicant notice setting out the reasons for the  
30                      refusal.

1   **24   Incorporation and certificate of registration**

- 2       (1) The incorporation of the cooperative takes effect on the registration  
3           of the cooperative.
- 4       (2) On the registration of the cooperative, the registrar must issue a  
5           certificate of registration.

6   **Division 2.5                   Registration of existing**  
7                                   **corporation**

8   **25   Existing corporation can be registered**

- 9       A corporation (other than a cooperative taken to be registered under  
10       this Act) may apply to the registrar to be registered as a cooperative  
11       under this Act if the corporation is—
- 12       (a) incorporated or registered, or taken to be registered, under the  
13           Corporations Act; or
- 14       (b) incorporated or registered under any other law relating to the  
15           incorporation or registration of corporations.

16   **26   Formation meeting**

- 17       (1) Before applying for registration as a cooperative, the corporation  
18       must pass a special resolution in accordance with its articles of  
19       association or rules approving of—
- 20       (a) the proposed registration; and
- 21       (b) any alterations of its existing memorandum and articles of  
22           association or rules necessary to allow the corporation to  
23           comply with this Act.
- 24       (2) At the meeting to pass the special resolution—
- 25       (a) the proposed rules of the proposed cooperative approved under  
26           section 21, and including active membership provisions in  
27           accordance with part 6, must also be passed by special  
28           resolution; and

- 1                      (b) for a proposed trading cooperative—a disclosure statement  
2                                      approved under section 20 must be presented to the meeting.

3        **27      Application for registration**

4                      An application for registration must be accompanied by—

- 5                      (a) a written declaration signed by the directors or the committee  
6                                      of management of the corporation stating that at a meeting of  
7                                      the directors or committee they formed the opinion that the  
8                                      corporation will be able to pay its debts as they fall due; and  
9                      (b) a report about the affairs of the corporation that shows its  
10                                      assets and liabilities, made up to the latest practicable date  
11                                      before the application; and  
12                      (c) a copy of the memorandum and articles of association or rules  
13                                      of the corporation in force at the date of the application; and  
14                      (d) 2 copies of the proposed rules of the cooperative, as provided  
15                                      for by the special resolution; and  
16                      (e) for a proposed trading cooperative—a copy of the disclosure  
17                                      statement presented to the formation meeting held under  
18                                      section 26, signed and certified by the directors or committee  
19                                      of management of the corporation; and  
20                      (f) a list containing the name, address, occupation and place and  
21                                      date of birth of each director; and  
22                      (g) evidence to the satisfaction of the registrar of the incorporation  
23                                      of the corporation; and  
24                      (h) any other particulars that the registrar may require in a  
25                                      particular case.

26                      *Note 1*      A fee may be determined under s 467 (Determination of fees) for this  
27                                      subsection.

28                      *Note 2*      If a form is approved under s 468 (Approved forms) for an application  
29                                      or report, the form must be used.

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1   **28    Requirements for registration**

2       (1) If—

3           (a) an application is made for registration of a cooperative under  
4               this division; and

5           (b) the registrar is satisfied that the requirements for registration of  
6               the cooperative have been met;

7           the registrar must register the corporation as a cooperative, and  
8               register its rules, under this Act.

9       (2) The requirements for registration of a cooperative under this  
10       division are as follows:

11           (a) the proposed rules of the proposed cooperative must be the  
12               rules approved by the registrar under section 21;

13           (b) the requirements of this Act must have been complied with in  
14               relation to the proposed cooperative and compliance must be  
15               likely to continue;

16           (c) there must be no reasonable cause for refusing registration of  
17               the proposed cooperative.

18       (3) If the registrar is not satisfied that the requirements for registration  
19       of the cooperative have been met, the registrar must refuse to  
20       register the cooperative and its rules.

21       (4) If the registrar has decided under this section to register a  
22       corporation under this Act, the corporation must notify the authority  
23       responsible for registering the corporation under the law under  
24       which it was previously registered of that decision.

25       (5) Despite anything to the contrary in this division, the registration of a  
26       corporation as a cooperative does not take effect until the  
27       corporation ceases to be registered under the law under which it was  
28       previously registered as a corporation.

29       (6) The corporation must notify the registrar in writing within 7 days  
30       after ceasing to be registered under the other law.

1    **29      Certificate of registration etc on registration of**  
2           **corporation**

- 3        (1) On the registration of the corporation as a cooperative the registrar  
4           must—  
5           (a) issue a certificate of registration; and  
6           (b) prepare a written notice about the issue of the certificate.  
7        (2) A notice is a notifiable instrument.

8           *Note*      A notifiable instrument must be notified under the *Legislation Act 2001*.

9    **30      Name of corporation registered as cooperative**

10           The corporate name of a corporation registered as a cooperative is  
11           the name stated in the certificate of registration issued by the  
12           registrar.

13   **31      Effect of registration**

- 14        (1) The corporation is taken to be incorporated under this Act on its  
15           registration as a cooperative.  
16        (2) Except as expressly provided in this Act, the registration and  
17           incorporation of the corporation as a cooperative does not prejudice  
18           any right of a member in relation to any shares held at the time of  
19           registration and incorporation.  
20        (3) The change of registration and incorporation does not affect the  
21           identity of the corporation (and, in particular, the corporation is  
22           taken to be the same body after registration as it was before).

23   **Division 2.6                      Conversion of cooperative**

24   **32      Procedure for conversion**

- 25        (1) A cooperative may, by alteration of its rules, convert from—  
26           (a) a cooperative with share capital to a cooperative without share  
27           capital or vice versa; or

1 (b) a trading cooperative to a non-trading cooperative or vice  
2 versa.

3 (2) An alteration of the rules for the conversion of a cooperative must  
4 be approved by special resolution passed by a special postal ballot.

5 **Division 2.7 General**

6 **33 Stamp duty exemption for certain cooperatives**

7 (1) This section applies to a cooperative that—

8 (a) has as its primary activity the providing of any community  
9 service or benefit; and

10 (b) was, before it was incorporated under this Act, an  
11 unincorporated club, association or body operating to provide  
12 sporting or recreational facilities for its members and not  
13 carried on for the financial profit of its members.

14 (2) An instrument transferring to a cooperative to which this section  
15 applies any property that was, immediately before the cooperative  
16 was incorporated, held by or on behalf of the unincorporated club,  
17 association or body is not chargeable with stamp duty.

18 **34 Acceptance of money by proposed cooperative**

19 (1) A proposed cooperative or anyone on its behalf or otherwise that  
20 accepts any money for the proposed cooperative before the proposed  
21 cooperative is registered must hold the money on trust until the  
22 cooperative is registered.

23 Maximum penalty: 50 penalty units.

24 (2) If a cooperative is not registered within the period of 3 months after  
25 the acceptance of any money under subsection (1), the proposed  
26 cooperative or the person who accepted the money on its behalf  
27 must refund the money to the person who paid it.

28 Maximum penalty: 50 penalty units.

1    **35    Issue of duplicate certificate of registration**

2            If the registrar is satisfied that the original certificate of registration  
3            issued under section 24 (Incorporation and certificate of  
4            registration) or section 29 (Certificate of registration etc on  
5            registration of corporation), or a duplicate certificate issued under  
6            this section, for a cooperative is lost, stolen or destroyed, the  
7            registrar must issue a duplicate certificate.

8            *Note*        A fee may be determined under s 467 (Determination of fees) for this  
9            section.





- 1            (a) a reference to the *doing* of an act by a cooperative includes a  
2            reference to the making of an agreement by the cooperative  
3            and a reference to a transfer of property to or by the  
4            cooperative; and  
5            (b) a reference to *legal capacity* includes a reference to powers.

6            **39      Doctrine of ultra vires**

7            The objects of this division are—

- 8            (a) to provide that the doctrine of ultra vires does not apply to  
9            cooperatives; and  
10           (b) without affecting the validity of a cooperative's dealings with  
11           others, to ensure that the cooperative's officers and members  
12           give effect to the provisions of the cooperative's rules relating  
13           to the primary activities or powers of the cooperative.

14           **40      Legal capacity**

- 15           (1) A cooperative has, both within and outside the ACT, the legal  
16           capacity of an individual.  
17           (2) Without limiting subsection (1), a cooperative has, both within and  
18           outside the Territory, power—  
19           (a) to issue and allot fully or partly paid shares in the cooperative;  
20           and  
21           (b) to issue debentures of the cooperative; and  
22           (c) to distribute any of the property of the cooperative among the  
23           members, in kind or otherwise; and  
24           (d) to give security by charging uncalled capital; and  
25           (e) to grant a charge on property of the cooperative; and  
26           (f) to procure the cooperative to be registered or recognised as a  
27           corporation in any place outside the ACT; and

- 1 (g) to do any other act that it is authorised to do by any other law  
2 (including a law of a place outside the ACT).
- 3 (3) Subsections (1) and (2) apply in relation to a cooperative—
- 4 (a) subject to this Act, but despite section 41 (2); and
- 5 (b) if the cooperative's rules contain an express or implied  
6 restriction on, or an express or implied prohibition of, the  
7 exercise by the cooperative of any of its powers—despite that  
8 restriction or prohibition; and
- 9 (c) if the rules of the cooperative contain a provision stating the  
10 objects of the cooperative—despite that fact.
- 11 (4) The fact that the doing of an act by a cooperative would not be, or is  
12 not, in its best interests does not affect its legal capacity to do the  
13 act.

14 **41 Restrictions on cooperatives in rules**

- 15 (1) A cooperative's rules may contain an express restriction on, or an  
16 express prohibition of, the exercise by the cooperative of a power of  
17 the cooperative.
- 18 (2) A cooperative contravenes this section if—
- 19 (a) it exercises a power contrary to an express restriction in the  
20 cooperative's rules on, or an express prohibition in the  
21 cooperative's rules of, the exercise of the power; or
- 22 (b) the rules of the cooperative contain a provision stating the  
23 objects of the cooperative and the cooperative does an act  
24 otherwise than in pursuance of the objects.
- 25 (3) An officer of a cooperative who is involved in a contravention by  
26 the cooperative of this section also contravenes this section.
- 27 (4) Contravention of this section is not an offence.

1    **42    Results of contravention of restriction in rules**

- 2        (1) The exercise of a power or the doing of an act in contravention of  
3           section 41 is not invalid only because of the contravention.
- 4        (2) An act of an officer of a cooperative is not invalid only because, by  
5           doing the act, the officer contravenes section 41.
- 6        (3) The fact that the exercise of a power or the doing of an act  
7           contravenes or would contravene section 41 may be asserted or  
8           relied on only in—
- 9           (a) a prosecution of a person for an offence against this Act; or  
10          (b) an application for an order under division 4.5; or  
11          (c) an application for an injunction under section 456 to restrain  
12           the cooperative from entering into an agreement; or  
13          (d) a proceeding, other than an application for an injunction, by the  
14           cooperative, or by a member of the cooperative, against the  
15           present or former officers of the cooperative; or  
16          (e) an application by the registrar or by a member of the  
17           cooperative for the winding-up of the cooperative.
- 18        (4) If, apart from subsection (3), the Supreme Court would have power  
19           under section 456 to grant, on the application of a person, an  
20           injunction restraining a cooperative or an officer of a cooperative  
21           from engaging in particular conduct in contravention of section 41,  
22           the court may, on the application of that person, order the  
23           cooperative or the officer to pay damages to the person or anyone  
24           else.

25    **Division 3.3                      Dealings with cooperatives**

26    **43    When assumptions may be made**

- 27        (1) Subject to section 45, a person is entitled to make the assumptions  
28           mentioned in section 44 in relation to—
- 29           (a) dealings with a cooperative; and

1 (b) dealings with a person who has, or purports to have, directly or  
2 indirectly acquired title to property from a cooperative.

3 (2) If a person is entitled to assume a matter, the cooperative or anyone  
4 mentioned in subsection (1)(b) is not entitled to assert in a  
5 proceeding in relation to the dealings that the matter is incorrect.

6 **44 The assumptions**

7 (1) The assumptions that a person may make are as follows:

8 (a) that the cooperative's rules have been complied with;

9 (b) that anyone who appears, from information provided by the  
10 cooperative that is available to the public from the registrar, to  
11 be a director or officer of the cooperative—

12 (i) has been properly appointed; and

13 (ii) has authority to exercise the functions customarily  
14 exercised by a director or officer of a similar cooperative;

15 (c) that anyone who is held out by the cooperative to be an officer  
16 or agent of the cooperative—

17 (i) has been properly appointed; and

18 (ii) has authority to exercise the functions customarily  
19 exercised by that kind of officer or agent of a similar  
20 cooperative;

21 (d) that anyone who is, or may be assumed to be, an officer or  
22 agent of the cooperative who has authority to issue a document  
23 or a certified copy of a document on its behalf also has  
24 authority to warrant that the document is genuine or is a true  
25 copy;

26 (e) that a document has been properly executed by the cooperative  
27 if it is signed by 2 people, 1 of whom is, or may be assumed to  
28 be, a director of the cooperative, and the other a director or  
29 officer of the cooperative;

- 1            (f) that a document has been properly sealed by the cooperative if  
2            it bears what appears to be an impression of the cooperative's  
3            seal and the sealing of the document appears to be witnessed  
4            by 2 people, 1 of whom is, or may be assumed to be, a director  
5            of the cooperative, and the other a director or officer of the  
6            cooperative;  
7            (g) that the officers and agents of the cooperative properly exercise  
8            their duties to the cooperative.

9        **45    Person who knows or ought to know is not entitled to**  
10       **make assumptions**

11       A person is not entitled under section 43 to make an assumption if,  
12       at the material time—

- 13       (a) the person has actual knowledge that the assumption is not  
14       correct; or  
15       (b) the person's connection or relationship with the cooperative is  
16       such that the person ought to know that the assumption is not  
17       correct.

18       **46    Lodgment of documents not to constitute constructive**  
19       **knowledge**

- 20       (1) A person is not taken to have knowledge of a cooperative's rules,  
21       any of the contents of a cooperative's rules, a document, the  
22       contents of a document, or any particulars, only because of either or  
23       both of the following:  
24       (a) the rules, the document or the particulars have been lodged  
25       with the registrar;  
26       (b) the rules, the document or the particulars are mentioned in any  
27       other document that has been lodged with the registrar, or  
28       lodged with a person under a provision of a previous Act  
29       corresponding to a provision of this Act.

- 1 (2) Subsection (1) does not apply in relation to a document, or in  
2 relation to the contents of a document, that has been lodged under  
3 schedule 3 to the extent that the document relates to a charge that is  
4 registrable under that schedule or a previous Act mentioned in  
5 subsection (1) (b).
- 6 (3) Despite subsection (1), a member of a cooperative is taken to have  
7 knowledge of the rules of the cooperative.

8 **47 Effect of fraud**

- 9 (1) A person's entitlement under this division to make an assumption is  
10 not affected only by the fact that anyone—
- 11 (a) has acted or is acting fraudulently in relation to the dealing or  
12 acquisition or purported acquisition of title to property to  
13 which the assumption relates; or
- 14 (b) has forged a document to which the assumption relates that  
15 appears to have been sealed on behalf of a cooperative.
- 16 (2) A person is not entitled to make the assumption if the person has  
17 actual knowledge of such fraudulent action or forgery.

18 **Division 3.4 Authentication and execution of**  
19 **documents and confirmation of**  
20 **contracts**

21 **48 Common seal**

- 22 A document or proceeding requiring authentication by a cooperative  
23 may be authenticated under the common seal of the cooperative.

24 **49 Official seal**

- 25 (1) A cooperative may, if authorised by its rules, have, for use outside  
26 the ACT in place of its common seal, 1 or more official seals, each  
27 of which must be a facsimile of the common seal of the cooperative

1 with the addition on its face of the name of every place where it is to  
2 be used.

3 (2) The person attaching an official seal must, in writing signed by the  
4 person, certify on the instrument to which it is attached the date  
5 when and the place where it is attached.

6 (3) A document sealed with such an official seal is taken to be sealed  
7 with the common seal of the cooperative.

8 **50 Authentication need not be under seal**

9 A document or proceeding requiring authentication by a cooperative  
10 may be authenticated, whether or not under the seal of the  
11 cooperative, by the signature of 2 people—

12 (a) both of whom are directors of the cooperative; or

13 (b) 1 of whom is a director, and the other of whom is an officer, of  
14 the cooperative.

15 **51 Cooperative may authorise person to execute deed**

16 (1) A cooperative may, by instrument under its common seal, authorise  
17 a person, either generally or in relation to a particular matter, as its  
18 agent or attorney to execute deeds on its behalf.

19 (2) A deed signed by such an agent or attorney on behalf of the  
20 cooperative and under the seal of the agent or attorney, or under the  
21 appropriate official seal of the cooperative, binds the cooperative  
22 and has effect as if it were under the common seal of the  
23 cooperative.

24 (3) The authority of such an agent or attorney, as between the  
25 cooperative and a person dealing with the agent or attorney,  
26 continues during—

27 (a) if the instrument giving the authority specifies the period  
28 during which the authority continues—that period; or



- 1 (b) in any other case—until notice of the revocation or termination  
2 of the authority of the agent or attorney has been given to the  
3 person dealing with the agent or attorney.

4 **52 Execution under seal**

5 A contract or other document executed, or purporting to have been  
6 executed, under the seal of a cooperative is not invalid only because  
7 a person attesting the attaching of the seal was in any way, whether  
8 directly or indirectly, interested in that contract or other document or  
9 in the matter to which the contract or other document relates.

10 **53 Contractual formalities**

- 11 (1) So far as concerns the formalities of making, varying or discharging  
12 a contract, a person acting under the express or implied authority of  
13 a cooperative may make, vary or discharge a contract in the name  
14 of, or on behalf of, the cooperative as if that contract were made,  
15 varied or discharged by an individual.
- 16 (2) The making, varying or discharging of a contract in accordance with  
17 subsection (1) is effective in law and binds the cooperative and other  
18 parties to the contract.
- 19 (3) This section does not prevent a cooperative from making, varying or  
20 discharging a contract under its seal.

21 **54 Other requirements about consent or sanction not**  
22 **affected**

23 This division does not affect the operation of a law that requires  
24 some consent or sanction to be obtained, or some procedure to be  
25 complied with, in relation to the making, varying or discharging of a  
26 contract.

27 **55 Application of div 3.4**

28 This division does not apply in relation to the making, varying or  
29 discharging of a contract before the commencement of this section,

1                      but applies otherwise in relation to a cooperative whether it gives its  
2                      authority before, on or after that commencement.

3                      **Division 3.5                      Pre-registration contracts**

4                      **56                      Contracts before registration**

- 5                      (1) If a person enters into, or purports to enter into, a contract (the *pre-*  
6                      *registration contract*) on behalf of, or for the benefit of, a proposed  
7                      cooperative, the cooperative becomes bound by the contract and  
8                      entitled to its benefit if the cooperative, or a cooperative reasonably  
9                      identifiable with it, is registered and ratifies the contract—
- 10                      (a) within a reasonable period after the contract is entered into; or  
11                      (b) within any period agreed to by the parties to the contract.
- 12                      (2) The person is released from any liability under the pre-registration  
13                      contract if the cooperative enters into another contract in  
14                      substitution for it—
- 15                      (a) within a reasonable period after the pre-registration contract is  
16                      entered into; or  
17                      (b) within any period agreed to by the parties to the pre-  
18                      registration contract.
- 19                      (3) Subject to section 57 (3), the person is liable to pay damages to each  
20                      other party to the pre-registration contract if a cooperative is not  
21                      registered, or a cooperative is registered but does not ratify the  
22                      contract or enter into a substitute for it—
- 23                      (a) within a reasonable period after the contract is entered into; or  
24                      (b) if a period agreed to by the parties to the contract—within that  
25                      period.
- 26                      (4) The maximum amount of damages the person is liable to pay to a  
27                      party is the amount the cooperative would be liable to pay to the  
28                      party if the cooperative had been registered and had ratified the  
29                      contract and then completely failed to perform it.

- 
- 1       (5) If a proceeding is brought to recover damages under subsection (3)  
2       because the cooperative is registered but does not ratify the pre-  
3       registration contract or enter into a substitute for it, the court may do  
4       anything that it considers just in the circumstances, including  
5       ordering the cooperative—
- 6           (a) to pay all or part of the damages that the person is liable to pay;  
7           and
- 8           (b) to transfer property that the cooperative received because of  
9           the contract to a party to the contract; and
- 10          (c) to pay an amount to a party to the contract.
- 11       (6) If the cooperative ratifies the pre-registration contract but fails to  
12       perform all or part of it, the court may order the person to pay all or  
13       part of the damages that the cooperative is ordered to pay.
- 14       **57     Person may be released from liability but is not entitled to**  
15       **indemnity**
- 16       (1) Any of the parties to the pre-registration contract may release the  
17       person who entered into, or purported to enter into, the contract  
18       from any liability in relation to that contract.
- 19       (2) The release must be in writing.
- 20       (3) The party giving the release is not entitled to recover damages under  
21       section 56 from the person.
- 22       (4) Despite any rule of law or equity, the person does not have any right  
23       of indemnity against the cooperative in relation to the person's  
24       liability under this division.
- 25       (5) Subsection (4) applies even if the person was acting, or purporting  
26       to act, as trustee for the cooperative.
- 27       **58     Div 3.5 replaces other rights and liabilities**
- 28       This division replaces any rights or liabilities anyone would  
29       otherwise have in relation to the pre-registration contract.
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1

2                      **Part 4**                      **Membership**

3                      **Division 4.1**                      **General**

4                      **59**                      **Becoming a member**

- 5                      (1) On the registration of a cooperative, the people who signed the  
6                      application for registration become members of the cooperative.
- 7                      (2) Other people may be admitted as members of the cooperative as  
8                      provided by its rules.
- 9                      (3) A person under 18 years old may be admitted as a member of the  
10                      cooperative unless the rules of the cooperative otherwise provide.
- 11                      (4) A corporation is not disqualified, because of being a corporation,  
12                      from being a member of a cooperative unless the cooperative's rules  
13                      so provide.
- 14                      (5) If 2 or more cooperatives merge, the members of the merged  
15                      cooperative are—
- 16                      (a) the members of the merging cooperatives; and
- 17                      (b) other people admitted as members of the merged cooperative  
18                      in accordance with its rules.

19                      **60**                      **Members of associations**

- 20                      (1) The members of an association are—
- 21                      (a) the component cooperatives by which the association is  
22                      formed; and
- 23                      (b) any other cooperative admitted to membership in accordance  
24                      with the rules of the association; and
- 25                      (c) any other corporation or other body admitted to membership  
26                      under subsection (2).

- 1       (2) A corporation or other body (other than a cooperative) may be  
2       admitted to membership of the association as a component  
3       cooperative if—
- 4           (a) it is incorporated or registered under any other law, whether or  
5           not a Territory law; and
- 6           (b) in the opinion of the board of the association, it is designed to  
7           function in accordance with cooperative principles; and
- 8           (c) it is eligible to be admitted to membership in accordance with  
9           the rules of the association.

10   **61   Members of federations**

- 11       (1) The members of a federation of associations are—
- 12           (a) the associations by which the federation is formed; and
- 13           (b) any other associations admitted to membership in accordance  
14           with the rules of the federation; and
- 15           (c) any corporations admitted to membership under subsection (2).
- 16       (2) If the registrar certifies that there is no association to which a  
17       particular corporation could conveniently or appropriately be  
18       admitted to membership, the corporation may be admitted to  
19       membership of a federation.

20   **62   Qualification for membership**

- 21       (1) A person is qualified to be admitted to membership of a cooperative  
22       only if—
- 23           (a) there are reasonable grounds for believing that the person will  
24           be an active member of the cooperative; and
- 25           (b) the person is eligible under the rules of the cooperative.
- 26       (2) The rules of a cooperative must contain provisions that—
- 27           (a) impose a duty on everyone who becomes a member to be an  
28           active member; and

- 1                      (b) explain the consequences of failing to be or ceasing to be an  
2                      active member.

3        **63      Membership may be joint**

- 4                      Membership of a cooperative may be individual or, unless the rules  
5                      of the cooperative provide otherwise, may be joint.

6        **64      Members under 18 years old**

- 7                      (1) A member of a cooperative is not entitled to avoid any obligation or  
8                      liability as a member under any contract, deed or other document  
9                      entered into as a member on any ground relating to minority.  
10                     (2) A person under 18 years old may not hold an office in a cooperative.  
11                     (3) A member of a cooperative who is under 18 years old may not vote.  
12                     (4) This section applies only to individuals.

13       **65      Representatives of corporations**

- 14                    (1) If a corporation is a member of a cooperative, it may by notice  
15                    served on the cooperative appoint a person to represent it in relation  
16                    to its membership.  
17                    (2) The power to appoint a representative is subject to any restriction  
18                    imposed by the rules of the cooperative about the entitlement of a  
19                    person to represent a corporation.  
20                    (3) If the corporation is a company that is not a listed corporation, a  
21                    person is not qualified to be appointed the representative of the  
22                    company unless the person is an officer (within the meaning of the  
23                    Corporations Act), member or employee of the company.

24       **66      Notification of shareholders and shareholdings**

- 25                    On the request of the board, a corporation that is a member of the  
26                    cooperative must make available for inspection by the board—  
27                    (a) a list of the names of all the shareholders of the corporation  
28                    and the number of shares held by each shareholder; or

- 1 (b) for a corporation without share capital—a list of the members  
2 of the corporation.

3 Maximum penalty: 20 penalty units.

4 **67 Circumstances in which membership ceases—all**  
5 **cooperatives**

- 6 (1) A person ceases to be a member of a cooperative in each of the  
7 following circumstances:
- 8 (a) the person's membership is cancelled under part 6;
- 9 (b) the person is expelled or resigns in accordance with the rules of  
10 the cooperative;
- 11 (c) the person becomes bankrupt, or the person's property  
12 becomes subject to control under the law relating to  
13 bankruptcy, unless the rules of the cooperative provide to the  
14 contrary;
- 15 (d) the person dies;
- 16 (e) the contract of membership is rescinded on the ground of  
17 misrepresentation or mistake;
- 18 (f) for a corporation—the corporation is deregistered.
- 19 (2) On the death of a member, the member's estate remains liable as the  
20 member until the member's personal representative or someone else  
21 is registered in the member's place.

22 **68 Additional circumstances in which membership ceases—**  
23 **cooperatives with share capital**

24 If a cooperative has a share capital, a person also ceases to be a  
25 member in each of the following circumstances:

- 26 (a) the person's share is transferred to someone else in accordance  
27 with the rules of the cooperative, and the transferee is  
28 registered as holder in the person's place;

- 1            (b) the person's share is forfeited under this Act or the rules of the  
2               cooperative;
- 3            (c) the person's share is sold by the cooperative under a power  
4               given by the rules of the cooperative, and the purchaser is  
5               registered as holder in the person's place;
- 6            (d) the person's share is purchased by the cooperative under this  
7               Act;
- 8            (e) the amount paid up on the person's shares is repaid to the  
9               person in accordance with the rules of the cooperative.

10    **69    Carrying on business with too few members**

- 11       (1) If a cooperative continues to carry on business for more than 28  
12       days after the day the number of members is reduced below the  
13       minimum number of members allowed, every person who is a  
14       director of the cooperative while it so continues to carry on  
15       business, and who knows it is carrying on business with fewer than  
16       the minimum number of members allowed, commits an offence.
- 17       Maximum penalty: 20 penalty units.
- 18       (2) Each person who commits an offence against subsection (1) is also  
19       liable to satisfy all obligations of the cooperative incurred after the  
20       28 days mentioned in that subsection, and may be sued without any  
21       other member being joined in the action.
- 22       (3) The minimum number of members allowed is—
- 23            (a) for an association or federation—2; or
- 24            (b) for any other cooperative—5 or, if a lesser number is  
25               prescribed under the regulations, not fewer than that number.
- 26       (4) The registrar may, in writing, extend and further extend in a  
27       particular case the period of 28 days mentioned in subsection (1).



- 1 (5) An application for an extension must be made before the period to  
2 be extended ends.

3 *Note* If a form is approved under s 468 (Approved forms) for an application,  
4 the form must be used.

## 5 **Division 4.2 Rights and liabilities of members**

### 6 **70 Rights of membership not exercisable until registered**

7 A member of a cooperative is not entitled to exercise any rights of  
8 membership until—

- 9 (a) the member's name appears in the register of members; and  
10 (b) the member has made any payment to the cooperative in  
11 relation to membership or acquired any share or interest  
12 provided under the rules of the cooperative.

### 13 **71 Board to ensure name of member entered in register of** 14 **members**

15 The board of a cooperative must ensure that the name of a person  
16 admitted to membership is recorded in the register of members  
17 within 28 days after the person is admitted to membership.

18 Maximum penalty: 20 penalty units.

### 19 **72 Liability of members to cooperative**

- 20 (1) A member of a cooperative is not, as a member, under any personal  
21 liability to the cooperative, except as provided by this section.  
22 (2) A member of a cooperative with a share capital is liable to the  
23 cooperative for the amount (if any) unpaid on the shares held by the  
24 member together with any charges payable by the member to the  
25 cooperative as required by the rules of the cooperative.  
26 (3) A member of a cooperative without a share capital is liable to the  
27 cooperative for any charges payable by the member to the  
28 cooperative as required by the rules of the cooperative.

- 1    **73    Cooperative to provide information to person intending to**  
2       **become a member**
- 3       (1) The board of a cooperative must provide each person intending to  
4           become a member of the cooperative with—
- 5           (a) a consolidated copy of the rules of the cooperative; and  
6           (b) a copy of all special resolutions passed by the members of the  
7               cooperative that will apply to the person as a member, except  
8               special resolutions providing for an alteration of the rules of  
9               the cooperative; and  
10          (c) a copy of the last annual report (if any) of the cooperative.
- 11      (2) The board of a cooperative may comply with subsection (1) by—
- 12          (a) giving the person intending to become a member notice that  
13               the documents mentioned in that subsection may be inspected  
14               by the person at—
- 15              (i) the registered office of the cooperative; and  
16              (ii) at any other office of the cooperative (whether the office  
17                   is situated within the ACT, elsewhere in Australia or  
18                   outside Australia); and  
19          (b) making those documents available for inspection at the  
20               registered office and any offices to which paragraph (a) (ii)  
21               applies.
- 22    **74    Entry fees and regular subscriptions**
- 23      (1) The rules of a cooperative may—
- 24          (a) require the payment by members of entry fees and regular  
25               subscriptions; and  
26          (b) authorise the amount of entry fees and regular subscriptions,  
27               based on the business done by shareholders with the  
28               cooperative; and

- 1 (c) provide for the repayment of the fees and subscriptions on a  
2 person ceasing to be a member.
- 3 (2) The amount of a particular member's regular subscription may be  
4 worked out by reference to the amount of business the member does  
5 with the cooperative.
- 6 (3) A cooperative must give to any person intending to become a  
7 member notice of any entry fees or regular subscriptions payable by  
8 a member to the cooperative.
- 9 (4) A person who becomes a member of the cooperative is not liable to  
10 pay any entry fees or regular subscriptions except—
- 11 (a) fees or subscriptions of which the person was given notice  
12 before becoming a member; and
- 13 (b) any regular subscriptions that may be imposed by any  
14 subsequent alteration of the rules and of which the member has  
15 been given notice.

16 **75 Fines payable by members**

- 17 (1) A cooperative may impose a fine on a member for any infringement  
18 of the rules of the cooperative if the rules of the cooperative so  
19 provide.
- 20 (2) A fine imposed under subsection (1) must not exceed the maximum  
21 fine (if any) specified by the cooperatives rules.
- 22 (3) A fine may be imposed only if—
- 23 (a) notice of intention to impose a fine and the reason for it has  
24 been given to the member; and
- 25 (b) the member has been given a reasonable opportunity to appear  
26 before the board in person (with or without witnesses), or to  
27 send to the board a written statement, for the purpose of  
28 showing cause why the fine should not be imposed.

- 1        (4) The cooperative may set off the fine against any amount owing to  
2        the member in relation to any produce delivered by the member to  
3        the cooperative, but the fine may not be set off against any advance  
4        owing to the member from the cooperative in accordance with the  
5        rules against produce so delivered.

6        **76      Charge and set-off of cooperative**

- 7        (1) A cooperative has, in relation to any debt owing by a member or  
8        former member to the cooperative, a charge on each of the  
9        following:  
10        (a) the share or interest in the capital and the credit balance and  
11        deposits of the member or former member;  
12        (b) any rebate, bonus, dividend or interest payable to the member  
13        or former member;  
14        (c) any entry fees and regular subscriptions required to be repaid  
15        to a member when the member ceases to be a member.  
16        (2) The cooperative may set off any amount paid on account of that  
17        share or other thing, or any amount credited or payable to the  
18        member or former member, in or towards payment of the debt.  
19        (3) The charge created by this section may be enforced by the  
20        appropriation by the cooperative of the thing subject to the charge,  
21        but only after at least 7 days notice has been given to the member or  
22        former member.  
23        (4) Any share in relation to which capital has been so appropriated must  
24        be cancelled.

25        **77      Repayment of shares on expulsion**

- 26        (1) If a member is expelled from a cooperative in accordance with its  
27        rules, the cooperative must, within 1 year after the date of  
28        expulsion—

- 
- 1           (a) repay to the former member an amount (the *repayable*  
2           *amount*) equal to the amount paid up on the shares held by the  
3           former member at the date of expulsion, less any amount owed  
4           by the former member to the cooperative at that date under the  
5           rules of the cooperative or any contract or otherwise; or
- 6           (b) apply, in accordance with subsection (2), the repayable amount  
7           if—
- 8               (i) the board is of the opinion that repayment would  
9               adversely affect the financial position of the cooperative;  
10              or
- 11              (ii) the board and the former member so agree.
- 12       (2) The repayable amount may be applied in 1 of the following ways:
- 13           (a) the cooperative may appropriate the amount owing as a  
14           donation to the cooperative, but only if the former member  
15           consents in writing to the donation;
- 16           (b) if the cooperative is a deposit-taking cooperative—the  
17           cooperative may apply the amount as a deposit by the former  
18           member with the cooperative;
- 19           (c) the cooperative may allot or issue debentures of the  
20           cooperative to the former member in satisfaction of the  
21           amount.
- 22       (3) However, the deposit or debenture must be repaid at the time  
23       required under section 135 (2).
- 24       (4) Payment of any amount payable under this section must be made at  
25       the time decided by the board of the cooperative, but not later than 1  
26       year after the date of expulsion.
- 27       (5) Shares in relation to which capital has been repaid must be  
28       cancelled.

1        **Division 4.3                      Death of member**

2        **78        Meaning of *interest* in div 4.3**

3                In this division:

4                *interest*, in relation to a dead member of a cooperative, includes—

- 5                (a) the member's membership; and
- 6                (b) any credit balance owing to the member; and
- 7                (c) any loan from or to the member, or deposit by the member
- 8                      with the cooperative; and
- 9                (d) any surplus arising on the sale by the cooperative as mortgagee
- 10                      of any property mortgaged by the member to the cooperative.

11        **79        Transfer of share or interest on death of member**

12                Subject to section 170 (Transfer on death of member), on the death

13                of a member, the board must transfer the member's share or interest

14                in the cooperative to—

- 15                (a) the personal representative of the member; or
- 16                (b) to the person that the member's personal representative
- 17                      specifies in an application made to the cooperative within 3
- 18                      months after the death of the member.

19        **80        Transfer of small shareholdings and interests on death**

20                (1) If the total value of a dead member's shares or interest in a

21                cooperative is less than \$10 000 (or, if another amount is prescribed

22                under the regulations, that amount), the board may, on the basis of

23                such evidence as it considers sufficient, transfer the shares or

24                interest to—

- 25                (a) if the member died leaving a valid will—the person who
- 26                      appears to the board to be entitled to the shares or interest
- 27                      under the will of the member; or

1 (b) if the member died without leaving a valid will—anyone who  
2 appears to the board to be entitled to obtain a grant of  
3 administration of the estate of the member.

4 (2) A person to whom shares or an interest of a dead member is  
5 transferred under subsection (1) (b) holds the shares or interest on  
6 the trusts that the person would have held the shares or interest if the  
7 person had obtained a grant of administration of the estate of the  
8 member.

9 (3) A transfer must not be made under this section after evidence has  
10 been produced to the cooperative of the grant of letters of  
11 administration of the estate, or probate of the will, of the dead  
12 member.

13 (4) In this section:

14 *transfer*, of an interest, includes the payment of money.

#### 15 **81 Value of shares and interests**

16 The value of the shares or interest of a dead member must be  
17 decided for this division in accordance with the rules of the  
18 cooperative.

#### 19 **82 Cooperative protected**

20 Any transfer of property made by the board of a cooperative to a  
21 person in accordance with this division is effective against any  
22 demand made on the cooperative by anyone else.

### 23 **Division 4.4 Disputes involving members**

#### 24 **83 Grievance procedure**

25 (1) The rules of a cooperative must set out a grievance procedure for  
26 dealing with any dispute under the rules between—

27 (a) a member and another member; or

28 (b) a member and the cooperative.

- 1        (2) A member may appoint anyone to act on behalf of the member in  
2            the grievance procedure.
- 3        (3) The grievance procedure must require natural justice to be applied.
- 4        (4) In this section:
- 5            *member* includes anyone who was a member at any time during the  
6            6 months that ended when the dispute happened.

7        **84      Application to Supreme Court**

- 8        (1) The Supreme Court may, on the application of a cooperative or a  
9            member of a cooperative, make an order declaring and enforcing—
- 10            (a) the rights or liabilities of members of the cooperative between  
11                themselves; or
- 12            (b) the rights or liabilities of the cooperative and any member  
13                between themselves.
- 14        (2) An order may be made under this section whether or not a right of a  
15            proprietary nature is involved and whether or not the applicant has  
16            an interest in the property of the cooperative.
- 17        (3) The Supreme Court may refuse to make an order on the application  
18            or may make an order for costs against a party, whether successful  
19            or not, if it is of the opinion that—
- 20            (a) the issue raised in the application is trivial; or
- 21            (b) having regard to the importance of the issue, the nature of the  
22                cooperative, any other available method of resolving the issue,  
23                the costs involved, lapse of time, acquiescence or any other  
24                relevant circumstance, it was unreasonable to make the  
25                application; or
- 26            (c) the unreasonable or improper conduct of a party—
- 27                (i) has been responsible for the making of the application; or  
28                (ii) has added to the cost of the proceeding.



1 (4) In this section:

2 *member* includes anyone who was a member at any time during the  
3 6 months that ended when the dispute happened.

## 4 **Division 4.5 Oppressive conduct of affairs**

### 5 **85 References in div 4.5 to *member* of cooperative**

6 In this division, a reference to a *member* of a cooperative that has a  
7 share capital includes a reference to a person to whom a share in the  
8 cooperative has been transmitted by will or by operation of law.

### 9 **86 Application of div 4.5**

10 This division does not apply in relation to anything done under  
11 part 6 (Active membership).

### 12 **87 Who may apply for court order**

13 The following people may apply to the Supreme Court for an order  
14 under this division:

15 (a) the registrar;

16 (b) a member who believes that the affairs of the cooperative are  
17 being conducted in a way that is oppressive or unfairly  
18 prejudicial to, or unfairly discriminatory against, a member, or  
19 in a way that is contrary to the interests of the members as a  
20 whole;

21 (c) a member who believes that an act or omission, or a proposed  
22 act or omission, by or on behalf of the cooperative, or a  
23 resolution, or a proposed resolution, of a class of members,  
24 was or would be oppressive or unfairly prejudicial to, or  
25 unfairly discriminatory against, a member or was or would be  
26 contrary to the interests of the members as a whole.

- 1    **88    Orders that Supreme Court may make**
- 2        (1) On application under this division, the Supreme Court may make
- 3            any order it considers appropriate.
- 4        (2) The orders that may be made include (but are not limited to) the
- 5            following:
- 6            (a) an order that the registrar appoint an administrator of the
- 7                cooperative;
- 8            (b) an order that the cooperative be wound up;
- 9            (c) an order for regulating the conduct of affairs of the cooperative
- 10                in the future;
- 11            (d) an order for the repayment under this Act of the member's
- 12                shares;
- 13            (e) an order for the purchase of the shares of any member by the
- 14                cooperative and for the reduction accordingly of the
- 15                cooperative's capital;
- 16            (f) an order directing the cooperative to bring, continue, defend or
- 17                discontinue a proceeding, or authorising a member of the
- 18                cooperative to bring, continue, defend or discontinue a
- 19                proceeding in the name and on behalf of the cooperative;
- 20            (g) an order appointing a receiver or a receiver and manager of
- 21                property of the cooperative;
- 22            (h) an order restraining a person from engaging in conduct or
- 23                doing anything;
- 24            (i) an order directing a cooperative to take steps necessary for it to
- 25                become registered as a company under the Corporations Act;
- 26            (j) an order requiring a person to do anything;
- 27            (k) an order about costs.

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**89 Basis on which Supreme Court makes orders**

The Supreme Court may make an order under this division if it is of the opinion—

(a) that the affairs of a cooperative are being conducted in a way that is—

(i) oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member, whether or not in the capacity of a member; or

(ii) contrary to the interests of the members as a whole; or

(b) that an act or omission, or a proposed act or omission, by or on behalf of a cooperative, or a resolution, or a proposed resolution, of a class of members of a cooperative, was or would be—

(i) oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member, whether or not in the capacity of a member; or

(ii) contrary to the interests of the members as a whole.

**90 Winding-up need not be ordered if oppressed member would be prejudiced**

(1) The Supreme Court need not make an order under this division for the winding-up of a cooperative if it is of the opinion that the winding-up of the cooperative would unfairly prejudice an oppressed member.

(2) In this section:

*oppressed member* means a member mentioned in section 89 (a) (i) or (b) (i).

1    **91      Application of winding-up provisions**

2            If an order that a cooperative be wound up is made under this  
3            division, the provisions of this Act relating to the winding-up of  
4            cooperatives apply, with any necessary changes, as if the order had  
5            been made on an application filed in the Supreme Court by the  
6            cooperative.

7    **92      Changes to rules**

8            If an order under this division makes any alteration to the rules of a  
9            cooperative—

10           (a) the alteration has effect as if it had been made by special  
11           resolution of the cooperative; and

12           (b) the cooperative must not (despite any other provisions of this  
13           Act) without the leave of the Supreme Court make any further  
14           alteration to the rules inconsistent with the provisions of the  
15           order.

16   **93      Copy of order to be lodged with registrar**

17           An applicant for an order under this division must lodge an office  
18           copy of the order with the registrar within 14 days after it is made.

19           Maximum penalty: 10 penalty units.

20   **Division 4.6                      Proceedings on behalf of**  
21   **cooperatives**

22   **94      Bringing, or intervening in, proceedings on behalf of**  
23   **cooperative**

24           (1) A person may bring a proceeding on behalf of a cooperative, or  
25           intervene in a proceeding to which a cooperative is a party for the  
26           purpose of taking responsibility on behalf of the cooperative for the  
27           proceeding or a step in the proceeding (for example, compromising  
28           or settling them), if—

- 1 (a) the person is—  
2 (i) a member, former member, or person entitled to be  
3 registered as a member, of the cooperative or of a related  
4 corporation; or  
5 (ii) an officer or former officer of the cooperative; or  
6 (iii) the registrar; and  
7 (b) the person is acting with leave granted under section 95.  
8 (2) A proceeding brought on behalf of a cooperative may be brought in  
9 the cooperative's name.

10 **95 Applying for and granting leave to bring proceedings etc**

- 11 (1) For section 94 (1), a person mentioned in section 94 (1) (a) may  
12 apply to the Supreme Court for leave to bring, or to intervene in, a  
13 proceeding.  
14 (2) The Supreme Court may grant the leave if satisfied that—  
15 (a) the cooperative is unlikely to bring the proceeding, or properly  
16 take responsibility for the proceeding or the step in the  
17 proceeding; and  
18 (b) the applicant is acting honestly; and  
19 (c) it is in the best interests of the cooperative that the applicant be  
20 granted leave; and  
21 (d) if the applicant is applying for leave to bring the proceeding—  
22 there is a serious question to be tried; and  
23 (e) either—  
24 (i) at least 14 days before making the application, the  
25 applicant gave notice to the cooperative of the applicant's  
26 intention to apply for leave and of the reasons for  
27 applying; or  
28 (ii) it is otherwise appropriate to grant leave.

1    **96    Substitution of someone else for person granted leave**

- 2        (1) Any of the following people may apply to the Supreme Court for an  
3           order that they be substituted for a person to whom leave has been  
4           granted under section 95:
- 5           (a) a member, former member, or person entitled to be registered  
6               as a member, of the cooperative or a related corporation;
- 7           (b) an officer, or former officer, of the cooperative;
- 8           (c) the registrar.
- 9        (2) The application may be made whether or not the other person has  
10           already brought the proceeding or made the intervention.
- 11       (3) The Supreme Court may make the order if it is satisfied that—
- 12           (a) the applicant is acting honestly; and
- 13           (b) it is appropriate to make the order.
- 14       (4) An order substituting a person for another person has the effect  
15           that—
- 16           (a) the grant of leave is taken to have been made in favour of the  
17               substituted person; and
- 18           (b) if the other person has already brought the proceeding or  
19               intervened—the substituted person is taken to have brought the  
20               proceeding or to have made the intervention.

21   **97    Effect of ratification by members**

- 22       (1) A ratification or approval of conduct by members of a  
23           cooperative—
- 24           (a) does not prevent a person from bringing or intervening in a  
25               proceeding with leave under section 95 or from applying for  
26               leave under that section; and

1 (b) does not have the effect that a proceeding brought or  
2 intervened in with leave under section 95 must be decided in  
3 favour of the defendant or that an application for leave under  
4 that section must be refused.

5 (2) The Supreme Court may take into account a ratification or an  
6 approval of the conduct by members of a cooperative in deciding  
7 what order or judgment (including as to damages) to make in a  
8 proceeding brought or intervened in with leave under section 95 or  
9 in relation to an application for leave under that section.

10 (3) In taking a ratification or approval into account under subsection  
11 (2), the Supreme Court may have regard to—

12 (a) how well-informed about the conduct the members were when  
13 deciding whether to ratify or approve the conduct; and

14 (b) whether the members who ratified or approved the conduct  
15 were acting for proper purposes.

16 **98 Leave to discontinue proceedings brought with leave etc**

17 A proceeding brought, or intervened in, with leave under section 95  
18 may be discontinued, compromised or settled only with the leave of  
19 the Supreme Court.

20 **99 General powers of Supreme Court about proceedings**  
21 **brought etc with leave**

22 (1) The Supreme Court may make any orders, and give any directions,  
23 it considers just in relation to a proceeding brought or intervened in  
24 with leave under section 95, or in relation to an application under  
25 this division for leave, including—

26 (a) interim orders; and

27 (b) directions about the conduct of the proceeding (including  
28 requiring mediation); and

29 (c) an order directing the cooperative, or an officer of the  
30 cooperative, to do or not to do anything; and

- 1            (d) an order appointing an independent person to investigate, and  
2            report to the Supreme Court, on—  
3            (i) the financial affairs of the cooperative; or  
4            (ii) the facts or circumstances that gave rise to the cause of  
5            action the subject of the proceeding; or  
6            (iii) the costs incurred in the proceeding and the person  
7            granted leave.  
8            (2) A person appointed by the Supreme Court under subsection (1) (d)  
9            is entitled, on giving reasonable notice (whether oral or in writing)  
10           to the cooperative, to inspect and make copies of any books of the  
11           cooperative for any purpose connected with their appointment.
- 12    **100 Power of Supreme Court to make costs order for**  
13    **proceedings brought etc with leave**
- 14           The Supreme Court may, in relation to a proceeding brought or  
15           intervened in with leave under section 95 or an application for leave  
16           under that section, make any orders it considers just about the costs  
17           of the person who applied for or was granted leave, of the  
18           cooperative or of any other party to the proceeding or application  
19           (including an order requiring indemnification for costs).



## **Part 5 Rules**

### **101 Effect of rules**

- (1) The rules of a cooperative have the effect of a contract under seal—
  - (a) between the cooperative and each member; and
  - (b) between the cooperative and each director, the principal executive officer and the secretary of the cooperative; and
  - (c) between a member and each other member.
- (2) Under the contract, each of those people agrees to observe and perform the provisions of the rules as in force from time to time so far as the provisions apply to the person.

### **102 Content of rules—generally**

The rules of the cooperative must comply with the requirements mentioned in schedule 2, and prescribed under the regulations, that apply to that cooperative.

### **103 Other requirements about contents of rules etc**

- (1) The rules must be divided into paragraphs numbered consecutively.
- (2) The rules may state the objects of the cooperative.
- (3) The rules may incorporate any provision of the model rules approved under section 106.
- (4) The rules may provide for the imposition of a fine on a member for any infringement of the rules.
- (5) If the rules provide for the imposition of a fine, the rules must specify the maximum fine that may be imposed on a member.
- (6) The maximum fine provided under the rules must not exceed any amount prescribed under the regulations as the maximum fine.

- 1 (7) The rules may contain other provisions not inconsistent with this  
2 Act or another Territory law.

3 **104 Obtaining copy of rules**

- 4 (1) A member is entitled to obtain from a cooperative a copy of its rules  
5 on payment of the amount required by the rules of the cooperative  
6 or, if the rules do not require an amount, on payment of \$5.
- 7 (2) The amount required by the rules must not exceed the fee (if any)  
8 determined under section 467 (Determination of fees) for obtaining  
9 a copy of the rules from the registrar.
- 10 (3) A person is entitled to obtain a copy of the rules of a cooperative  
11 from the registrar.

12 *Note* A fee may be determined under s 467 (Determination of fees) for this  
13 subsection.

14 **105 False copies of rules**

- 15 (1) A person who gives to a member of a cooperative, or to a person  
16 intending or applying to become a member of a cooperative, a copy  
17 of any rules or alterations of rules, other than rules or alterations that  
18 have been properly registered, must not represent that they are  
19 binding on the members of the cooperative.

20 Maximum penalty: 10 penalty units.

- 21 (2) A person who alters any of the rules of a cooperative after they have  
22 been registered, and circulates them representing that they have  
23 been properly registered if they have not been, commits an offence.

24 Maximum penalty: 10 penalty units.

25 **106 Model rules**

- 26 (1) The registrar may, in writing, approve model rules for cooperatives.

27 *Note* Power given under an Act to make an instrument (including model  
28 rules) includes power to amend or repeal the instrument (see *Legislation*  
29 *Act 2001*, s 46 (1)).

1       (2) The model rules may make provision for anything for which the  
2       rules of a cooperative may make provision.

3       (3) If the model rules provide for a matter and the rules of a cooperative  
4       to which the model rules apply do not provide for the matter, the  
5       provision of the model rules relating to the matter is taken to be  
6       included in the rules of the cooperative.

7       (4) Model rules approved under this section are a notifiable instrument.

8       *Note 1*   A notifiable instrument must be notified under the *Legislation Act 2001*.

9       *Note 2*   An amendment or repeal of the model rules is also a notifiable  
10      instrument (see *Legislation Act 2001*, s 46 (2)).

11   **107 Rules may only be altered in accordance with Act**

12       The rules of a cooperative may only be altered in accordance with  
13       this Act.

14   **108 Proposed alteration must be approved by registrar**

15       A resolution altering the rules may be passed by a cooperative or the  
16       board of a cooperative only if the proposed alteration of the rules  
17       has been approved in writing by the registrar.

18   **109 Approval of proposed alteration by registrar**

19       (1) A draft of the proposed alteration of the rules of a cooperative must  
20       be given to the registrar at least 28 days (or, if the registrar allows a  
21       shorter period, that period) before—

22           (a) the notice of the proposed special resolution altering the rules  
23           is given to the members by the cooperative; or

24           (b) the resolution is passed by the board of the cooperative.

25       (2) The proposed alteration must—

26           (a) comply with sections 102 and 103; and

Section 110

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- 1 (b) be accompanied by a statement setting out the reasons for the  
2 alteration.

3 *Note* If a form is approved under s 468 (Approved forms) for a proposed  
4 alteration, the form must be used.

- 5 (3) The registrar may—

6 (a) approve the proposed alteration as submitted; or

7 (b) approve a different alteration to the proposed alteration as  
8 submitted; or

9 (c) refuse to approve the proposed alteration.

- 10 (4) If the registrar approves the proposed alteration, the registrar must  
11 give notice of the approval to the person who submitted the  
12 alteration to the registrar.

- 13 (5) If the registrar refuses to approve the proposed alteration, the  
14 registrar must give notice of the refusal to the person who submitted  
15 the alteration to the registrar.

16 **110 Alteration by special resolution**

17 An alteration of rules of a cooperative must be made by special  
18 resolution unless otherwise provided by this Act.

19 **111 Alteration by resolution of board**

- 20 (1) The rules of a cooperative may be altered by a resolution passed by  
21 the board if the alteration does no more than give effect to a  
22 requirement, restriction or prohibition made under this Act.

- 23 (2) If the rules of a cooperative are altered under this section, the  
24 cooperative must tell its members in writing about the alteration—

25 (a) as soon as practicable after the alteration takes effect; and

26 (b) not later than the day when notice is given to the members of  
27 the next annual general meeting of the cooperative after the  
28 alteration takes effect.

1   **112   Registration of alteration**

2       (1) An application for registration of an alteration must—

3           (a) be made within 28 days after the alteration is made or, if  
4               another period is prescribed under the regulations, that period;  
5               and

6           (b) be accompanied by a consolidated copy of the rules of the  
7               cooperative (including the alteration).

8       *Note*     If a form is approved under s 468 (Approved forms) for an application,  
9               the form must be used.

10       (2) The registrar must register the alteration unless the registrar refuses  
11           to register it under subsection (3).

12       (3) The registrar must refuse to register the alteration if—

13           (a) the registrar is satisfied that the alteration is contrary to this  
14               Act; or

15           (b) the registrar has other reasonable cause to refuse to register the  
16               alteration.

17       (4) The registrar must give notice of the decision to the person who  
18           applied for registration of the alteration.

19       (5) A certificate of registration of any alteration of the rules of a  
20           cooperative given by the registrar is, in favour of anyone advancing  
21           money to the cooperative on the faith of the certificate or in favour  
22           of any guarantor of that advance, conclusive evidence that the  
23           alteration was properly made.

24   **113   Alteration does not take effect unless registered**

25       An alteration of the rules of a cooperative does not take effect unless  
26       it is registered by the registrar.

## Part 6                      Active membership

### Division 6.1              Interpretation

#### 114    Meaning of *primary activity*

A *primary activity* of a cooperative is an activity that the rules of the cooperative provide is a primary activity of the cooperative.

#### 115    Who is an *active member*

For this Act, a member of a cooperative is an *active member* of the cooperative if the member—

- (a) uses or supports an activity of, or maintains a relationship or an arrangement with, the cooperative, in relation to the carrying on of a primary activity of the cooperative, in the way and to the extent that the rules of the cooperative provide is sufficient to establish active membership; or
- (b) maintains any other relationship or arrangement with the cooperative in relation to the carrying on of a primary activity of the cooperative that the regulations provide is sufficient to establish active membership.

#### 116    What are active membership provisions and resolutions

(1) The *active membership provisions* of the rules of a cooperative are the provisions of the rules that specify—

- (a) the activities of the cooperative that are its primary activities; and
- (b) how, and extent to what, a member of the cooperative is required to use or support an activity of, or maintain a relationship or an arrangement with, the cooperative, in relation to the carrying on of a primary activity of the cooperative, to establish active membership of the cooperative.

- 1       (2) An *active membership resolution* is a resolution that would, if given  
2       effect to, make or amend active membership provisions in the rules  
3       of a cooperative.

4       **Division 6.2                      Rules to contain active**  
5       **membership provisions**

6       **117    Number of primary activities required**

- 7       A cooperative must have at least 1 primary activity.

8       **118    Rules to contain active membership provisions**

- 9       The board of a cooperative must ensure that the rules of the  
10       cooperative contain active membership provisions in accordance  
11       with this part.

12       **119    Factors and considerations for deciding primary**  
13       **activities etc**

- 14       (1) The board of a cooperative must ensure that the relevant factors and  
15       considerations are taken into account in deciding—  
16       (a) which of the activities of a cooperative are its primary  
17       activities; and  
18       (b) how, and extent to which, a member is required to use or  
19       support an activity of, or maintain a relationship or an  
20       arrangement with, a cooperative, in relation to the carrying on  
21       of a primary activity of the cooperative, to establish active  
22       membership of the cooperative.  
23       (2) The relevant factors and considerations are—  
24       (a) the primary activity (or, if there are 2 or more primary  
25       activities, the primary activities taken together) must constitute  
26       the basic purpose for which the cooperative exists and make a  
27       significant contribution to the business of the cooperative; and

- 1 (b) the requirements decided under subsection (1) (b) must be  
2 reasonable, when considered in relation to the activities of the  
3 cooperative as a whole; and
- 4 (c) any other factors and considerations that are prescribed under  
5 the regulations.
- 6 (3) The regulations may—
- 7 (a) provide for the matters to be taken into account in deciding  
8 whether an activity makes (or activities make) a significant  
9 contribution to the business of the cooperative; and
- 10 (b) specify minimum percentages of turnover, minimum amounts  
11 of income or minimum amounts of business necessary to  
12 constitute that significant contribution.
- 13 (4) This section does not limit the right of active members, other than  
14 the board of the cooperative, to propose an active membership  
15 resolution.

16 **120 Active membership provisions—trading cooperatives**

17 The only active membership provisions that may be contained in the  
18 rules of a trading cooperative are—

- 19 (a) provisions specifying activities associated with the  
20 cooperative's primary activities that are available for members  
21 of the cooperative to use or support if they wish to establish  
22 active membership; and
- 23 (b) any other active membership provisions that the registrar may  
24 approve.

25 **121 Regular subscription—active membership of non-trading**  
26 **cooperative**

- 27 (1) Active membership provisions for a non-trading cooperative may  
28 include provision that the payment of a regular subscription by a  
29 member of the cooperative, to be applied in relation to a primary



1 activity of the cooperative, is sufficient to establish active  
2 membership of the cooperative.

3 (2) A member of a cooperative who would, on payment of such a  
4 subscription, be an active member of a cooperative is taken to be an  
5 active member until the subscription is owing.

## 6 **Division 6.3 Active membership resolutions**

### 7 **122 Notice of meeting**

8 (1) At least 21 days notice must be given to members of a cooperative  
9 of a meeting at which an active membership resolution is to be  
10 proposed.

11 (2) The notice must, in addition to the other matters required to be  
12 specified—

13 (a) specify whether the member is eligible to vote on the  
14 resolution; and

15 (b) specify the full text of the proposed resolution; and

16 (c) contain a copy of section 126 (Cancellation of membership of  
17 inactive members).

18 (3) If the notice to a member states that the member is not eligible to  
19 vote on a resolution, the member may, after endeavouring to settle  
20 the matter with the cooperative, apply to the registrar for a decision  
21 about the member's eligibility.

22 (4) The registrar may decide the matter, on the information available to  
23 the registrar, by written direction to the cooperative and the  
24 member.

25 (5) The registrar's decision about eligibility has effect but only if given  
26 before the meeting is proposed to be held.

1    **123    Eligibility to vote on active membership resolution**

2            The only members of a cooperative who are eligible to vote on an  
3            active membership resolution if the rules do not contain active  
4            membership provisions are the members who would be active  
5            members if the resolution had already taken effect.

6    **124    Eligibility of directors to vote on proposal at board**  
7            **meeting**

8            If the board is meeting to consider a proposal to submit an active  
9            membership resolution to a meeting of the cooperative—

10           (a) subject to paragraph (b), a director is only eligible to vote on  
11           that proposal if the director would be eligible to vote on the  
12           resolution at the meeting of the cooperative; or

13           (b) if fewer than 2 directors (whether or not they are present at the  
14           meeting of the board) would be eligible to vote on the  
15           resolution at the meeting of the cooperative—all the directors  
16           are eligible to vote on that proposal at the meeting of the board.

17   **125    Other rights etc of members not affected by div 6.3**

18           A provision of this division that renders a member of a cooperative  
19           ineligible to vote on a resolution does not affect any other right,  
20           entitlement, liability or duty of the member as a member.

21   **Division 6.4                      Cancellation of membership of**  
22     **inactive members**

23   **126    Cancellation of membership of inactive members**

24           (1) The board of a cooperative must declare the membership of a  
25           member cancelled if—

26           (a) the whereabouts of the member are not presently known to the  
27           cooperative and have not been known to the cooperative for at  
28           least the required period before that time; or

- 1 (b) the member is not presently an active member of the  
2 cooperative and has not been an active member of the  
3 cooperative at any time during the required period immediately  
4 before that time.
- 5 (2) This section applies to a member only if the member was a member  
6 of the cooperative throughout the required period.
- 7 (3) The question whether a member was an active member at a  
8 particular time in the past is to be decided as if the active  
9 membership provisions concerned had been in force at that time.
- 10 (4) The board's declaration under this section in relation to a member  
11 has the effect of cancelling the membership of the member.
- 12 (5) A person may apply to the Supreme Court for an order under  
13 section 132 in relation to the cancellation of the person's  
14 membership under this section.
- 15 (6) In this section:
- 16 *required period*, for a cooperative, means—
- 17 (a) 3 years; or
- 18 (b) if a shorter period is provided in the rules of the cooperative—  
19 that shorter period.

20 **127 Share to be forfeited if membership cancelled**

- 21 (1) If a cooperative has a share capital, the board of the cooperative  
22 must declare the shares of a member to be forfeited at the same time  
23 as the member's membership is cancelled under section 126.
- 24 (2) The board's declaration has the effect of forfeiting the shares.
- 25 (3) Nothing in this section affects the operation of section 133  
26 (Repayment of amounts owing in relation to cancelled membership).

1 **128 Failure to cancel membership—offence by director**

2 If the board of a cooperative fails to cancel the membership of a  
3 member as required by this part, a director of the cooperative who  
4 did not use all due diligence to prevent that failure commits an  
5 offence.

6 Maximum penalty: 20 penalty units.

7 **129 Deferral of forfeiture by board**

8 (1) The board of a cooperative may, by resolution, defer cancellation of  
9 a member's membership for up to 1 year—

10 (a) if the board has reasonable grounds to believe that a member  
11 has ceased to be an active member because of unusual  
12 circumstances that prevent the member fulfilling the member's  
13 active membership obligations; or

14 (b) if—

15 (i) the board considers that during that period an active  
16 membership resolution may be put to the members of the  
17 cooperative; and

18 (ii) the effect of the resolution would be relevant to the  
19 question whether the member is an active member.

20 (2) The board of the cooperative must review the resolution to defer  
21 before the end of the deferral period to decide if a further resolution  
22 should be made under subsection (1).

23 **130 Cancellation of membership prohibited in certain**  
24 **circumstances**

25 Unless the regulations otherwise provide, the board of a cooperative  
26 must not declare the membership of a member to be cancelled under  
27 this part—

28 (a) if the cooperative is insolvent; or

- 
- 1 (b) if the cooperative is under administration under the  
2 Corporations Act, part 5.3A (Administration of a company's  
3 affairs with a view to executing a deed of company  
4 arrangement) as applied by this Act; or
- 5 (c) if a compromise or an arrangement is being administered in  
6 relation to the cooperative; or
- 7 (d) if the cooperative is in the course of being wound up; or
- 8 (e) if an appointment of a receiver (whether or not a receiver and  
9 manager) of any property of the cooperative is in force; or
- 10 (f) if the cooperative has, for the purposes of being registered as a  
11 company under the Corporations Act, filed with the registrar a  
12 copy of the entry made in the minute book of the cooperative  
13 under section 199; or
- 14 (g) in any other circumstances prescribed under the regulations.

15 **131 Notice of intention to cancel membership**

- 16 (1) The board of a cooperative must ensure that not less than 28 days  
17 notice of its intention to declare the membership of a member to be  
18 cancelled is given to the member.
- 19 (2) Notice is not required to be given under this section if—
- 20 (a) the member's whereabouts are unknown to the cooperative;  
21 and
- 22 (b) the amount required to be repaid to the member in relation to  
23 the cancelled membership (whether because of the cancellation  
24 of shares or otherwise) does not exceed \$50.

25 **132 Supreme Court order against cancellation of membership**

- 26 (1) If the Supreme Court is satisfied that the cancellation of a member's  
27 membership under section 126 was or would be unreasonable, the  
28 court may order that the membership should not have been  
29 cancelled or should not be cancelled.

- 1 (2) While an order is in force under this section—
- 2 (a) if the membership was cancelled—the person whose
- 3 membership was cancelled must be reinstated as a member of
- 4 the cooperative with all the rights and entitlements (including
- 5 any shareholding) attaching to or arising from the former
- 6 membership; and
- 7 (b) if the membership is proposed to be cancelled—the
- 8 membership must not be cancelled and any shareholding of the
- 9 member must not to be forfeited.
- 10 (3) Subsection (2) applies subject to any directions of the Supreme
- 11 Court.
- 12 **133 Repayment of amounts owing in relation to cancelled**
- 13 **membership**
- 14 (1) If the membership of a member of a cooperative is cancelled under
- 15 this part, the cooperative must, within 1 year after the date of
- 16 cancellation—
- 17 (a) repay to the former member the amount owing to the member
- 18 in relation to the cancellation; or
- 19 (b) apply the amount in accordance with subsection (2) if—
- 20 (i) the board is of the opinion that repayment would
- 21 adversely affect the financial position of the cooperative;
- 22 or
- 23 (ii) the board and the former member so agree.
- 24 (2) The amount owing may be applied as follows:
- 25 (a) if the cooperative is a deposit-taking cooperative—the
- 26 cooperative may apply the amount as a deposit by the former
- 27 member with the cooperative (subject to the requirements of
- 28 section 134 about interest on the deposit);

- 1 (b) the cooperative may allot or issue debentures of the  
2 cooperative to the former member in satisfaction of the  
3 amount;
- 4 (c) the cooperative may appropriate the amount owing as a  
5 donation to the cooperative, but only if the former member  
6 consents in writing to the donation.
- 7 (3) The amount owing to a former member in relation to the  
8 cancellation of membership includes any amount paid up in relation  
9 to shares forfeited because of the cancellation of membership.
- 10 (4) If the former member is subsequently readmitted to membership,  
11 any amount held by the cooperative under this section must, if the  
12 member asks, be applied towards the cost of admission to  
13 membership (including any subscription for share capital).

14 **134 Interest on deposits and debentures**

- 15 (1) This section applies if the amount owing to a former member under  
16 section 77 (Repayment of shares on expulsion) or section 133 is  
17 applied as a deposit with the cooperative or the cooperative allots or  
18 issues debentures to the former member in satisfaction of the  
19 amount.
- 20 (2) The deposit or debenture bears interest during any period—
- 21 (a) for a cooperative with share capital—
- 22 (i) at the rate (or, if there is more than 1 rate, at the higher or  
23 highest rate) of dividend payable in relation to that period  
24 on the share capital of the cooperative; or
- 25 (ii) if the rate of dividend payable in relation to that period  
26 has not been decided—at the rate (or the higher or  
27 highest rate) payable in relation to the immediately  
28 preceding period for which a rate has been decided; or
- 29 (iii) if a rate of dividend has never been decided in relation to  
30 the share capital of the cooperative—at the rate that the  
31 board of the cooperative considers reasonable; or

- 1 (b) for a cooperative without share capital—at the rate that the  
2 board of the cooperative considers reasonable; or
- 3 (c) if the rules provide for a rate to be payable that is higher than  
4 the rate applying under paragraph (a) or (b)—at the higher rate.
- 5 (3) A former member may agree to the rate of interest being less than  
6 that which would otherwise be payable under this section and may  
7 agree to no interest being paid.
- 8 (4) The following provision of the Corporations Act (as applied by  
9 section 264 (Application of Corporations Act—issue of debentures))  
10 do not apply to an allotment or issue of debentures under this  
11 section:
- 12 • chapter 2L (Debentures)  
13 • chapter 6D (Fundraising).

14 **135 Repayment of deposits and debentures**

- 15 (1) If an amount is owing to a former member under this division or  
16 section 77 in relation to a deposit or debenture, the amount must be  
17 repaid to the former member as soon as repayment would not, in the  
18 opinion of the board, adversely affect the financial position of the  
19 cooperative.
- 20 (2) The deposit or debenture must, in any case, be repaid within 10  
21 years (or within any shorter period that the rules of the cooperative  
22 may require) after cancellation of the member's membership.

23 **136 Register of cancelled memberships**

- 24 (1) A cooperative must keep a register of people whose membership has  
25 been cancelled under this division.
- 26 (2) The register must contain the particulars prescribed under the  
27 regulations.



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1 **Division 6.5**                      **Entitlements of former members of**  
2    **trading cooperatives**

3 **137**    **Application of div 6.5**

4                      This division only applies to trading cooperatives.

5 **138**    **Former shareholders taken to be shareholders for certain**  
6                      **purposes**

7              (1) Even though a person's shares in a cooperative have been forfeited  
8                      under this part, the person is taken to be the holder of shares in the  
9                      cooperative (the same in all respects as the shares that were  
10                     forfeited) for the following purposes:

11                    (a) the entitlements of a shareholder in relation to the purchase of  
12                      shares in the cooperative in accordance with an offer  
13                      mentioned in section 290 (1) (a), (b) or (c) or the purchase of  
14                      all the shares in the cooperative, if the offer or purchase  
15                      happens within 5 years after the person's shares were forfeited;

16                    (b) the entitlement of a shareholder when the cooperative becomes  
17                      registered as a company if the relevant special resolution under  
18                      section 308 is passed within 5 years after the person's shares  
19                      were forfeited;

20                    (c) the entitlement of a shareholder to a distribution of surplus in a  
21                      winding-up of the cooperative that begins within 5 years after  
22                      the person's shares were forfeited.

23              (2) Subsection (1) (a) does not apply in relation to—

24                    (a) an offer mentioned in section 290 (1) (a) or (c) that is made by  
25                      another cooperative; or

26                    (b) the purchase of all the shares in the cooperative by another  
27                      cooperative.

28              (3) Subsection (1) (c) does not apply if the winding-up is for a merger  
29                      under division 12.1.

1        (4) To remove any doubt, the entitlement under subsection (1) (a) of a  
2            person whose shares have been forfeited does not include an  
3            entitlement to vote on anything.

4        (5) This section does not apply to a forfeited shareholding in a  
5            cooperative if the forfeited shareholding is taken under section 139  
6            to be a forfeited shareholding in another cooperative.

7        **139 Entitlements of former shareholders on mergers etc**

8        (1) This section applies if a person's shares in a cooperative (the  
9            *original cooperative*) are forfeited under this part and within 5 years  
10           after the forfeiture—

11           (a) the original cooperative becomes a subsidiary of another  
12           cooperative (the *new cooperative*); or

13           (b) another cooperative (the *new cooperative*) is created because  
14           of a merger under division 12.1 involving the original  
15           cooperative; or

16           (c) the engagements of the original cooperative are transferred to  
17           another cooperative (the *new cooperative*) under division 12.1.

18        (2) The person is, for the operation of section 138 (and the further  
19           operation of this section), taken to have held shares in the new  
20           cooperative and as having had the shares in the new cooperative  
21           forfeited under this part when the person's shares in the original  
22           cooperative were forfeited.

23        (3) The extent of the forfeited shareholding in the new cooperative is to  
24           be decided as follows:

25           (a) if the entitlement of active members of the original cooperative  
26           is solely an entitlement to be allotted shares in the new  
27           cooperative—the forfeited shareholding in the new cooperative  
28           is the shareholding to which the person would have been  
29           entitled had the person's shares in the original cooperative not  
30           been forfeited;

- 1 (b) in any other case—the forfeited shareholding in the new  
2 cooperative is the shareholding that is the same in all respects  
3 as the forfeited shareholding in the original cooperative.
- 4 (4) A decision under subsection (3) (a) of the person’s shareholding in  
5 the new cooperative must be made—
- 6 (a) solely on the basis of the person’s shareholding in the original  
7 cooperative when the shares were forfeited or (in a further  
8 operation of this section in relation to the person) when the  
9 person was first taken to have a forfeited shareholding in the  
10 original cooperative; and
- 11 (b) without regard to any additional shareholding in the original  
12 cooperative to which the person would have become entitled  
13 had the shares not been forfeited (whether because of any  
14 bonus share issue or otherwise).

15 **140 Set off of amounts repaid etc on forfeited shares**

- 16 (1) If a person has an entitlement because of section 139, the  
17 entitlement operates to extinguish any liability of the cooperative—
- 18 (a) to repay to the person under section 133 (Repayment of  
19 amounts owing in relation to cancelled membership) any  
20 amount in relation to the person’s forfeited shares in the  
21 cooperative; or
- 22 (b) in relation to a deposit held by the cooperative, or debentures  
23 allotted or issued to the person, under section 133 in relation to  
24 the person’s forfeited shares in the cooperative (except a  
25 liability to pay any interest owing).
- 26 (2) If an amount has been repaid to a person under section 133 or 135  
27 (Repayment of deposits and debentures), the amount repaid is to be  
28 set off against any entitlement of the person under section 138 in  
29 relation to the forfeited shares.

- 1 (3) If the amount repaid cannot be set off against the entitlement  
2 because the entitlement is not, or is only partly, an entitlement to  
3 money, the entitlement is lost unless the person pays to the  
4 cooperative the amount repaid to the person and does so within the  
5 period required under subsection (4).
- 6 (4) If the circumstances mentioned in subsection (3) arise, the  
7 cooperative must—
- 8 (a) give notice of the matter by prepaid post to the person at the  
9 person's address last-known to the cooperative, stating a period  
10 of not less than 28 days after the notice is given during which  
11 any amount repaid must be paid to the cooperative; and
- 12 (b) publish a general notice to that effect in a newspaper  
13 circulating generally in the district where the registered office  
14 of the cooperative is located.

15 **141 Entitlement to distribution from reserves**

16 A person whose membership of a cooperative has been cancelled  
17 under this part is taken to still be a member for any distribution from  
18 reserves of the cooperative that takes place within 5 years after the  
19 person's membership was cancelled.

20 **142 Registrar may give exemptions for div 6.5**

21 The registrar may, in writing, exempt a cooperative from this  
22 division or a provision of this division.



- 1        (2) The disclosure statement must be given before the person becomes  
2        bound to acquire the shares.
- 3        (3) The disclosure statement is in addition to any information required  
4        to be provided to the person under part 4 (Membership).
- 5        (4) A disclosure statement is current until the first happening, after it is  
6        prepared, of 1 of the following:
- 7            (a) a change in the rights or liabilities attaching to any class of  
8            shares in the cooperative;
- 9            (b) a significant change in the financial position or prospects of the  
10          cooperative;
- 11          (c) any of the next financial records, financial statements or  
12          auditor's reports required to be prepared under section 240  
13          becomes available.
- 14        (5) If a disclosure statement stops being a current disclosure statement  
15        because of the happening of a change mentioned in  
16        subsection (4) (a) or (b), the cooperative must, within 14 days after  
17        the change—
- 18            (a) give the registrar written notice that the disclosure statement is  
19            no longer current because of a change mentioned in subsection  
20            (4) (a) or (b); or
- 21            (b) file with the registrar a current disclosure statement that  
22            complies with this Act.
- 23        (6) For subsection (1) (b), the following particulars are required:
- 24            (a) a statement of the rights and liabilities attaching to shares in  
25            the cooperative;
- 26            (b) if there has been a significant change in the financial position  
27            or prospects of the cooperative since the date of the last annual  
28            report—any information about the financial position and  
29            prospects of the cooperative;
- 30            (c) any other information that the registrar orders.

1 **145 Last annual report to be sent with disclosure statement**

2 A disclosure statement given to a person under section 144 (1) must  
3 have with it a copy of the last annual report of the cooperative,  
4 unless a copy of the report—

5 (a) has already been given to the person under this Act; or

6 (b) has been made available for inspection by notice to the person  
7 given under section 73 (2) (Cooperative to provide information  
8 to person intending to become member).

9 **146 Registrar may give exemptions for div 7.2**

10 (1) The registrar may, in writing, exempt the board of a trading  
11 cooperative from this division or a provision of this division.

12 (2) The registrar may give the exemption only if the registrar is satisfied  
13 that compliance would be inappropriate in the circumstances or  
14 would impose an unreasonable burden.

15 **Division 7.3 Issue of shares in cooperative**

16 **147 Issue of shares generally**

17 (1) The share capital of a cooperative varies in amount according to the  
18 nominal value of shares from time to time subscribed.

19 (2) Shares must be of a fixed amount that is specified in the rules of the  
20 cooperative.

21 (3) A cooperative may have more than 1 class of shares provided the  
22 shareholding and the rights of shareholders comply with the  
23 cooperative principles.

24 (4) Subject to this part and part 4 (Membership), shares must not be  
25 issued to a nonmember.

1    **148    Minimum paid-up amount**

- 2        (1) A share may be allotted only if at least 10% of the nominal value of  
3            the share has been paid.
- 4        (2) Any balance unpaid in relation to shares at the time of allotment  
5            must be paid in a way provided under the cooperative's rules or this  
6            Act.
- 7        (3) This section does not apply to a bonus share issued under  
8            section 153 or 274.

9    **149    Shares not to be issued at discount**

10            A cooperative must not issue shares at a discount.

11   **150    Issue of shares at premium**

- 12        (1) A trading cooperative may issue shares at a premium.
- 13        (2) A premium may be in the form of cash or other valuable  
14            consideration.
- 15        (3) If a trading cooperative issues shares for which it receives a  
16            premium, an amount equal to the aggregate amount or value of the  
17            premiums on the shares must be transferred to a share premium  
18            account.
- 19        (4) The share premium account is taken to be paid-up share capital of  
20            the trading cooperative and may be applied in any 1 or more of the  
21            following ways:
- 22            (a) in paying up unissued shares to be issued to members of the  
23                cooperative as fully-paid bonus shares;
- 24            (b) in paying up in whole or part the balance unpaid on shares  
25                previously issued to members of the cooperative;
- 26            (c) in the payment of dividends, if those dividends are satisfied by  
27                the issue of shares to members of the cooperative;
- 28            (d) in writing off the preliminary expenses of the cooperative;



- 1 (e) in providing for the premium payable on redemption of shares  
2 or debentures.

3 **151 Joint ownership of shares**

- 4 A share may be held by 2 or more people jointly unless the rules of  
5 the cooperative provide otherwise.

6 **152 Members may be required to take up additional shares**

- 7 (1) If authorised by the rules of the cooperative, the board of a trading  
8 cooperative may require a member to take up or subscribe for  
9 additional shares in accordance with a proposal approved by a  
10 special resolution of the cooperative.
- 11 (2) The board of a trading cooperative may deduct amounts, in payment  
12 for additional shares from amounts owing to members in relation to  
13 dealings with the cooperative, in accordance with a proposal  
14 approved by a special resolution of the cooperative.
- 15 (3) Any proposal to require a member to take up or subscribe for  
16 additional shares must—
- 17 (a) be accompanied by a disclosure statement, approved in writing  
18 by the registrar, that explains the purpose for which the funds  
19 raised by the issue of the additional shares are to be used; and
- 20 (b) clearly show the total number of additional shares to be issued  
21 and the basis on which the shares are to be apportioned  
22 amongst members; and
- 23 (c) be accompanied by a statement telling the member that the  
24 member may tell the board, by notice given to the board on or  
25 before the date stated in the statement, that the member resigns  
26 on the passing of the special resolution.
- 27 (4) The date stated in the statement must be a date before the passing of  
28 the special resolution.

- 1        (5) Any proposal to deduct amounts in payment for additional shares  
2        from amounts owing to members in relation to their dealings with  
3        the trading cooperative must clearly show—  
4        (a) the basis on which the deductions are to be made; and  
5        (b) the time and manner of making the deductions.  
6        (6) A proposal approved under this section is binding on—  
7        (a) every member of the trading cooperative on the date of the  
8        passing of the special resolution, other than a member who has  
9        given a notice of resignation in accordance with  
10       subsection(3) (c); and  
11       (b) everyone who becomes a member of the trading cooperative  
12       after that date and before the total number of shares to be  
13       issued in accordance with the proposal has been issued.  
14       (7) Section 20 (except subsections (2), (4) and (9)) applies to the  
15       approval of a disclosure statement under this section with any  
16       necessary changes and, in particular, as if a reference in the section  
17       to a formation meeting were a reference to the special resolution.  
18       (8) In this section:  
19       *share* does not include a bonus share if it is issued, or proposed to  
20       be issued, under a rule of the cooperative authorised by  
21       section 274 (1).

22       **153 Bonus share issues**

- 23       (1) The rules of a trading cooperative may authorise the issue of bonus  
24       shares to members of the cooperative if assets of the cooperative—  
25       (a) have been sold at a profit; or  
26       (b) have been revalued at a greater value than that disclosed before  
27       to the revaluation in the books of the cooperative.  
28       (2) This section does not—  
29       (a) apply if the assets were acquired for resale at a profit; or

- 1 (b) affect the operation of section 274 (Distribution of surplus or  
2 reserves to members).

3 **154 Restrictions on bonus shares**

4 Bonus shares under section 153 may be issued in accordance with  
5 the rules of the cooperative subject to the following restrictions:

- 6 (a) each issue must have been approved by a special resolution of  
7 the cooperative;  
8 (b) they are to be issued as fully paid-up shares with no payment  
9 required to be made by a member of the cooperative to whom  
10 they are issued;  
11 (c) they are to be issued only in relation to shares of the same class  
12 of shares that are fully paid up as at the date of issue of the  
13 bonus shares;  
14 (d) the total nominal value of bonus shares issued by a cooperative  
15 during any 1 year period must not exceed 20% (or, if another  
16 percentage is prescribed under the regulations, that percentage)  
17 of the nominal value of the issued share capital of the  
18 cooperative immediately before the date of issue of the bonus  
19 shares.

20 **155 Notice in relation to bonus shares**

21 Notice of the meeting or postal ballot at which a resolution is to be  
22 proposed as a special resolution for the purpose of approving a  
23 bonus share issue must be accompanied by—

- 24 (a) a statement of the value of the assets concerned as disclosed in  
25 the books of the cooperative before the sale or revaluation; and  
26 (b) if the issue arises from, or partly from, a sale of assets—a  
27 statement of the price for which the assets were sold; and  
28 (c) if the issue arises from, or partly from, a revaluation of  
29 assets—a certificate of value of the assets that is provided for a

- 1                      valuation made not more than 1 year before the date of the  
2                      notice by a person prescribed under the regulations; and
- 3                      (d) particulars of acquisitions of shares in the cooperative made  
4                      during the 3 years immediately before the date of the notice by  
5                      or on behalf of each of its directors and his or her spouse and  
6                      the father, mother, children, brothers and sisters of each such  
7                      director and spouse; and
- 8                      (e) a certificate signed by 2 directors of the cooperative stating that  
9                      to the best of their knowledge and belief the issue of bonus  
10                     shares would not be imprudent and that no circumstances are  
11                     known to them as to why the issue should not take place.

12                     **Division 7.4                      Beneficial and non-beneficial**  
13                     **interests in shares**

14                     **156    Notice of non-beneficial ownership at time of transfer**

- 15                     (1) If it may reasonably be expected (having regard to all relevant  
16                     circumstances) that on registration of a transfer of shares the  
17                     transferee will hold some or all of the shares non-beneficially, the  
18                     instrument of transfer must include a non-beneficial ownership  
19                     notice.
- 20                     (2) A non-beneficial ownership notice is a notice that—
- 21                     (a) contains a statement to the effect that, on registration of the  
22                     transfer, the transferee will hold particular shares non-  
23                     beneficially; and
- 24                     (b) sets out particulars of the shares; and
- 25                     (c) is signed by or on behalf of the transferee.
- 26                     (3) A transferee must ensure that this section is complied with if an  
27                     instrument of transfer of shares is lodged by or on behalf of the  
28                     transferee with the cooperative for registration of the transfer.
- 29                     Maximum penalty: 10 penalty units.

- 1 (4) An offence against this section does not affect the validity of the  
2 registration of a transfer of shares.

3 **157 Notice of non-beneficial ownership not notified at time of**  
4 **transfer**

- 5 (1) If on the registration of an instrument of transfer of shares the  
6 transferee holds non-beneficially any of the shares transferred,  
7 notice of that fact must be given to the cooperative.
- 8 (2) The notice must—
- 9 (a) set out the name and address of the transferee; and
- 10 (b) contain a statement to the effect that, as from registration of the  
11 transfer, the transferee holds the shares non-beneficially; and
- 12 (c) set out particulars of the shares; and
- 13 (d) be signed by or on behalf of the transferee.
- 14 (3) The notice must be given within 14 days after the registration of the  
15 transfer (even if before the end of that 14 days the transferee begins  
16 to hold any of the relevant shares beneficially).
- 17 (4) The transferee of the shares must ensure that this section is complied  
18 with.
- 19 Maximum penalty: 10 penalty units.
- 20 (5) This section does not apply in relation to any shares for which  
21 particulars were set out in a non-beneficial ownership notice under  
22 section 156 included in the instrument of transfer.

23 **158 Registration as beneficial owner of shares notified as**  
24 **non-beneficially transferred**

- 25 (1) If an instrument of transfer of shares lodged with a cooperative  
26 includes a non-beneficial ownership notice under section 156 in  
27 relation to particular shares but on registration of the transfer the  
28 transferee holds some or all of those shares beneficially, notice of  
29 that fact must be given to the cooperative.

- 1        (2) The notice must—  
2            (a) set out the name and address of the transferee; and  
3            (b) contain a statement to the effect that, as from registration of the  
4                transfer, the transferee holds the relevant shares beneficially;  
5                and  
6            (c) set out particulars of the shares held beneficially; and  
7            (d) be signed by or on behalf of the transferee.  
8        (3) The notice must be given within 14 days after the registration of the  
9            transfer (even if before the end of that 14 days the transferee begins  
10           to hold any of the relevant shares non-beneficially).  
11        (4) The transferee of the shares must ensure that this section is complied  
12           with.  
13           Maximum penalty (subsection (4)): 10 penalty units.

14       **159 Notification of change in nature of shareholding**

- 15        (1) A person must notify the cooperative in accordance with this section  
16           of the change in the person's shareholding in the cooperative if the  
17           person—  
18            (a) begins to hold any shares beneficially that the person currently  
19                holds non-beneficially; or  
20            (b) begins to hold any shares non-beneficially that the person  
21                currently holds beneficially.  
22           Maximum penalty: 10 penalty units.  
23        (2) The notice must—  
24            (a) set out the name and address of the person; and  
25            (b) contain a statement to the effect that, as from the time of the  
26                change, the person holds the shares beneficially or non-  
27                beneficially (as appropriate); and

- 1 (c) specify the time of the change and set out particulars of the  
2 shares affected; and  
3 (d) be signed by or on behalf of the person.  
4 (3) The notice must be given within 14 days after the change (even if  
5 before the end of that 14 days another such change affecting any of  
6 the shares happens).

7 **160 Presumption of awareness**

- 8 (1) For this division, a person is, unless the contrary is established,  
9 presumed to have been aware at a particular time of a circumstance  
10 of which an employee or agent of the person was aware at that time.  
11 (2) Subsection (1) only applies if the employee or agent has duties or  
12 acts in relation to the transfer to, or ownership by, the person of  
13 shares in the cooperative concerned.

14 **161 Presumption that shares held non-beneficially**

- 15 (1) A person who holds particular shares is taken to hold the shares  
16 non-beneficially if the person—  
17 (a) holds the shares in a capacity other than that of sole beneficial  
18 owner; or  
19 (b) without limiting paragraph (a), holds the shares as trustee for,  
20 as nominee for, or otherwise on behalf of or on account of,  
21 someone else.  
22 (2) A person who holds particular shares is taken to hold the shares  
23 beneficially at a particular time unless the person holds the shares  
24 non-beneficially at that time.

25 **162 Noting of beneficial and non-beneficial interests in**  
26 **register of members**

- 27 (1) The register of members kept by a cooperative must contain a  
28 statement of the shares that each member holds beneficially and of  
29 the shares that each member holds non-beneficially.

1        (2) In deciding, for an entry in the register, whether a member of a  
2           cooperative holds shares beneficially or non-beneficially, regard is  
3           to be had only to the following information:

4           (a) information contained in a non-beneficial ownership notice  
5                under section 157 included in an instrument of transfer  
6                registered by the cooperative;

7           (b) information contained in a notice given to the cooperative  
8                under any other provision of this division.

9        **163 Registration as trustee etc on death of owner of shares**

10       (1) A trustee, executor or administrator of the estate of a dead person  
11           who was the registered holder of a share in a cooperative may be  
12           registered as the holder of that share as trustee, executor or  
13           administrator of the estate.

14       (2) A trustee, executor or administrator of the estate of a dead person  
15           who was entitled in equity to a share in a cooperative may, with the  
16           consent of the cooperative and of the registered holder of the share,  
17           be registered as the holder of the share as trustee, executor or  
18           administrator of that estate.

19       **164 Registration as administrator of estate on incapacity of**  
20           **shareholder**

21       (1) This section applies to a person (the *appointed person*) who is  
22           appointed under a guardianship law to administer the estate of  
23           someone (the *incapable person*).

24       (2) If the incapable person is the registered holder of a share in a  
25           cooperative, the appointed person may be registered as the holder of  
26           that share as administrator of the estate of the incapable person.

27       (3) If the incapable person is entitled in equity to a share in a  
28           cooperative, the appointed person may, with the consent of the  
29           cooperative and of the registered holder of that share, be registered  
30           as the holder of the share as administrator of the estate of the  
31           incapable person.



1 (4) In this section:

2 *guardianship law* means a law of a State or Territory relating to the  
3 administration of the estates of people who, through mental or  
4 physical infirmity, cannot manage their affairs.

5 **165 Registration as official trustee in bankruptcy**

6 (1) This section applies if a share in a cooperative that is the property of  
7 a bankrupt vests under the *Bankruptcy Act 1966* (Cwlth) in the  
8 Official Trustee in Bankruptcy (the *official trustee*).

9 (2) If the bankrupt is the registered holder of the share, the official  
10 trustee may be registered as the holder of that share as the Official  
11 Trustee in Bankruptcy.

12 (3) If the bankrupt is entitled in equity to the share, the official trustee  
13 may, with the consent of the cooperative and of the registered holder  
14 of the share, be registered as the holder of that share as the Official  
15 Trustee in Bankruptcy.

16 **166 Liabilities of person registered as trustee or administrator**

17 (1) A person registered under section 163, 164 or 165 is, while so  
18 registered, subject to the same liabilities in relation to the share as  
19 those to which the person would have been subject if the share had  
20 remained, or had been, registered in the name of the dead person,  
21 the incapable person or the bankrupt.

22 (2) The person registered is subject to no other liabilities in relation to  
23 the share.

24 **167 Notice of trusts in register of members**

25 Shares held by a trustee in relation to a particular trust may, with the  
26 consent of the cooperative, be marked in the register of members in  
27 such a way as to identify the shares as being held in relation to the  
28 trust.

1    **168    No notice of trust except as provided in div 7.4**

2            Except as provided in this division—

- 3            (a) no notice of a trust, whether express, implied or constructive, is  
4                      to be entered on a register or be receivable by the registrar; and  
5            (b) no liabilities are affected by anything done under this division;  
6                      and  
7            (c) nothing done under this division affects a cooperative with  
8                      notice of a trust.

9    **Division 7.5                      Sale or transfer of shares**

10   **169    Sale or transfer of shares**

- 11        (1) A share in a cooperative may be sold or transferred only—  
12            (a) in accordance with division 4.3 and section 170, on the death  
13                      of a member; or  
14            (b) to a person appointed to administer the estate of a shareholder  
15                      under a law of a State or Territory relating to the  
16                      administration of the estates of people who, through mental or  
17                      physical infirmity, cannot manage their affairs; or  
18            (c) with the consent of the board, to any person if there are  
19                      reasonable grounds for believing that the person will be an  
20                      active member of the cooperative.  
21        (2) A share in a cooperative may be sold or transferred only in  
22            accordance with the rules of the cooperative.

23   **170    Transfer on death of member**

- 24        (1) On the death of a member, the member's share in the cooperative  
25            may be transferred to a person other than an administrator or  
26            executor only with the consent of the board of the cooperative.

- 1 (2) The board may only give its consent under subsection (1) if there  
2 are reasonable grounds for believing that the person will be an  
3 active member of the cooperative.

4 **171 Restriction on total shareholding**

5 The board of a cooperative must not consent under section 169 or  
6 170 to the sale or transfer of a share if, because of the sale or  
7 transfer, the nominal value of the shares held by the purchaser or  
8 transferee would exceed—

- 9 (a) 20% of the nominal value of the share capital of the  
10 cooperative; or  
11 (b) if a lower percentage is provided under the rules of the  
12 cooperative—the lower percentage of the nominal value of the  
13 share capital of the cooperative.

14 **172 Transfer not effective until registered**

15 A transferor of a share remains the holder of the share until the  
16 transfer is registered and the name of the transferee is entered in the  
17 register of members in relation to the share.

18 **Division 7.6 Repurchase of shares**

19 **173 Purchase and repayment of shares**

- 20 (1) The rules of a cooperative may authorise the cooperative to—  
21 (a) buy any share of a member in the cooperative at the request of  
22 the member; and  
23 (b) repay to a member, with the member's consent, all or any part  
24 of the amount paid up on any share held by the member if the  
25 amount repaid is not required for the activities of the  
26 cooperative.  
27 (2) The amount paid by a cooperative under this section in buying  
28 shares or repaying any amount paid up on shares, or both, in any  
29 financial year of the cooperative must not exceed the total of—

- 1                      (a) 5% of the nominal value of the issued share capital of the  
2                              cooperative immediately before the beginning of the financial  
3                              year; and
- 4                      (b) the amount of any additional share capital of the cooperative  
5                              subscribed for during the financial year.
- 6                      (3) The members of a cooperative may by special resolution exempt a  
7                              cooperative from the operation of subsection (2) in relation to a  
8                              particular financial year, either unconditionally or subject to  
9                              conditions.
- 10                      (4) The amount paid for a share when it is repurchased may be an  
11                              amount decided by the board that is less than the nominal value of  
12                              the share but only—
- 13                              (a) if the books of the cooperative disclose that the amount paid is  
14                                      the net shareholder's equity per share in the undertaking of the  
15                                      cooperative; or
- 16                              (b) in accordance with the rules of the cooperative.
- 17                      (5) This section does not apply if the member has resigned or has been  
18                              expelled from the cooperative or the member's membership has  
19                              been otherwise cancelled.
- 20                      (6) A cooperative must not repurchase shares, or repay amounts paid up  
21                              on shares, if—
- 22                              (a) the cooperative would be likely to become insolvent because of  
23                                      the repurchase or repayment; or
- 24                              (b) the cooperative is insolvent.
- 25                      **174    Deposit or debentures instead of payment when share**  
26                              **repurchased**
- 27                      (1) If a cooperative repurchases a share of a member, the cooperative  
28                              may instead of paying the purchase price to the member—
- 29                              (a) for a deposit-taking cooperative—apply the amount as an  
30                                      interest-bearing deposit by the member with the cooperative; or

- 
- 1 (b) allot or issue debentures of the cooperative to the member in  
2 satisfaction of the amount.
- 3 (2) Subsection (1) applies only—
- 4 (a) if the board is of the opinion that payment of the repurchase  
5 price would adversely affect the financial position of the  
6 cooperative; or
- 7 (b) if the board and the member agree.
- 8 (3) The deposit or debenture bears interest during any period—
- 9 (a) for a cooperative with share capital—
- 10 (i) at the rate (or, if there is more than 1 rate, at the higher or  
11 highest rate) of dividend payable in relation to the period  
12 on the share capital of the cooperative; or
- 13 (ii) if the rate of dividend payable in relation to the period  
14 has not been decided—at the rate (or the higher or  
15 highest rate) payable in relation to the immediately  
16 preceding period for which a rate has been decided; or
- 17 (iii) if a rate of dividend has never been decided in relation to  
18 the share capital of the cooperative—at the rate that the  
19 board of the cooperative considers reasonable; or
- 20 (b) for a cooperative without share capital—at the rate that the  
21 board of the cooperative considers reasonable; or
- 22 (c) if the rules provide for a rate to be payable that is higher than  
23 the rate applying under paragraph (a) or (b)—at the higher rate.
- 24 (4) The deposit or debenture must be repaid to the member as soon as  
25 repayment would not, in the opinion of the board, adversely affect  
26 the financial position of the cooperative.
- 27 (5) The deposit or debenture must in any case be repaid within 10 years  
28 (or, if the rules of the cooperative provided for a shorter period, the  
29 shorter period) after the repurchase of the shares.

1    **175    Cancellation of shares**

2            A cooperative must cancel any share purchased by or forfeited to the  
3            cooperative in accordance with this Act or the rules of the  
4            cooperative.

23 (1) If the rules so provide, voting may be by proxy at a general meeting.  
24 (2) The instrument of proxy may specify how a proxy is to vote in  
25 relation to a particular resolution.

- 1        (3) The proxy must vote in the way authorised by an instrument of  
2           proxy mentioned in subsection (2).
- 3        (4) A person may act as a proxy only if the person—  
4           (a) is an active member of the cooperative; or  
5           (b) for an association or a federation—is entitled to represent a  
6           component cooperative or association of the association or  
7           federation on the association or federation.
- 8        (5) A person must not act as proxy for more than 10 people (or, if the  
9           rules of the cooperative provide for a lesser number, that number of  
10          people) on any single occasion.
- 11       (6) Subsection (5) does not apply if the proxy acts under an instrument  
12          of proxy mentioned in subsection (2).

13       **179    Restriction on voting entitlement under power of attorney**

14           A person is not entitled to exercise, under a power of attorney, the  
15           power of a member of the cooperative to vote if the person has that  
16           power in relation to another member of the cooperative under  
17           another power of attorney.

18       **180    Restriction on voting by representatives of corporations**

19           A person is not entitled to exercise, as the representative of a  
20           corporation, the power of a corporation member of the cooperative  
21           to vote if the person has that power as the representative of another  
22           corporation member of the cooperative.

23       **181    Inactive members not entitled to vote**

24           A member is not entitled to vote if the member is not an active  
25           member of the cooperative.



1 **182 Control of right to vote**

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

4 Maximum penalty: 50 penalty units, imprisonment for 6 months or  
5 both.

6 (2) If a person controls the exercise of the right to vote of a member at a  
7 meeting of a cooperative the following votes are invalid:

8 (a) the vote of the member;

9 (b) the vote of the person, if the person is a member.

10 (3) This section does not prevent the exercise of a vote by proxy or  
11 power of attorney.

12 **183 Effect of disposal of shares on voting rights**

13 A member of a cooperative cannot vote if the member has sold or  
14 transferred, or disposed of the beneficial interest in, the member's  
15 shares, or has agreed to do so.

16 **184 Effect of relevant share and voting interests on voting**  
17 **rights**

18 (1) A member of a cooperative is not entitled to vote if someone else  
19 (whether or not a member of the cooperative) has a relevant interest  
20 in any share held by the member or in the right to vote of the  
21 member.

22 (2) A member who is not entitled to vote because of this section may  
23 apply to the registrar to review the matter.

24 (3) The registrar may order that the member is entitled to vote if the  
25 registrar is satisfied in the circumstances of the case that loss of the  
26 right to vote would be unjust or unreasonable.

- 1    **185   Rights of representatives to vote**
- 2            A person appointed as provided by this Act to represent a member
- 3            of a cooperative, association or federation—
- 4            (a) is entitled to receive notice of all meetings in the same way as
- 5            the member represented; and
- 6            (b) is entitled to exercise the same rights to vote as the member
- 7            represented; and
- 8            (c) is eligible to be elected to the board if the member represented
- 9            holds the qualifications required for holding office as a director
- 10           (other than any relating to age).

- 11   **186   Other rights etc of members not affected by ineligibility to**
- 12   **vote**
- 13            A provision of this Act that disentitles a member of a cooperative to
- 14            vote (either generally or in relation to a particular matter) does not
- 15            affect any other right, entitlement, obligation or duty of the member
- 16            as a member.

- 17   **187   Vote of disentitled member to be disregarded**
- 18            Any vote cast by or on behalf of a member of a cooperative who is
- 19            not entitled to vote must be disregarded.

20   **Division 8.2                      Resolutions**

- 21   **188   Decisions generally to be by ordinary resolution**
- 22            Except as otherwise provided under this Act or the rules of the
- 23            cooperative, every question for decision by a cooperative must be
- 24            decided by ordinary resolution.

- 25   **189   Ordinary resolutions**
- 26            An ordinary resolution is a resolution of a cooperative passed by a
- 27            simple majority at a general meeting of the cooperative or in a
- 28            postal ballot of members.

1 **190 Special resolutions**

- 2 (1) A special resolution is a resolution of a cooperative passed—
- 3 (a) by a  $\frac{2}{3}$  majority at a general meeting of members; or
- 4 (b) by a  $\frac{2}{3}$  majority in a postal ballot (other than a special postal
- 5 ballot) of members; or
- 6 (c) by a  $\frac{3}{4}$  majority in a special postal ballot of members.
- 7 (2) A special resolution may be passed by a postal ballot only if—
- 8 (a) the rules of the cooperative allow the resolution to be passed by a
- 9 postal ballot; or
- 10 (b) this Act requires the resolution to be passed by postal ballot
- 11 (including a special postal ballot).
- 12 (3) A resolution is not taken to have been passed as a special resolution
- 13 unless not less than 21 days notice has been given to the members of
- 14 the cooperative specifying—
- 15 (a) the intention to propose the special resolution; and
- 16 (b) the reasons for the making of the special resolution; and
- 17 (c) the effect of the special resolution being passed.
- 18 (4) A cooperative must give at least 28 days notice to the registrar of a
- 19 proposed special resolution before giving notice to the members of
- 20 the proposed special resolution.
- 21 Maximum penalty: 20 penalty units.
- 22 (5) A failure to give notice to the registrar under subsection (4) does not
- 23 affect the validity of the resolution.

24 **191 Working out majority**

- 25 (1) A resolution is passed by a particular majority at a meeting if that
- 26 majority of the members of the cooperative who, being entitled to
- 27 do so, vote in person or (if proxies are allowed) by proxy at the
- 28 meeting vote in favour of the resolution.

- 1        (2) A resolution is passed by a particular majority in a postal ballot if  
2            that majority of the members of the cooperative who, being entitled  
3            to do so, cast formal votes in the postal ballot vote in favour of the  
4            resolution.

5        **192    Disallowance by registrar**

- 6            The registrar may, by notice to the cooperative, disallow a proposed  
7            special resolution before it is passed if the registrar is of the opinion  
8            that the effect of the special resolution if passed would be in  
9            contravention of this Act or any other law.

10       **193    Declaration of passing of special resolution**

- 11        (1) At a meeting of a cooperative, a declaration by the chairperson of  
12            the meeting that a resolution has been passed as a special resolution  
13            is conclusive evidence of the fact.  
14        (2) A declaration by the returning officer for a postal ballot for a special  
15            resolution that the resolution has been passed as a special resolution  
16            is conclusive evidence of that fact.  
17        (3) Subsection (1) does not apply if a poll is taken at the meeting of the  
18            cooperative.

19       **194    Effect of special resolution**

- 20        (1) A special resolution takes effect on the day it is passed.  
21        (2) However, a special resolution does not take effect until it is  
22            registered if it relates to any of the following matters:  
23            (a) the removal of an auditor;  
24            (b) the expulsion of a member;  
25            (c) any matter for which a special resolution is required to be  
26            passed by special postal ballot.

1 **195 Lodgment of special resolution**

2 (1) A cooperative must lodge 2 copies of each special resolution passed  
3 by the cooperative with the registrar in accordance with this section  
4 for registration.

5 (2) The copies must—

6 (a) be lodged within 28 days after the passing of a special  
7 resolution or, if the registrar allows a further period, the further  
8 period; and

9 (b) be signed by a director and the secretary of the cooperative.

10 *Note* A fee may be determined under s 467 (Determination of fees) for this  
11 subsection.

12 (3) A cooperative that, and any officer of the cooperative who,  
13 knowingly fails to lodge the required copies in accordance with this  
14 section commits an offence.

15 Maximum penalty: 20 penalty units.

16 (4) This section and section 196 do not apply to a special resolution  
17 altering the rules of a cooperative.

18 **196 Decision of registrar on application to register special**  
19 **resolution**

20 (1) If the registrar is satisfied that the cooperative has complied with  
21 this Act in relation to a resolution, and that the resolution is not  
22 contrary to this Act, the registrar must register the resolution.

23 (2) If the registrar is of the opinion that the effect of a special resolution  
24 lodged for registration would be in contravention of this Act or any  
25 other law, the registrar may—

26 (a) refuse to register the special resolution; and

27 (b) give notice to the cooperative that the special resolution—

28 (i) for a special resolution mentioned in section 194 (2) (a),  
29 (b) or (c)—has no effect; and

1                      (ii) for any other special resolution—has no effect as from  
2                      the date that it was passed.

3            (3) A certificate of registration of a special resolution given by the  
4            registrar is, in favour of any person advancing money to the  
5            cooperative on the faith of the certificate or in favour of any  
6            guarantor of that advance, conclusive evidence that the resolution  
7            was properly passed.

## 8            **Division 8.3                      Resolution by circulated document**

### 9            **197      Application of div 8.3**

10            (1) This division applies to a resolution of a cooperative (including a  
11            resolution appointing an officer or auditor or approving, or agreeing  
12            to, anything) if—

13                      (a) the cooperative has fewer than 50 members; and

14                      (b) the resolution is required or permitted under this Act or the  
15                      rules of the cooperative to be passed at a general meeting of the  
16                      cooperative.

17            (2) However, this division does not apply to a resolution if—

18                      (a) more than 14 days notice of the resolution is required under  
19                      this Act to be given; or

20                      (b) the resolution is required to be passed by a majority other than  
21                      a simple majority.

### 22            **198      Resolution by circulation of document**

23            (1) If all the members of a cooperative have signed a document that sets  
24            out the terms of the resolution and contains a statement that they are  
25            in favour of the resolution, the resolution is taken to have been  
26            passed at a general meeting of the cooperative.

27            (2) The document need not exist as a single document, but may exist in  
28            the form of 2 or more documents in identical terms.

- 1       (3) The document is taken to constitute a minute of the general meeting.
- 2       (4) Anything attached to the document and signed by the members  
3       signing the document is taken to have been laid before the  
4       cooperative at the general meeting.
- 5       (5) The document is taken to have been signed by all the members  
6       when the last member signs the document.
- 7       (6) The meeting mentioned in subsection (1) is taken to have been held  
8       on the day, and at the time, when the last member to sign the  
9       document does so.
- 10      (7) This section does not affect any rule of law about the effectiveness  
11      of the assent of members of a cooperative given to a document, or to  
12      anything else, otherwise than at a general meeting of a cooperative.

13       **Division 8.4                      Postal ballots**

14       **199    Postal ballots**

- 15      (1) A postal ballot may be held as provided by the rules of a cooperative  
16      and must be conducted in accordance with the regulations.
- 17      (2) On the declaration by the returning officer of the result of the ballot,  
18      the secretary of the cooperative must make an entry in the minute  
19      book of the cooperative showing—
- 20          (a) the number of formal votes cast in favour of the proposal; and  
21          (b) the number of formal votes cast against the proposal; and  
22          (c) the number of informal votes cast.

23       **200    Special postal ballots**

- 24      (1) A special postal ballot is a postal ballot conducted as required by  
25      this section.
- 26      (2) The ballot must be held not earlier than 21 days after notice of the  
27      ballot is given to members.

- 1        (3) The cooperative must send to each member (along with any other  
2        material required to be sent in relation to the postal ballot) a  
3        disclosure statement approved in writing by the registrar and  
4        containing information about—
- 5            (a) the financial position of the cooperative; and
- 6            (b) the interests of the directors of the cooperative in the proposal  
7            with which the ballot is concerned (including any interests of  
8            the directors in another organisation concerned in the  
9            proposal); and
- 10          (c) any compensation or consideration to be paid to officers or  
11          members of the cooperative in relation to the proposal; and
- 12          (d) anything else the registrar directs.
- 13        (4) If the registrar so requires, the statement must be accompanied by a  
14        report made by an independent person approved in writing by the  
15        registrar about anything that the registrar directs.
- 16        (5) Section 20 (except subsections (2), (4) and (9)) applies to the  
17        approval of a disclosure statement under this section with any  
18        necessary changes and, in particular, as if any reference in the  
19        section to a formation meeting were a reference to the notice of the  
20        special postal ballot.

21        **201    When special postal ballot required**

22            In addition to any requirement of this Act, the rules of a cooperative  
23            must require a special postal ballot to be conducted for the purpose  
24            of passing a special resolution in relation to any of the following  
25            matters relating to a cooperative:

- 26            (a) conversion of—
- 27                  (i) a share capital cooperative to a non-share capital  
28                  cooperative or vice versa; or
- 29                  (ii) a trading cooperative to a non-trading cooperative or vice  
30                  versa;



- 1 (b) transfer of incorporation;
- 2 (c) an acquisition or disposal of assets mentioned in section 276;
- 3 (d) the maximum permissible level of share interest in the
- 4 cooperative;
- 5 (e) takeover;
- 6 (f) merger;
- 7 (g) transfer of engagements;
- 8 (h) members' voluntary winding-up.

9 **202 Holding of postal ballot on requisition**

- 10 (1) The board of a cooperative must conduct a postal ballot (including a
- 11 special postal ballot) for a special resolution on the written
- 12 requisition of such number of members who together can cast at
- 13 least 20% (or, if a lesser percentage is provided under the rules of
- 14 the cooperative, the lesser percentage) of the total number of votes
- 15 that can be cast at a meeting of the cooperative.
- 16 (2) A member is entitled to be a requisitioning member only if the
- 17 member is an active member.
- 18 (3) A requisition for a postal ballot must—
- 19 (a) state—
- 20 (i) the proposed special resolution to be voted on; and
- 21 (ii) the reasons for the making of the special resolution; and
- 22 (iii) the effect of the special resolution being passed; and
- 23 (b) be signed by the requisitioning members (and may consist of
- 24 several documents in like form each signed by 1 or more of the
- 25 requisitioning members); and
- 26 (c) be served on the cooperative by being lodged at the registered
- 27 office of the cooperative.

1        (4) The postal ballot must be conducted as soon as practicable and in  
2        any case must be conducted within 2 months after the requisition is  
3        served.

4        (5) If the special resolution for which the requisitioned postal ballot is  
5        conducted is not passed, the cooperative may recover the expenses  
6        of the postal ballot from the members who requisitioned the postal  
7        ballot as a debt owing to the cooperative.

8        **203    Expenses involved in postal ballots on requisition**

9        (1) For section 202, the expenses of the postal ballot are all reasonable  
10       expenses incurred by a cooperative in relation to preparing for and  
11       holding a special postal ballot.

12       (2) The expenses include (but are not limited to) the following  
13       expenses:

14           (a) the cost of obtaining expert advice (including legal and  
15           financial advice) and of commissioning expert reports;

16           (b) costs attributable to the use of staff of the cooperative in  
17           relation to preparing for and holding the ballot;

18           (c) the cost of producing, printing and posting the ballot papers  
19           and other material associated with the ballot.

20       **Division 8.5                      Meetings**

21       **204    Annual general meetings**

22       (1) A cooperative must hold an annual general meeting within—

23           (a) 5 months after the end of each financial year of the  
24           cooperative; or

25           (b) any further time that may be allowed by the registrar or is  
26           prescribed under the regulations.

27       (2) However, the first annual general meeting of a cooperative must be  
28       held—

- 1 (a) within 18 months after the incorporation of the cooperative; or  
2 (b) if a longer time applies under subsection (1)—within that  
3 longer time.

4 **205 Special general meetings**

5 A special general meeting of a cooperative may be called at any  
6 time by the board.

7 **206 Notice of meetings**

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

10 **207 Quorum at meetings**

- 11 (1) The quorum for a meeting of a cooperative must be specified in the  
12 rules.  
13 (2) An item of business may be transacted at a meeting of a cooperative  
14 only if a quorum of members entitled to vote is present during the  
15 transaction of that item.

16 **208 Decisions at meetings**

- 17 (1) A question for decision at a general meeting must be decided by a  
18 majority of members present in person at the meeting and voting,  
19 but this is subject to any other provision of this Act and the rules of  
20 the cooperative.  
21 (2) A poll must be held if required by at least 5 members.  
22 (3) Unless a poll is held, a question for decision at a general meeting  
23 must be decided by a show of hands.  
24 (4) If the votes are equal, whether on a show of hands or on a poll, the  
25 chairperson of the meeting may exercise a second or casting vote if  
26 the rules so provide.

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**209 Calling of general meeting on requisition**

- (1) The board of a cooperative must call a general meeting of the cooperative on the written requisition of such number of members who together can cast at least 20% (or, if a lesser percentage is provided under the rules of the cooperative, the lesser percentage) of the total number of votes that can be cast at a meeting of the cooperative.
- (2) A member is entitled to be a requisitioning member only if the member is an active member.
- (3) A requisition for a general meeting must—
- (a) state the objects of the meeting; and
  - (b) be signed by the requisitioning members (and may consist of several documents in like form each signed by 1 or more of the requisitioning members); and
  - (c) be served on the cooperative by being lodged at the registered office of the cooperative.
- (4) The meeting must be called and held as soon as practicable and in any case is to be held within 2 months after the requisition is served.
- (5) If the board does not call the meeting within 21 days after the requisition is served, the following provisions apply:
- (a) the requisitioning members (or any of them representing at least half their aggregate voting rights) may call the meeting in the same way as nearly as possible as meetings are called by the board;
  - (b) for that purpose they may ask the cooperative to supply a written statement setting out the names and addresses of the people entitled when the requisition was served to receive notice of general meetings of the cooperative;
  - (c) the board must send the requested statement to the requisitioning members within 7 days after the request for the statement is received;

- 1 (d) the meeting called by the requisitioning members must be held  
2 not later than 3 months after the requisition is served;
- 3 (e) any reasonable expenses incurred by the requisitioning  
4 members because of the board's failure to call the meeting  
5 must be paid by the cooperative;
- 6 (f) any amount required to be paid by the cooperative under  
7 paragraph (e) must be deducted by the cooperative from any  
8 amount owing by the cooperative, by way of fees or other  
9 remuneration, to the directors who were in default.

10 **210 Minutes**

- 11 (1) Minutes of each general meeting, board meeting and subcommittee  
12 meeting must be—
- 13 (a) entered in the appropriate records within the earlier of—
- 14 (i) 28 days after the general meeting; or
- 15 (ii) the next meeting; and
- 16 (b) confirmed at the next meeting; and
- 17 (c) signed by the chairperson of that meeting.
- 18 (2) The minutes of each general meeting must be available for  
19 inspection by members.
- 20 (3) The rules may provide that the minutes of board meetings and  
21 subcommittee meetings be available for inspection by members.
- 22 (4) The minutes must be written in English.

1

2 **Part 9 Management and**  
3 **administration of cooperatives**

4 **Division 9.1 Board**

5 **211 Board of directors**

- 6 (1) Subject to this Act and the rules of the cooperative, the business of a  
7 cooperative is to be managed by a board of directors.
- 8 (2) The board of directors may exercise all the functions of the  
9 cooperative that are not, by this Act or the rules of the cooperative,  
10 required to be exercised by the cooperative in general meeting.
- 11 (3) The acts of a director are valid despite any defect that may  
12 afterwards be discovered in the director's appointment or  
13 qualification.

14 **212 Election of directors**

- 15 (1) Except as provided in subsections (2), (3) and (4), the directors of a  
16 cooperative are to be elected in the way provided under the rules of  
17 the cooperative.
- 18 (2) The first directors of—
- 19 (a) a cooperative formed under this Act are to be elected at its  
20 formation meeting; and
- 21 (b) a cooperative that was a corporation incorporated under  
22 another law are to be the directors in office at the date of  
23 registration under this Act.
- 24 (3) If so authorised by the rules of the cooperative, a board of directors  
25 may appoint a person to fill a casual vacancy in the office of a  
26 director until the next annual general meeting.

- 1 (4) A motion approving or nominating 2 or more people for election as  
2 directors may be made by a single resolution at a meeting of a  
3 cooperative only if a resolution that it be made by a single resolution  
4 has first been agreed to by the meeting without any vote being made  
5 against it.
- 6 (5) If a resolution is passed following a motion in contravention of  
7 subsection (4)—
- 8 (a) the resolution is void; and
- 9 (b) there is no provision for the automatic re-election of retiring  
10 directors in default of another election.
- 11 (6) Subsections (4) and (5) do not apply to a resolution altering the rules  
12 to prevent the election of 2 or more directors by ballot.
- 13 (7) A nomination for election or appointment to the office of a director  
14 must provide details of the qualifications and experience of the  
15 person nominated.
- 16 (8) Except as provided under this Act or the rules of a cooperative, a  
17 director is eligible for re-election at the end of the director's term of  
18 office.

19 **213 Qualification of directors etc**

- 20 (1) A person is qualified to be a director of a cooperative only if the  
21 person is—
- 22 (a) a member of the cooperative or a representative of a  
23 corporation that is a member of the cooperative (a *member*  
24 *director*); or
- 25 (b) an employee of the cooperative or a person qualified as  
26 provided under the rules.
- 27 (2) The majority of directors must be member directors.
- 28 (3) The rules may require a greater number of directors than a majority  
29 to be member directors.

- 1 (4) A cooperative must have at least 3 directors.  
2 (5) At least 2 of the directors must be Australian residents.

3 **214 Disqualified people**

- 4 (1) A person must not act as a director of a cooperative, or directly or  
5 indirectly take part in or be concerned with the management of a  
6 cooperative, if the person is the auditor of the cooperative or a  
7 partner, employee or employer of the auditor.  
8 Maximum penalty: 50 penalty units, imprisonment for 6 months or  
9 both.
- 10 (2) A person must not, except with the Supreme Court's leave, act as a  
11 director of a cooperative, or indirectly take part in or be concerned  
12 with the management of a cooperative, within 5 years after the  
13 person's conviction for a disqualifying offence or, if the person was  
14 sentenced to imprisonment for the offence, after the person's release  
15 from prison.  
16 Maximum penalty: 50 penalty units, imprisonment for 6 months or  
17 both.
- 18 (3) For subsection (2), a *disqualifying offence* is any of the following  
19 offences, whether committed before or after the commencement of  
20 this Act, and whether in or outside the ACT or Australia:
- 21 (a) an offence, of which the person has been convicted on  
22 indictment, in relation to the promotion, formation or  
23 management of a corporation;
- 24 (b) an offence involving fraud or dishonesty punishable by  
25 imprisonment for at least 3 months;
- 26 (c) an offence against any of the following sections of the  
27 Corporations Act:
- 28 • section 184 (Good faith, use of position and use of  
29 information—criminal offences)  
30 • section 344 (Contravention of part 2M.2 or 2M.3)



- 1                   • section 590 (Offences by officers of certain companies)  
2                   • section 592 (Incurring of certain debts; fraudulent  
3                   conduct)  
4                   • section 670A (Misstatement in, or omission from,  
5                   takeover and compulsory acquisition and buy-out  
6                   documents)  
7                   • section 728 (Misstatements in, or omissions from,  
8                   disclosure document);  
9               (d) an offence against a provision of a previous law of the  
10              Commonwealth or a State that corresponds to a section  
11              mentioned in paragraph (c).  
12       (4) A person must not act as a director of a cooperative, or directly or  
13           indirectly take part in or be concerned with the management of a  
14           cooperative, if the person—  
15           (a) has been convicted of an offence against this Act within the  
16           last 5 years, except with the Supreme Court's leave; or  
17           (b) is disqualified from managing corporations under the  
18           Corporations Act, part 2D.6 (Disqualification from managing  
19           corporations); or  
20           (c) is an insolvent under administration (within the meaning of the  
21           Corporations Act).  
22           Maximum penalty: 50 penalty units, imprisonment for 6 months or  
23           both.  
24       (5) In a proceeding for an offence against subsection (2), a certificate by  
25           an entity prescribed under the regulations stating that a person was  
26           released from prison on a stated date is, in the absence of evidence  
27           to the contrary, proof that the person was released from prison on  
28           that date.  
29       (6) A person who intends to apply for leave of the Supreme Court under  
30           this section must give the registrar at least 21 days notice of the  
31           person's intention.

1 (7) The Supreme Court may grant leave subject to any condition or  
2 limitation it considers appropriate.

3 (8) A person must comply with any condition or limitation subject to  
4 which leave is granted.

5 Maximum penalty: 50 penalty units, imprisonment for 6 months or  
6 both.

7 (9) On the application of the registrar, the Supreme Court may revoke  
8 its leave.

9 **215 Meetings of board of directors**

10 (1) Meetings of the board of directors are to be held at least once every  
11 3 months and may be held as often as may be necessary.

12 (2) A meeting of the board may be called by a director giving notice  
13 individually to every other director.

14 (3) A meeting of the board may be called or held using any technology  
15 consented to by the board.

16 (4) The consent may be a standing consent.

17 (5) A quorum of a meeting of the board is 50% of the number of  
18 directors or, if a higher number is provided under the rules of the  
19 cooperative, the higher number.

20 (6) However, for a quorum the member directors must be greater than  
21 the other directors by at least 1 or, if a higher number is specified by  
22 the rules of the cooperative, the higher number.

23 (7) The chairperson of the board may be elected either by the board or  
24 at a general meeting of the cooperative, and is to be elected, hold  
25 office, and retire, and may be removed from office, as provided by  
26 the rules of the cooperative.

27 **216 Transaction of business outside meetings**

28 (1) The board of a cooperative may transact any of its business by the  
29 circulation of papers among all of the directors of the board.

- 1 (2) A resolution in writing approved in writing by a majority of the  
2 directors of the board is taken to be a decision of the board.
- 3 (3) Separate copies of a resolution may be distributed for signing by the  
4 directors if the wording of the resolution and approval is identical in  
5 each copy.
- 6 (4) For the purpose of the approval of a resolution under this section,  
7 the chairperson of the board and each director of the board have the  
8 same voting rights as they have at an ordinary meeting of the board.
- 9 (5) The resolution is approved when the last director required for the  
10 majority signs.
- 11 (6) A resolution approved under this section must be recorded in the  
12 minutes of the meetings of the board within 28 days after the  
13 resolution is approved.
- 14 (7) Papers may be circulated among directors of the board for this  
15 section by fax or other transmission of the information in the papers.

16 **217 Deputy directors**

- 17 (1) The rules of a cooperative may authorise the board of the  
18 cooperative to appoint deputies of directors.
- 19 (2) The deputy of a director may attend, and speak and vote at, any  
20 meeting of the board from which the director is absent.
- 21 (3) The rules of the cooperative may also include provisions regulating,  
22 or authorising the board to regulate (subject to any conditions  
23 provided under the rules), the term of office, vacation of or removal  
24 from office, and remuneration, of a deputy.

25 **218 Delegation by board**

- 26 (1) If the rules of a cooperative so provide, the board may, by  
27 resolution, delegate the exercise of such of the board's functions  
28 (other than this power of delegation) as are specified in the  
29 resolution—

- 1 (a) to a director; or  
2 (b) to a committee of 2 or more directors; or  
3 (c) to a committee of members of the cooperative; or  
4 (d) to a committee of members of the cooperative and other people  
5 if members are the majority of the committee members.  
6 (2) The cooperative or the board may, by resolution, revoke completely  
7 or in part a delegation under this section.  
8 (3) A function that has been delegated under this section may be  
9 exercised from time to time in accordance with the terms of the  
10 delegation while the delegation remains unrevoked.  
11 (4) A delegation under this section may be made subject to conditions  
12 or limitations.  
13 (5) Despite any delegation under this section, the board may continue to  
14 exercise a delegated function.

15 **219 Removal etc of directors**

- 16 (1) The directors hold office and must retire, and may be removed from  
17 office, as provided by the rules of the cooperative.  
18 (2) A director vacates office in the circumstances (if any) provided  
19 under the rules of the cooperative and in any of the following cases:  
20 (a) if the director is disqualified under section 214 from being a  
21 director;  
22 (b) if the director is absent from 3 consecutive ordinary meetings  
23 of the board without its leave;  
24 (c) if the director resigns the office of director by notice given by  
25 the director to the cooperative;  
26 (d) if the director is removed from office by ordinary resolution of  
27 the cooperative;

- 1 (e) if the person ceases to hold the qualification because of which  
2 the person was qualified to be a director;  
3 (f) if an administrator of the cooperative's affairs is appointed  
4 under division 12.5.

5 **Division 9.2 Secretary**

6 **220 Cooperative to have secretary**

- 7 (1) A cooperative must have a secretary.  
8 (2) The board of the cooperative must appoint the secretary.  
9 (3) The board may appoint a person to act as secretary during the  
10 absence or incapacity of the secretary.  
11 (4) A secretary (including an acting secretary) must be an individual at  
12 least 18 years old and resident in Australia.

13 **Division 9.3 Duties and liabilities of directors,**  
14 **officers and employees**

15 **221 Meaning of *officer* in div 9.3**

16 In this division:

17 *officer*, of a cooperative, means—

- 18 (a) a director or secretary of the cooperative; or  
19 (b) a person who is concerned, or takes part, in the management of  
20 the cooperative, whether or not as a director; or  
21 (c) a receiver, or receiver and manager, of property of the  
22 cooperative, or any other authorised person who enters into  
23 possession or assumes control of property of the cooperative  
24 for the purpose of enforcing any charge; or  
25 (d) an administrator of a deed of arrangement executed by the  
26 cooperative; or

- 1 (e) a liquidator or provisional liquidator appointed in a voluntary  
2 winding-up of the cooperative; or
- 3 (f) an administrator of the cooperative appointed under the  
4 Corporations Act, part 5.3A (Administration of a company's  
5 affairs with a view to executing a deed of company  
6 arrangement) as applied by this Act; or
- 7 (g) a trustee or anyone else administering a compromise or  
8 arrangement made between the cooperative and someone else.

9 **222 Officers to act honestly**

- 10 (1) An officer of a cooperative must at all times act honestly, in the  
11 ACT and elsewhere, in the exercise of the officer's functions.
- 12 (2) A person who contravenes subsection (1) commits an offence.  
13 Maximum penalty: 50 penalty units.
- 14 (3) A person who contravenes subsection (1) with intent to deceive or  
15 defraud the cooperative, members or creditors of the cooperative or  
16 creditors of anyone else or for any other fraudulent purpose commits  
17 an offence.  
18 Maximum penalty: 200 penalty units, imprisonment for 2 years or  
19 both.

20 **223 Standard of care and diligence required**

- 21 (1) An officer of a cooperative must, in the exercise of the officer's  
22 functions, exercise the degree of care and diligence that a reasonable  
23 person in a like position in a cooperative would exercise in the  
24 cooperative's circumstances.  
25 Maximum penalty: 20 penalty units.
- 26 (2) An officer is not liable to be convicted for a contravention of this  
27 section if the cooperative has resolved by ordinary resolution to  
28 excuse the contravention.

1   **224   Improper use of information or position**

2       (1) An officer or employee, or former officer or employee, of a  
3       cooperative, or a member of a committee mentioned in  
4       section 218 (1), must not make improper use of information  
5       acquired because of his or her position as such an officer or  
6       employee or member to gain, directly or indirectly, an advantage for  
7       himself or herself or for anyone else or to cause detriment to the  
8       cooperative.

9       Maximum penalty:

10       (a) if the contravention was committed with intent to deceive or  
11       defraud the cooperative, members or creditors of the  
12       cooperative or creditors of anyone else or for any other  
13       fraudulent purpose—200 penalty units, imprisonment for  
14       2 years or both; and

15       (b) in any other case—50 penalty units.

16       (2) An officer or employee of a cooperative, or a member of a  
17       committee mentioned in section 218 (1), must not make improper  
18       use of his or her position as an officer or employee or member, to  
19       gain, directly or indirectly, an advantage for himself or herself or for  
20       anyone else or to cause detriment to the cooperative.

21       Maximum penalty:

22       (a) if the contravention was committed with intent to deceive or  
23       defraud the cooperative, members or creditors of the  
24       cooperative or creditors of anyone else or for any other  
25       fraudulent purpose—200 penalty units, imprisonment for  
26       2 years or both; and

27       (b) in any other case—50 penalty units.

1 **225 Court may order payment of compensation**

- 2 (1) If the court that convicts a person for a contravention of a provision  
3 of this division is satisfied that a cooperative has suffered loss or  
4 damage because of the act or omission that constituted the offence,  
5 the court may (in addition to imposing a penalty) order the  
6 convicted person to pay compensation to the cooperative.
- 7 (2) An order under subsection (1) takes effect, and may be enforced, as  
8 a judgment of the court.

9 **226 Recovery of damages by cooperative**

- 10 (1) If a person contravenes a provision of this division in relation to a  
11 cooperative, the cooperative may, whether or not the person has  
12 been convicted of an offence in relation to the contravention,  
13 recover an amount from the person as a debt owing to the  
14 cooperative.
- 15 (2) The amount that the cooperative is entitled to recover from the  
16 person is—
- 17 (a) if the person or anyone else made a profit because of the  
18 contravention—an amount equal to the profit; and
- 19 (b) if the cooperative has suffered loss or damage because of the  
20 contravention—an amount equal to the loss or damage.

21 **227 Other duties and liabilities not affected**

22 This division is additional to any rule of law relating to the duty or  
23 liability of a person because of the person's office or employment in  
24 relation to a cooperative and does not prevent the bringing of a civil  
25 proceeding in relation to a breach of the duty or in relation to the  
26 liability.

27 **228 Indemnification of officers and auditors**

- 28 (1) A provision exempting an officer or auditor of a cooperative from,  
29 or indemnifying the officer or auditor against, any liability that by  
30 law would otherwise attach to the person in relation to any



1 negligence, default, breach of duty or breach of trust of which the  
2 person may be guilty in relation to the cooperative is void.

3 *Note* For the meaning of *provision* see s (6).

4 (2) However, a cooperative may, under its rules or otherwise, indemnify  
5 an officer or auditor of the cooperative against any liability incurred  
6 by the person in defending any proceeding, whether civil or  
7 criminal—

8 (a) in which judgment is given in the person's favour or the person  
9 is acquitted; or

10 (b) in relation to a liability for which relief is granted under this  
11 section to the person.

12 (3) A court may relieve an officer or auditor of a cooperative, either  
13 completely or partly, from a relevant liability in relation to a matter  
14 relating to the cooperative, if—

15 (a) the matter is before the court; and

16 (b) the court is satisfied that the person—

17 (i) acted honestly and reasonably; and

18 (ii) having regard to all the circumstances of the case  
19 (including circumstances in relation to the person's  
20 appointment), the person ought fairly to be relieved in  
21 relation to the relevant liability

22 *Note* For the meaning of *relevant liability* see s (6).

23 (4) The court may make an order under subsection (3) on any terms  
24 (including terms about costs) the court considers appropriate.

25 (5) The Supreme Court may exercise the powers mentioned in  
26 subsections (3) and (4) in relation to an officer or auditor of a  
27 cooperative who applies to the court for relief because—

28 (a) a claim in a matter relating to the cooperative has been made  
29 against the person; or

1 (b) the person has reason to believe that a claim of that kind will  
2 be made against the person.

3 (7) In this section:

4 *officer*, of a cooperative, includes an employee of the cooperative  
5 and anyone else authorised under the rules of the cooperative to give  
6 directions in relation to the business of the cooperative.

7 *provision*, in relation to cooperative, includes a provision of the  
8 rules of the cooperative, a contract with the cooperative or any other  
9 instrument to which the cooperative is a party (other than a contract  
10 of insurance).

11 *relevant liability* means liability for negligence, default or breach of  
12 duty.

13 **229 Application of Corporations Act—officers of cooperatives**

14 (1) The following provisions of the Corporations Act apply in relation  
15 to a cooperative and its officers:

- 16 • part 5.8 (Offences)  
17 • part 5.9 (Miscellaneous), division 1 (Examining a person about  
18 a corporation) and division 2 (Orders against a person in  
19 relation to a corporation)  
20 • section 1307 (Falsification of books).

21 (2) The provisions apply subject to the modification mentioned in  
22 subsection (3).

23 (3) The Corporations Act, section 592 (1) (a) (Incurring of certain  
24 debts; fraudulent conduct) is taken to be amended by omitting the  
25 words ‘before 23 June 1993’.

1     **Division 9.4                      Employee entitlements**

2     **230     Application of Corporations Act—entitlements of**  
3             **cooperative employees**

4             The Corporations Act, part 5.8A (Employee entitlements) applies to  
5             a cooperative and its employees.

6     **Division 9.5                      Restrictions on directors and**  
7             **officers**

8     **231     Directors' remuneration and financial accommodation to**  
9             **officers**

10            (1) A director of a cooperative must not be paid any remuneration for  
11               the director's services as a director other than fees, concessions and  
12               other benefits that are approved at a general meeting of the  
13               cooperative.

14            (2) An officer of a cooperative who is not a director of the cooperative  
15               must not obtain financial accommodation from the cooperative other  
16               than—

17               (a) with the approval of a majority of the directors; or

18               (b) under a scheme about providing financial accommodation to  
19                   officers that has been approved by a majority of the directors.

20               Maximum penalty: 200 penalty units, imprisonment for 2 years or  
21               both.

22            (3) For subsection (2), financial accommodation is taken to be obtained  
23               by an officer of a cooperative if it is obtained by—

24               (a) a proprietary company in which the officer is a shareholder or  
25                   director; or

26               (b) a trust of which the officer is a trustee or beneficiary; or

27               (c) a trust of which a corporation is trustee if the officer is a  
28                   director or other officer of the corporation.

- 1 (4) A cooperative must not give financial accommodation to an officer  
2 of the cooperative if—  
3 (a) by giving the financial accommodation, the officer would  
4 contravene subsection (2); and  
5 (b) the cooperative knows or should reasonably know of the  
6 contravention.  
7 Maximum penalty: 500 penalty units.

8 **232 Financial accommodation to directors and associates**

- 9 (1) In this section:  
10 *associate*, of a director, means a person, other than a director, who  
11 is—  
12 (a) the spouse of a director; or  
13 (b) when acting in the capacity of a trustee of a trust under  
14 which—  
15 (i) a director or the spouse of a director has a beneficial  
16 interest; or  
17 (ii) a corporation mentioned in paragraph (c) has a beneficial  
18 interest; or  
19 (c) a corporation if—  
20 (i) a director or the spouse of a director has a material  
21 interest in shares in the corporation; and  
22 (ii) the nominal value of the shares is not less than 10% of  
23 the nominal value of the issued share capital of the  
24 corporation.  
25 (2) For the definition of *associate* in subsection (1), a person has a  
26 *material interest* in a share in a corporation if—

- 
- 1           (a) the person has power to withdraw the share capital subscribed  
2           for the share or to exercise control over the withdrawal of the  
3           share capital; or
- 4           (b) the person has power to dispose of or to exercise control over  
5           the disposal of the share; or
- 6           (c) the person has power to exercise or to control the exercise of  
7           any right to vote given to the holder of the share.
- 8       (3) A cooperative must not provide financial accommodation to a  
9       director, or to a person the cooperative knows or should reasonably  
10      know is an associate of a director, unless—
- 11       (a) the accommodation is—
- 12           (i) approved under subsection (4); or
- 13           (ii) given under a scheme approved under subsection (4); or
- 14           (iii) provided on terms no more favourable to the director or  
15           the associate of a director than the terms on which it is  
16           reasonable to expect the cooperative would give if  
17           dealing with the director or associate at arm's length in  
18           the same circumstances; and
- 19       (b) the directors have approved the accommodation, at a meeting  
20       of the board at which a quorum was present, by a majority of at  
21       least  $\frac{2}{3}$  of the directors present and voting on the matter.
- 22       Maximum penalty: 500 penalty units.
- 23       (4) For subsection (3) (a) (i) and (ii), financial accommodation or a  
24       scheme is approved if—
- 25           (a) it is approved by a resolution passed at a general meeting; and
- 26           (b) the full details of the accommodation or scheme were made  
27           available to members at least 21 days before the meeting.

- 1 (5) A director, or an associate of a director, must not obtain financial  
2 accommodation given in contravention of subsection (3).  
3 Maximum penalty: 200 penalty units, imprisonment for 2 years or  
4 both.
- 5 (6) For this section, a concessional rate of interest for a borrower from a  
6 cooperative is a normal term only if the borrower is entitled to the  
7 concession by being a member of a class of borrowers from the  
8 cooperative specified in its rules as being entitled to the concession.
- 9 (7) If a director, or an associate of a director, of a cooperative accepts,  
10 in payment of a debt owed by a member of the cooperative to the  
11 director or associate, any proceeds of financial accommodation  
12 provided to the member by the cooperative, this section has effect as  
13 if the financial accommodation has been provided to the director or  
14 associate.
- 15 (8) In this section—  
16 (a) a reference to providing financial accommodation to, or the  
17 obtaining of financial accommodation by, a director or an  
18 associate of a director includes a reference to providing  
19 financial accommodation to, or the obtaining of financial  
20 accommodation by, the director or associate jointly with  
21 someone else; or  
22 (b) a reference to a debt owed to a director or an associate of a  
23 director includes a reference to a debt owed to the director or  
24 associate jointly with someone else.
- 25 **233 Restriction on directors of certain cooperatives selling**  
26 **land to cooperative**  
27 A director of a cooperative the primary activity of which is or  
28 includes the acquisition of land to settle or keep people on the land,  
29 and of providing any community service or benefit, must not sell  
30 land to the cooperative except in accordance with a special  
31 resolution of the cooperative.

1   **234   Management contracts**

2       (1) In this section:

3           *management contract* means a contract or other arrangement under  
4           which—

5           (a) a person who is not an officer of the cooperative agrees to  
6               exercise all, or a substantial part, of the functions of the  
7               cooperative, whether or not under the control of the  
8               cooperative; or

9           (b) a cooperative agrees to exercise all, or a substantial part, of its  
10           functions—

11               (i) in a particular way; or

12               (ii) in accordance with the directions of anyone; or

13               (iii) subject to restrictions or conditions.

14       (2) A cooperative may enter into a management contract only if the  
15       contract has first been approved by special resolution.

16       (3) A management contract entered into in contravention of  
17       subsection (2) is void.

18   **Division 9.6           Declaration of interests**

19   **235   Declaration of interest**

20       (1) A director of a cooperative who is or becomes in any way (whether  
21       directly or indirectly) interested in a contract, or proposed contract,  
22       with the cooperative must declare the nature and extent of the  
23       interest to the board under this section.

24       Maximum penalty: 200 penalty units, imprisonment for 2 years or  
25       both.

26       (2) For a proposed contract, the declaration must be made—

27           (a) at the meeting of the board when the question of entering into  
28           the contract is first considered; or

- 1 (b) if the director was not at that time interested in the proposed  
2 contract—at the next meeting of the board held after the  
3 director becomes interested in the proposed contract.
- 4 (3) If a director becomes interested in a contract with the cooperative  
5 after it is made, the declaration must be made at the next meeting of  
6 the board held after the director becomes interested in the contract.
- 7 (4) For this section, a general notice given to the board by a director is a  
8 sufficient declaration if it is to the effect that the director—  
9 (a) is a member of an entity stated in the notice; and  
10 (b) is taken to be interested in any contract that may be made with  
11 the entity after the giving of the notice.
- 12 (5) A director of a cooperative who holds an office or has an interest in  
13 property under which, whether directly or indirectly, duties or  
14 interests might be created that could conflict with the director's  
15 duties or interests as director must, in accordance with  
16 subsection (6), declare at a meeting of the board the fact and the  
17 nature, character and extent of the conflict.
- 18 Maximum penalty: 200 penalty units, imprisonment for 2 years or  
19 both.
- 20 (6) A declaration required by subsection (5) in relation to holding an  
21 office, or having an interest, must be made by a person—  
22 (a) if the person holds the office or has the interest when the  
23 person becomes a director—at the first meeting of the board  
24 held after the later of the following happens:  
25 (i) the person becomes a director;  
26 (ii) the relevant facts about holding the office or having the  
27 interest come to the person's knowledge; and  
28 (b) if the person begins to hold the office or acquires the interest  
29 after the person becomes a director—at the first meeting of the  
30 board held after the relevant facts about holding the office or  
31 having the interest come to the person's knowledge.



- 1       (7) If a director has made a declaration under this section, then, unless  
2       the board otherwise decides, the director must not—  
3       (a) be present during any deliberation of the board in relation to  
4       the matter; or  
5       (b) take part in any decision of the board in relation to the matter.  
6       (8) For the making of a decision of the board under subsection (7) in  
7       relation to a director who has made a declaration under this section,  
8       the director must not—  
9       (a) be present during any deliberation of the board for the purpose  
10      of making the decision; or  
11      (b) take part in the making by the board of the decision.

12   **236   Declarations must be recorded in minutes**

13       Every declaration under this division must be recorded in the  
14       minutes of the meeting at which it was made.

15   **237   Div 9.6 does not affect other laws or rules of cooperative**

16       Except as provided in section 238, this division is additional to any  
17       rule of law or any provision of the rules of the cooperative  
18       restricting a director from having any interest in contracts with the  
19       cooperative or from holding offices or having properties involving  
20       duties or interests in conflict with the director's duties or interests as  
21       director.

22   **238   Certain interests need not be declared**

- 23       (1) A director of a cooperative is not required to declare an interest in—  
24       (a) a contract or proposed contract for a purchase of goods and  
25       services by the director from the cooperative; or  
26       (b) a lease of land to the director by the cooperative; or  
27       (c) a contract or proposed contract for the sale of agricultural  
28       products or livestock by the director to the cooperative; or

- 1 (d) a contract or proposed contract that, under the rules of the  
2 cooperative, may be made between the cooperative and a  
3 member; or
- 4 (e) a contract or proposed contract of a class of contracts  
5 prescribed under the regulations.
- 6 (2) This section applies only if the contract is made honestly, in the  
7 ordinary course of the business of the cooperative, and on the terms  
8 that are usual and proper in similar dealings between the cooperative  
9 and its members.

10 **Division 9.7 Financial statements, reports and**  
11 **audit**

12 **239 Meaning of *control* and *entity* for div 9.7**

13 In this division:

14 *control* has the same meaning in relation to a cooperative as it has  
15 under the Corporations Act in relation to a corporation.

16 *Note* *Control* is defined in the Corporations Act, s 50AA.

17 *entity* has the same meaning in relation to a cooperative as it has  
18 under the Corporations Act in relation to a corporation.

19 *Note* *Entity* is defined in the Corporations Act, s 9.

20 **240 Requirements for financial records, statements and**  
21 **reports**

- 22 (1) The following provisions of the Corporations Act apply in relation  
23 to a cooperative:
- 24 • part 2F.3 (Inspection of books)
  - 25 • section 249K (Auditor entitled to notice and other  
26 communications)
  - 27 • section 249V (Auditor's right to be heard at general meetings)
  - 28 • chapter 2M (Financial reports and audit).

- 1       (2) The provisions apply subject to the following modifications:
- 2           (a) a reference in the provisions to a company or public company
- 3               is taken to be a reference to a cooperative;
- 4           (b) a reference in the provisions to the Court is taken to be a
- 5               reference to the Supreme Court;
- 6           (c) a reference in the provisions to 'prescribed' is taken to be a
- 7               reference to 'approved by the registrar';
- 8           (d) a reference in the provisions to securities is taken to be a
- 9               reference to debentures;
- 10          (e) any offence created in relation to the provisions is taken to be
- 11             the offence set out in subsection (3);
- 12          (f) any penalty for an offence mentioned in paragraph (e) is taken
- 13             to be the penalty set out in subsection (3);
- 14          (g) the provisions apply as if the following provisions were
- 15             omitted:
- 16               • section 293 (Small proprietary company—shareholder
- 17                 direction)
- 18               • section 294 (Small proprietary company—ASIC
- 19                 direction)
- 20               • section 300 (8) and (9) (Annual directors' report—
- 21                 specific information)
- 22               • section 301 (2) (Audit of annual financial report)
- 23               • section 340 (ASIC's power to make specific exemption
- 24                 orders)
- 25               • section 341 (ASIC's power to make class orders)
- 26               • section 342 (Criteria for specific exemption orders and
- 27                 class orders).
- 28       (3) A cooperative must—
- 29           (a) keep financial records and prepare financial statements and
- 30               financial reports as required by this Act (including the
- 31               Corporations Act as applied by this Act); and
-

- 1 (b) ensure that the financial statements and financial reports are  
2 audited in accordance with this Act (including the Corporations  
3 Act as applied by this Act).

4 Maximum penalty: 20 penalty units.

5 *Note* A reference to an Act includes a reference to the statutory instruments  
6 made or in force under the Act, including regulations (see *Legislation*  
7 *Act 2001*, s 104)

- 8 (4) Without limiting the matters for which regulations under this section  
9 may make provision, the regulations may make provisions in  
10 relation to the following:

11 (a) requiring the submission of financial statements and financial  
12 reports to the Australian Accounting Standards Board;

13 (b) requiring the adoption by a cooperative of the same financial  
14 year for each entity that the cooperative controls.

15 **241 Registrar may give exemptions for pt 9**

- 16 (1) The registrar may, in writing, exempt a cooperative, a person or firm  
17 proposed to be appointed as an auditor of a cooperative, or a director  
18 or auditor of a cooperative, from this part or a provision of this part.

19 *Note 1* A reference to a provision of an Act includes a reference to the statutory  
20 instruments made or in force under the provision, including regulations  
21 (see *Legislation Act 2001*, s 104).

22 *Note 2* Power given under an Act to make a statutory instrument (including an  
23 exemption) includes power to amend or revoke the instrument (see  
24 *Legislation Act 2001*, s 46 (1)).

- 25 (2) An exemption may be—

26 (a) unconditional or subject to conditions; and

27 (b) limited in time.

- 28 (3) An exemption may be suspended by the registrar.

- 1 (4) An exemption under this section that applies in relation to a class of  
2 cooperatives is a notifiable instrument.

3 *Note 1* A notifiable instrument must be notified under the *Legislation Act 2001*.

4 *Note 2* The *Legislation Act 2001*, s 73 deals with the commencement of  
5 notifiable instruments.

- 6 (5) An exemption under this section that applies only in relation to a  
7 particular cooperative takes effect when a copy of the order is  
8 served on the cooperative.

9 **242 Disclosure by directors**

- 10 (1) The directors of a cooperative must make the disclosures in relation  
11 to the affairs of the cooperative, and of any entity that the  
12 cooperative controls, that are prescribed under the regulations.

- 13 (2) If this section is not complied with, each director of the cooperative  
14 commits an offence.

15 Maximum penalty (subsection (2)): 20 penalty units.

16 **243 Protection of auditors etc**

- 17 (1) An auditor of a cooperative has qualified privilege in relation to—

18 (a) any statement that the auditor makes, orally or in writing, in  
19 the course of the auditor's duties as auditor; or

20 (b) the giving of any notice, or the sending of any copy of  
21 financial statements, financial reports or another report, to the  
22 registrar under this Act.

- 23 (2) A person has qualified privilege—

24 (a) in relation to the publishing of any document prepared by an  
25 auditor in the course of the auditor's duties and required by this  
26 Act to be lodged with the registrar, whether or not the  
27 document has been lodged; or

28 (b) in relation to the publishing of any statement made by an  
29 auditor as mentioned in subsection (1).

- 1 (3) This section does not limit or affect any right, privilege or immunity  
2 that an auditor or anyone else has, apart from this section, as  
3 defendant in a proceeding for defamation.

4 **244 Financial year of cooperative**

- 5 (1) The financial year of a cooperative ends on the day in each calendar  
6 year provided under the rules of the cooperative.
- 7 (2) The first financial year of a cooperative may extend from the date of  
8 its registration to a date not later than 18 months from the date of  
9 registration.
- 10 (3) If the rules of a cooperative are altered to change its financial year,  
11 the alteration may provide either—
- 12 (a) that the financial year current when the alteration takes effect is  
13 extended for not longer than 6 months; or
- 14 (b) that the next financial year is to be a period longer than 1 year  
15 but not longer than 18 months.

16 **Division 9.8 Registers, records and returns**

17 **245 Registers to be kept by cooperatives**

- 18 (1) A cooperative must keep the following registers in accordance with  
19 this section:
- 20 (a) a register of members, directors and shares (if any);
- 21 (b) a register of any loans to, securities given by, debentures issued  
22 by and deposits received by the cooperative;
- 23 (c) a register of names of people who have given loans or deposits  
24 to or hold securities or debentures given or issued by the  
25 cooperative;
- 26 (d) a register of any loans made by or guaranteed by the  
27 cooperative and of any securities taken by the cooperative;

- 1 (e) a register of memberships cancelled under part 6 (Active  
2 membership);  
3 (f) a register of notifiable interests under section 285;  
4 (g) any other registers that the regulations require.  
5 Maximum penalty: 20 penalty units.  
6 (2) The registers must be kept in the way, and contain the particulars,  
7 required under this Act.

8 **246 Location of registers**

- 9 (1) A register kept under this division must be kept, in accordance with  
10 subsection (2), at—  
11 (a) the cooperative's registered office; or  
12 (b) an office at the cooperative's principal place of business; or  
13 (c) an office (whether of the cooperative or of someone else)  
14 where the work involved in maintaining the register is done; or  
15 (d) another office approved in writing by the registrar.  
16 (2) The office at which the register is kept must be in the ACT.  
17 (3) The cooperative must lodge with the registrar a notice of the address  
18 where the register is kept within 28 days after the register is—  
19 (a) established at an office that is not the cooperative's registered  
20 office; or  
21 (b) moved from an office to another office.  
22 (4) For this section, a document kept on a computer is taken to be kept  
23 at an office if—  
24 (a) the document can be accessed using a computer kept at the  
25 office; and  
26 (b) a hard copy of the document can be printed out at the office.

- 1 **247 Inspection of registers etc**
- 2 (1) A cooperative must have the following documents available for  
3 inspection during all reasonable hours by any member free of charge  
4 at the office where the registers are kept:
- 5 (a) a copy of this Act and the regulations;
- 6 (b) a copy of the rules of the cooperative;
- 7 (c) a copy of the minutes of each general meeting of the  
8 cooperative;
- 9 (d) a copy of the last annual report (if any) of the cooperative filed  
10 under section 250;
- 11 (e) the register of directors, members and shares;
- 12 (f) the register of names of people who have given loans or  
13 deposits to or hold securities or debentures given or issued by  
14 the cooperative;
- 15 (g) any other register that the regulations provide is to be open for  
16 inspection under this section.
- 17 (2) If a register is not kept on a computer, the person may inspect the  
18 register itself.
- 19 (3) If the register is kept on a computer, the person may inspect a hard  
20 copy of the information on the register unless the person and the  
21 cooperative agree that the person may access the information by  
22 computer.
- 23 (4) A member is entitled to make a copy of entries in a register  
24 mentioned in subsection (1), and to do so free of charge, unless the  
25 rules of the cooperative require a fee to be paid, in which case on  
26 payment of the required fee.
- 27 (5) The fee required by the rules must not exceed the amount (if any)  
28 prescribed under the regulations.
- 29 (6) A cooperative must—



1 (a) allow a member to inspect a document or make a copy of a  
2 document that the member is entitled to inspect or make under  
3 this section; and

4 (b) give the member reasonable assistance to inspect the document  
5 or make the copy.

6 Maximum penalty: 20 penalty units.

7 (7) A cooperative must have the documents prescribed under the  
8 regulations available for inspection by anyone, at the office where  
9 its registers are kept, during all reasonable hours.

10 Maximum penalty: 20 penalty units.

11 **248 Use of information on registers**

12 (1) A person must not—

13 (a) use information about a person obtained from a register kept  
14 under this division to contact or send material to the person; or

15 (b) disclose information of that kind knowing that the information  
16 is likely to be used to contact or send material to the person.

17 (2) However, subsection (1) does not apply to the use or disclosure of  
18 information—

19 (a) relevant to the holding of the directorship, membership, shares,  
20 loans, securities, debentures or deposits concerned or the  
21 exercise of the rights attaching to them; or

22 (b) approved by the board; or

23 (c) necessary to comply with a requirement of this Act.

24 (3) A person who contravenes this section is liable to compensate  
25 anyone who suffers loss or damage because of the contravention.

26 (4) A person who makes a profit from a contravention of this section  
27 owes a debt to the cooperative equal to the amount of the profit.

1   **249 Notice of appointment etc of directors and officers**

- 2       (1) A cooperative must give notice to the registrar in accordance with  
3       this section of the appointment of a person as a director, principal  
4       executive officer or secretary of the cooperative or any subsidiary of  
5       the cooperative, and of the cessation of any such appointment.

6       Maximum penalty: 20 penalty units.

- 7       (2) The notice must—

- 8           (a) be given within 28 days after the appointment or cessation of  
9           appointment; and  
10          (b) state the particulars prescribed under the regulations of the  
11          appointment or cessation of appointment.

12       *Note*     If a form is approved under s 468 (Approved forms) for a notice, the  
13       form must be used.

14   **250 Annual report to be filed with registrar**

- 15       (1) A cooperative must file with the registrar within the required period  
16       in each year an annual report containing each of the following:

- 17           (a) a list stating the secretary, directors and the principal executive  
18           officers of the cooperative and each of its subsidiaries, as at the  
19           date the annual report is filed with the registrar;  
20           (b) if the cooperative is required under the provisions of the  
21           Corporations Act applied by section 240 (the *applied*  
22           *provisions*) to prepare financial statements for its most recently  
23           ended financial year—a copy of the financial statements;  
24           (c) a copy of the financial statements of each subsidiary of the  
25           cooperative for the most recently ended financial year;  
26           (d) a copy of any report by the auditor of the cooperative or  
27           subsidiary—  
28               (i) prepared under the applied provisions in relation to the  
29               cooperative or subsidiary; or

1 (ii) on any financial statements mentioned in paragraph (b) or  
2 (c);

3 (e) any particulars prescribed under the regulations.

4 Maximum penalty: 20 penalty units.

5 *Note* If a form is approved under s 468 (Approved forms) for a list, the form  
6 must be used.

7 (2) In subsection (1):

8 *required period*, for a year, means—

9 (a) if the annual general meeting of the cooperative is not held  
10 within 5 months after the relevant financial year of the  
11 cooperative—28 days after the end of that period; or

12 (b) in any other case—28 days after the annual general meeting of  
13 the cooperative.

14 **251 List of members to be provided at request of registrar**

15 A cooperative must, at the written request of the registrar, send to  
16 the registrar, within the time and in the way that the registrar  
17 specifies, a full list of the members of the cooperative and of each  
18 subsidiary of the cooperative, together with the particulars in  
19 relation to those members that the registrar specifies in the request.

20 Maximum penalty: 20 penalty units.

21 **252 Special return to be provided at request of registrar**

22 (1) The registrar may, in writing, require a cooperative to provide to the  
23 registrar a special return in the form, within the time, and relating to  
24 the subject matter, specified by the registrar.

25 (2) The cooperative must comply with a requirement under  
26 subsection (1).

27 Maximum penalty: 20 penalty units.

1 **Division 9.9 Name and registered office**

2 **253 Name to include certain matter**

3 (1) The name of a cooperative may consist of words, numbers or a  
4 combination of both.

5 (2) The name of the cooperative must include the word 'Cooperative' or  
6 'Co-operative' or the abbreviation 'Co-op' or 'Co-op.'.

7 (3) The word 'Limited' or the abbreviation 'Ltd' must be the last word  
8 of the name.

9 (4) A corporation formed or incorporated under a law other than this  
10 Act must not register under the other law by any name that includes  
11 the word 'Cooperative' or 'Co-operative' or the abbreviation 'Co-  
12 op' or 'Co-op.'.

13 Maximum penalty: 20 penalty units.

14 (5) Subsection (4) does not apply to—

15 (a) a credit union; or

16 (b) a body corporate, corporation, society or other entity that was,  
17 immediately before the repeal of the former Act, an exempt  
18 body within the meaning of section 32 of the former Act.

19 **254 Use of abbreviations**

20 A description of a cooperative is not inadequate or incorrect only  
21 because it uses 1 or more of the following:

22 (a) the abbreviation 'Co-op' or 'Co-op.' instead of the word  
23 'Cooperative' or 'Co-operative' in the cooperative's name;

24 (b) the abbreviation 'Ltd' instead of the word 'Limited' in the  
25 cooperative's name;

26 (c) an ampersand (the symbol '&') instead of the word 'and' in the  
27 cooperative's name;

- 1 (d) any of those words instead of the corresponding abbreviation  
2 or symbol in the cooperative's name;  
3 (e) any abbreviation or elaboration of the name of the cooperative  
4 approved, in writing, by the registrar in a particular case or for  
5 a particular purpose.

6 **255 Name to appear on business documents etc**

- 7 (1) A cooperative must ensure that the name of the cooperative appears  
8 in legible characters—  
9 (a) on its seal; and  
10 (b) in all notices, advertisements and other official publications of  
11 the cooperative; and  
12 (c) in all its business documents.  
13 Maximum penalty: 20 penalty units.  
14 (2) An officer of a cooperative, or a person on its behalf, must not—  
15 (a) use a seal of the cooperative; or  
16 (b) issue, or authorise the issue of, any notice, advertisement or  
17 other official publication of the cooperative; or  
18 (c) sign, or authorise to be signed, on behalf of the cooperative any  
19 business document of the cooperative;  
20 in or on which the cooperative's name does not appear in legible  
21 characters.  
22 Maximum penalty: 20 penalty units.  
23 (3) A director of a cooperative must not knowingly authorise or permit  
24 a contravention of subsection (1) or (2).  
25 Maximum penalty: 20 penalty units.

1 (4) In this section:

2 *business document*, of a cooperative, means a document issued,  
3 signed or endorsed by or on behalf of the cooperative that is—

4 (a) a business letter, statement of account, invoice or order for  
5 goods or services; or

6 (b) a bill of exchange, promissory note, cheque or other negotiable  
7 instrument; or

8 (c) a receipt or letter of credit issued by the cooperative; or

9 (d) a document prescribed under the regulations.

10 **256 Change of name of cooperative**

11 (1) A cooperative may by special resolution change its name to a name  
12 approved in writing by the registrar.

13 (2) A change of name must be advertised in the way prescribed under  
14 the regulations.

15 (3) A change of name does not take effect until—

16 (a) the registrar has noted the change on the certificate of  
17 registration of the cooperative; or

18 (b) the certificate of registration is surrendered to the registrar and  
19 a replacement certificate of registration is issued in the new  
20 name.

21 (4) A change of name by a cooperative does not affect—

22 (a) the identity of the cooperative; or

23 (b) the exercise of any rights, or the enforcement of any  
24 obligations, by or against the cooperative or anyone else; or

25 (c) the continuation of a legal proceeding by or against the  
26 cooperative.

- 1       (5) A legal proceeding that might have been continued or begun by or  
2       against the cooperative in its former name may be continued or  
3       begun by or against the cooperative in its new name.
- 4       (6) The registrar must refuse to approve a change of name if the  
5       registrar considers that the new name contravenes this Act or is  
6       undesirable.
- 7       (7) The registrar may order a cooperative to change its name if the  
8       registrar is of the opinion that the name is likely to be confused with  
9       the name of a corporation or a registered business name.

10   **257 Registered office of cooperative**

- 11       (1) A cooperative must have a registered office.  
12       Maximum penalty: 20 penalty units.
- 13       (2) A cooperative must, at the premises of its registered office, publicly  
14       and conspicuously display a notice stating the name of the  
15       cooperative and identifying the premises as its registered office.  
16       Maximum penalty: 20 penalty units.
- 17       (3) Not later than 28 days after becoming registered, a cooperative must  
18       give the registrar notice of the address of its registered office.  
19       Maximum penalty: 20 penalty units.
- 20       (4) Not later than 28 days after changing the address of its registered  
21       office, a cooperative must give the registrar notice of the new  
22       address.  
23       Maximum penalty: 20 penalty units.

1

2 **Part 10 Funds and property**

3 **Division 10.1 Power to raise money**

4 **258 References in div 10.1 to *obtaining* financial**  
5 **accommodation**

6 A reference in this division to the *obtaining* of financial  
7 accommodation includes a reference to the obtaining of credit and  
8 the borrowing or raising of money by any means.

9 **259 Fundraising to be in accordance with regulations**

10 The regulations may impose requirements and restrictions on the  
11 obtaining of financial accommodation and the giving of security in  
12 relation to the obtaining of financial accommodation by a  
13 cooperative.

14 **260 Limits on deposit taking**

15 (1) A cooperative may accept money on deposit only as permitted by  
16 subsection (2).

17 (2) A cooperative may accept money on deposit if—

18 (a) the cooperative—

19 (i) was authorised by its rules immediately before the  
20 commencement of this Act to accept money on deposit;  
21 and

22 (ii) remains so authorised; or

23 (b) the cooperative was a deposit-taking corporation immediately  
24 before it became a cooperative and it is authorised by its rules  
25 to accept money on deposit; or



- 1 (c) for a merged cooperative—1 or more of the cooperatives  
2 involved in the merger was a deposit-taking cooperative  
3 immediately before the registration of the merged cooperative  
4 and the merged cooperative is authorised by its rules to accept  
5 money on deposit.

6 **261 Members etc not required to see to application of**  
7 **financial accommodation**

- 8 A member or anyone else from whom a cooperative obtains  
9 financial accommodation is not required to see how it is applied and  
10 is not affected if the cooperative applies it in a way that contravenes  
11 this Act or the rules of the cooperative.

12 **262 Registrar's directions about fundraising**

- 13 (1) The registrar may, by notice served on a cooperative, give a  
14 direction to the cooperative about how it is to exercise its functions  
15 in relation to the activities of the cooperative in obtaining financial  
16 accommodation.
- 17 (2) A direction under subsection (1) may make provision for any 1 or  
18 more of the following matters:
- 19 (a) requiring the cooperative to cease obtaining financial  
20 accommodation or to cease obtaining financial accommodation  
21 in a particular way;
- 22 (b) requiring the cooperative to repay in accordance with the  
23 direction all or part of financial accommodation obtained;
- 24 (c) requiring the cooperative to refinance in a stated way financial  
25 accommodation repaid in accordance with the registrar's  
26 direction;
- 27 (d) how the cooperative is permitted to invest or use the proceeds  
28 of financial accommodation it obtains.

29 **263 Subordinated debt**

- 30 (1) A cooperative may incur subordinated debt.

- 1 (2) A *subordinated debt* is a debt incurred under an agreement under  
2 which, in the event of the winding-up of the cooperative, any claim  
3 of the creditor against the cooperative in relation to the debt is to  
4 rank in priority—
- 5 (a) equally with the claim of any other creditor who is a party to a  
6 similar agreement; and
- 7 (b) except as provided under paragraph (a), after the claims of any  
8 other creditor of the cooperative and before the claims of  
9 members to repayment of any share capital in the cooperative.
- 10 (3) An agreement mentioned in subsection (2) has effect despite the  
11 provisions of the Corporations Act, part 5.6 (Winding up generally),  
12 division 6 (Proof and ranking of claims) that are applied by division  
13 12.3 (Winding-up and deregistration).
- 14 **264 Application of Corporations Act—issue of debentures**
- 15 (1) The following provisions of the Corporations Act apply to  
16 debentures of a cooperative:
- 17 • part 1.2A (Disclosing entities)  
18 • chapter 2L (Debentures)  
19 • chapter 6D (Fundraising)  
20 • part 7.11 (Conduct in relation to securities).
- 21 (2) The provisions of the Corporations Act applied by this section do  
22 not apply to a loan to which section 268 (Compulsory loan by  
23 member to cooperative) applies.
- 24 (3) The provisions of the Corporations Act applied by this section do  
25 not apply to an issue of debentures of a cooperative made—
- 26 (a) solely to members; or  
27 (b) solely to members and employees of the cooperative; or  
28 (c) to a person who has had the person's share capital converted to  
29 debt on becoming an inactive member of the cooperative.

- 1 (5) The registrar may, in writing, exempt a cooperative from the  
2 provisions of the Corporations Act applied by this section or any of  
3 them.

4 **265 Disclosure statement for debentures issue**

- 5 (1) This section applies to the issue of debentures of a cooperative  
6 where the issue is made—  
7 (a) solely to members; or  
8 (b) solely to members and employees of the cooperative.  
9 (2) Before issuing to the person debentures to which this section  
10 applies, a cooperative must provide a person with a disclosure  
11 statement, approved in writing by the registrar, and containing such  
12 information as is reasonably necessary to allow a person to make an  
13 informed assessment of the financial prospects of the cooperative,  
14 including—  
15 (a) the purpose for which the money raised by the cooperative by  
16 the issue of debentures is to be used; and  
17 (b) the rights and liabilities attaching to the debentures; and  
18 (c) the financial position of the cooperative; and  
19 (d) the interests of the directors of the cooperative in the issue of  
20 the debentures; and  
21 (e) any compensation or consideration to be paid to officers or  
22 members of the cooperative in relation to the issue of  
23 debentures; and  
24 (f) such other matters as the registrar directs.  
25 (3) Section 20 (except subsections (2), (4) and (9)) applies to the  
26 approval of a disclosure statement under this section with any  
27 necessary changes and, in particular, as if any reference in the  
28 section to a formation meeting were a reference to the issue of  
29 debentures.

1 **266 Approval of board for transfer of debentures**

2 A debenture of a cooperative may be sold or transferred only with  
3 the consent of the board and in accordance with the rules of the  
4 cooperative.

5 **267 Application of Corporations Act—reissue of redeemed**  
6 **debentures**

7 The Corporations Act, section 124 (1) (b) (Legal capacity and  
8 powers of a company) and section 563AAA (Redemption of  
9 debentures) apply to debentures issued by a cooperative to any of its  
10 members or employees.

11 **268 Compulsory loan by member to cooperative**

- 12 (1) A cooperative may, if authorised by its rules, require its members to  
13 lend, with or without security, to the cooperative in accordance with  
14 a proposal approved by special resolution of the cooperative.
- 15 (2) The proposal may not require a loan to be for longer than 7 years or,  
16 if another term is prescribed under the regulations, that term.
- 17 (3) The proposal must—
- 18 (a) be accompanied by a disclosure statement, approved in writing  
19 by the registrar, that explains the purpose for which the loan  
20 raised by the cooperative in accordance with the proposal is to  
21 be used and includes any other information that the registrar  
22 directs; and
- 23 (b) clearly show the total amount of the loan to be raised by the  
24 cooperative and the basis on which the amount required to be  
25 lent by each member is to be worked out; and
- 26 (c) be accompanied by a statement telling the member that the  
27 member may tell the board, by notice given to the board on or  
28 before the date stated in the statement, that the member resigns  
29 on the passing of the special resolution.

- 
- 1       (4) The date stated in the statement must be a date before the passing of  
2       the special resolution.
- 3       (5) If the proposal allows, the board of the cooperative may, in  
4       accordance with the terms of the proposal, deduct the amount  
5       required to be lent by a member to the cooperative from any amount  
6       owing by the cooperative to the member in relation to the member's  
7       dealings with the cooperative.
- 8       (6) A proposal to deduct an amount mentioned in subsection (5) must,  
9       in addition, clearly show—
- 10       (a) the basis on which the amount is to be deducted; and
- 11       (b) when and how the deduction is to be made.
- 12       (7) If the proposal is approved, it is binding on—
- 13       (a) all members of the cooperative at the date of passing of the  
14       special resolution, other than a member who has given a notice  
15       of resignation in accordance with subsection (3) (c); and
- 16       (b) everyone who becomes a member of the cooperative after that  
17       date and before the total amount of the loan to be raised in  
18       accordance with the proposal has been raised.
- 19       (8) Section 20 (except subsections (2), (4) and (9)) applies to the  
20       approval of a disclosure statement under this section with any  
21       necessary changes and, in particular, as if any reference in the  
22       section to a formation meeting were a reference to the special  
23       resolution.

24       **269 Interest payable on compulsory loan**

- 25       (1) The rate of interest payable by a cooperative in relation to a loan  
26       under section 268 during any period is—
- 27       (a) for a cooperative with share capital—
- 28           (i) the rate (or, if there is more than 1 rate, at the higher or  
29           highest rate) of dividend payable in relation to the period  
30           on the share capital of the cooperative; or

- 1 (ii) if the rate of dividend payable in relation to the period  
2 has not been decided—at the rate (or the higher or  
3 highest rate) payable in relation to the immediately  
4 preceding period for which a rate has been decided; or  
5 (iii) if a rate of dividend has never been decided in relation to  
6 the share capital of the cooperative—at the rate that the  
7 board of the cooperative considers reasonable; or  
8 (b) for a cooperative without share capital—at the rate that the  
9 board of the cooperative considers reasonable; or  
10 (c) if the rules provide for a rate to be payable that is higher than  
11 the rate applying under paragraph (a) or (b)—at the higher rate.  
12 (2) A member may agree to a lesser rate of interest than the rate that  
13 would otherwise be payable under this section and may agree to no  
14 interest being paid.

15 **Division 10.2 Charges**

16 **270 Registration of charges**

- 17 (1) Schedule 3 has effect.  
18 (2) However, schedule 3 does not apply to—  
19 (a) a mortgage, charge or encumbrance that is over particular land  
20 and is registered under a Territory law; or  
21 (b) a memorandum of such a mortgage, charge or encumbrance  
22 that is registered under a Territory law; or  
23 (c) a mortgage, charge or encumbrance over a particular licence  
24 under laws about mining.

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1 **Division 10.3**                      **Receivers and other controllers of**  
2    **property of cooperatives**

3 **271**    **Receivers and other controllers of property of**  
4                      **cooperatives**

5                      Schedule 4 has effect.

6 **Division 10.4**                      **Disposal of surplus from activities**

7 **272**    **Retention of surplus for benefit of cooperative**

8                      The board of a cooperative may resolve to retain all or any part of  
9                      the surplus arising in any year from the business of the cooperative  
10                     to be applied for the benefit of the cooperative.

11 **273**    **Application for charitable purposes or members**  
12                      **purposes**

13                     (1) The rules of a cooperative may authorise the cooperative to apply a  
14                     part of the surplus arising in any year from the business of the  
15                     cooperative for any charitable purpose.

16                     (2) The rules of a trading cooperative may authorise the cooperative to  
17                     apply a part of the surplus arising in any year from the business of  
18                     the cooperative for supporting any activity approved by the  
19                     cooperative.

20                     (3) The rules must limit the amount that may be applied under  
21                     subsection (1) or (2) to a specified proportion of the surplus.

22                     (4) A cooperative may apply part of the surplus for a purpose and to the  
23                     extent authorised by rules mentioned in subsection (1) or (2).

24 **274**    **Distribution of surplus or reserves to members**

25                     (1) The rules of a trading cooperative may authorise the cooperative to  
26                     apply a part of the surplus arising in any year from the business of  
27                     the cooperative or a part of the reserves of the cooperative by—

- 1 (a) distribution to members as a rebate on the basis of business  
2 done with the cooperative; or
- 3 (b) the issue of bonus shares to members on the basis of business  
4 done with the cooperative or on the basis of shares held by  
5 members; or
- 6 (c) the issue to members of a limited dividend for shares held by  
7 the members.
- 8 (2) The amount of any rebate or dividend payable to a member under  
9 subsection (1) may, with the consent of the member, be applied—
- 10 (a) in payment for the issue to the member of bonus shares; or  
11 (b) as a loan to the cooperative.
- 12 (3) In this section:
- 13 *limited dividend* means a dividend that does not exceed the amount  
14 prescribed under the regulations.
- 15 **275 Application of surplus to other people**
- 16 (1) If authorised by the rules of a trading cooperative, any part of the  
17 surplus arising in any year from the business of the cooperative may  
18 be credited to anyone who is not a member, but is qualified to be a  
19 member, by way of rebate in proportion to the business done by the  
20 person with the cooperative, if—
- 21 (a) the person was a member at the time the business was done and  
22 the membership has lapsed; or
- 23 (b) the person has applied for membership after the business was  
24 done.
- 25 (2) This section does not prevent the payment of a bonus to an  
26 employee in accordance with the terms of the employee's  
27 employment.



1 **Division 10.5**                      **Acquisition and disposal of assets**

2 **276**    **Acquisition and disposal of assets**

3        (1) A cooperative may do any of the following things only if approved  
4            by special resolution of the cooperative passed by a special postal  
5            ballot:

6            (a) sell or lease, as a going concern—

7                      (i) the undertaking of the cooperative; or

8                      (ii) a part of the undertaking of the cooperative if—

9                                      (A) the part relates to the primary activities of the  
10                                      cooperative; and

11                                      (B) the value of the part represents at least 5% of the  
12                                      total value of the undertaking;

13            (b) acquire from or dispose to a director or employee of the  
14                      cooperative, or a relative (within the meaning of the  
15                      Corporations Act) or spouse of a director or employee of the  
16                      cooperative, property if the value of the property represents at  
17                      least 5% of the total value of all the assets of the cooperative  
18                      that relate to its primary activities;

19            (c) acquire an asset if the value of the assets represents at least 5%  
20                      of the total assets of the cooperative and the acquisition would  
21                      result in the cooperative beginning to carry on an activity that  
22                      is not a primary activity of the cooperative;

23            (d) dispose of an asset if the disposal would result in—

24                      (i) the cooperative ceasing to carry on a primary activity of  
25                      the cooperative; or

26                      (ii) the ability of the cooperative to carry on a primary  
27                      activity of the cooperative being substantially impaired  
28                      either generally or in a particular locality.

- 1 (2) The registrar may, in writing, exempt a cooperative from some or all  
2 of the provisions of—  
3 (a) this section; or  
4 (b) section 200 (Special postal ballots) in relation to anything to  
5 which this section applies.  
6 (3) An exemption may be unconditional or subject to conditions.  
7 (4) If a cooperative contravenes this section, each person who is a  
8 member of the board of the cooperative commits an offence.  
9 Maximum penalty: 50 penalty units.  
10 (5) It is a defence to a prosecution of a person for an offence against  
11 subsection (4) if the person satisfies the court that the person used  
12 all due diligence to prevent the contravention by the cooperative.

1

2 **Part 11** **Restrictions on acquisition of**  
3 **interests in trading**  
4 **cooperatives**

5 **Division 11.1** **Restrictions on share and voting**  
6 **interests**

7 **277 Notice required to be given of voting interest**

- 8 (1) A person (whether or not a member of the cooperative) must give  
9 notice to a trading cooperative within 5 business days after  
10 becoming aware that the person has a relevant interest in the right to  
11 vote of a member of the cooperative.

12 Maximum penalty: 20 penalty units.

- 13 (2) A person (whether or not a member of the cooperative) who has  
14 ceased to have a relevant interest in the right to vote of a member of  
15 a trading cooperative must give notice to the cooperative within 5  
16 business days after becoming aware of that fact.

17 Maximum penalty: 20 penalty units.

18 *Note* Section 184 deals with the effect of a person having a relevant interest  
19 on the right to vote of a member of a cooperative.

20 **278 Notice required to be given of substantial share interest**

- 21 (1) A person must give notice to a trading cooperative within 5 business  
22 days after becoming aware that the person has a substantial share  
23 interest in the cooperative.

24 Maximum penalty: 20 penalty units.

1 (2) A person who has a substantial share interest in a trading  
2 cooperative must give notice to the cooperative within 5 business  
3 days after becoming aware that a substantial change has happened in  
4 that share interest.

5 Maximum penalty: 20 penalty units.

6 (3) A person who has ceased to have a substantial share interest in a  
7 trading cooperative must give notice to the cooperative within 5  
8 business days after becoming aware that the person has ceased to  
9 have the interest.

10 Maximum penalty: 20 penalty units.

11 (4) A person has a *substantial share interest* in a trading cooperative if  
12 the nominal value of the shares in the cooperative in which the  
13 person has a relevant interest represents 5% or more of the nominal  
14 value of the issued share capital of the cooperative.

15 (5) A *substantial change* takes place in a person's share interest in a  
16 trading cooperative if there is an increase or decrease in the number  
17 of shares in the cooperative in which the person has a relevant  
18 interest and the increase or decrease represents at least 1% of the  
19 nominal value of the issued share capital of the cooperative.

## 20 **279 Requirements for notices under div 11.1**

21 A notice required under this division must state the particulars,  
22 prescribed under the regulations, of the interest or change being  
23 notified.

24 *Note* If a form is approved under s 468 (Approved forms) for a notice, the  
25 form must be used.

## 26 **280 Maximum permissible level of share interest**

27 (1) A person must not have a relevant interest in shares of a trading  
28 cooperative if the nominal value of the shares is more than 20% of  
29 the nominal value of the issued share capital of the cooperative.

- 
- 1       (2) The registrar may, in writing, determine a higher percentage for  
2       subsection (1) in relation to a cooperative.
- 3       (3) A determination under subsection (2) is a notifiable instrument.
- 4       *Note*     A notifiable instrument must be notified under the *Legislation Act 2001*.
- 5       (4) The percentage applying under subsection (1) or (2) in relation to a  
6       cooperative may be increased for a particular person by special  
7       resolution of the cooperative passed by a special postal ballot.
- 8       (5) A resolution under subsection (4) for a person has effect only if—  
9       (a) it is approved in writing by the registrar; or  
10      (b) the person is another cooperative.
- 11      (6) The registrar's approval may be given on conditions.

12   **281   Shares to be forfeited to remedy contravention**

- 13      (1) If a person has a relevant interest in a share of a trading cooperative  
14      in contravention of this division, the board of the cooperative must  
15      declare to be forfeited sufficient of the shares in which the person  
16      has a relevant interest to remedy the contravention.
- 17      (2) The shares to be forfeited are—  
18      (a) the shares nominated by the person for the purpose; or  
19      (b) in the absence of such a nomination, the shares in which the  
20      person has had a relevant interest for the shortest time.
- 21      (3) A declaration of the board that shares are forfeited operates to forfeit  
22      the shares.
- 23      (4) Sections 133 to 135 apply to shares forfeited under this section as if  
24      the shares had been forfeited under part 6.

25   **282   Powers of board in relation to suspected contravention**

- 26      (1) If the board of a trading cooperative is satisfied on reasonable  
27      grounds that a person has contravened section 277 in relation to the  
28      cooperative, the board may do either or both of the following:

- 1 (a) refuse to register any share transfer involving the person;  
2 (b) suspend any specified rights or entitlements that a person has  
3 as a member of the cooperative or attaching to any shares of  
4 the cooperative in which the person has a relevant interest.  
5 (2) The board may ask a person who it suspects has a relevant interest  
6 in any shares of the cooperative to provide information to the board  
7 about the interest.  
8 (3) A failure by a person to comply with a request under subsection (2)  
9 constitutes reasonable grounds for the board being satisfied that the  
10 person has contravened section 277.

11 **283 Powers of Supreme Court in relation to contravention**

- 12 (1) If the Supreme Court is satisfied that a person has contravened  
13 section 277 in relation to a trading cooperative, the court may, on  
14 the application of the cooperative or the registrar, make any orders it  
15 considers just.  
16 (2) The orders that may be made under subsection (1) include—  
17 (a) a remedial order; and  
18 (b) an order directing the cooperative or anyone else to do or not  
19 do anything to secure compliance with any other order under  
20 the subsection.  
21 (3) An order may be made whether or not the contravention continues.  
22 (4) Proof to the satisfaction of the Supreme Court at the hearing of an  
23 application that—  
24 (a) a person has a relevant interest in a share of a trading  
25 cooperative because an associate of the person has a relevant  
26 interest in a share; and  
27 (b) the associate became entitled to that relevant interest within 6  
28 months before the application was filed with the court;

1 is evidence that the associate was an associate of the person from  
2 the time the person first had the relevant interest until the date of the  
3 hearing.

4 **284 Cooperative to tell registrar about certain high share**  
5 **holdings**

6 (1) A trading cooperative must tell the registrar in writing within 14  
7 days after the board becomes aware that—

8 (a) a person has a relevant interest in shares of the cooperative and  
9 the nominal value of the shares exceeds the permitted  
10 percentage of the nominal value of the issued share capital of  
11 the cooperative; or

12 (b) there has been a change in the number of shares in which a  
13 person mentioned in paragraph (a) holds a relevant interest.

14 (2) The trading cooperative must also give the registrar details of the  
15 relevant interest or the change.

16 (3) In this section:

17 *permitted percentage*, in relation to a relevant interest in shares of a  
18 cooperative held by a person, means—

19 (a) 20%; or

20 (b) if a higher percentage applies under section 280 (2) or (4)—the  
21 higher percentage.

22 **285 Cooperative to keep register of notifiable interests**

23 (1) A trading cooperative must keep a register of notifiable interests.

24 (2) The cooperative must enter in the register, in alphabetical order, the  
25 names of people from whom the cooperative has received a  
26 notification under this division together with the information  
27 contained in the notification.

- 1       (3) The register must be open for inspection—  
2           (a) by any member of the cooperative free of charge; and  
3           (b) by anyone else on payment of the fee (if any) that the  
4               cooperative may require.  
5       (4) The fee required by the cooperative must not exceed the amount (if  
6           any) prescribed under the regulations.

7       **286 Unlisted companies to provide list of shareholders etc**

- 8       (1) This section applies to a company that is not a listed corporation.  
9       (2) A company to which this section applies that is a member of a  
10           trading cooperative must provide to the cooperative a list showing—  
11           (a) the name of each member of the company as at the end of the  
12               financial year of the company and the number of shares in the  
13               company held by each member; and  
14           (b) the name of each person who has a relevant interest (within the  
15               meaning of the Corporations Act) in any share of the company  
16               together with details of that interest; and  
17           (c) the name of each person who is an associate (within the  
18               meaning of the Corporations Act) of the company.  
19       (3) A list under subsection (2) must be provided within 28 days after the  
20           end of each financial year of the company and within 28 days after a  
21           request for the list is made in writing to the company by the  
22           registrar.  
23       (4) The details to be shown on the list are those details as at the end of  
24           the financial year concerned or, if the list is provided at the request  
25           of the registrar, as at the date stated in the request.  
26       (5) The registrar may make a request under subsection (3) at any time  
27           but only if the registrar is of the opinion that the company is or may  
28           be involved in a suspected contravention of a provision of this  
29           division.



1   **287   Excess share interest not to affect loan liability**

- 2       (1) This section applies if a trading cooperative has made a loan to a  
3       member and the member had or has a relevant interest in shares of  
4       the cooperative in contravention of this division.
- 5       (2) Until the amount lent to the member has been repaid to the  
6       cooperative (with any interest payable), the member is liable to  
7       make to the cooperative the payments that the member would be  
8       liable to make if all the shares concerned were lawfully held by the  
9       member.
- 10      (3) Any security for the repayment of the loan is not affected by a  
11      contravention of this division.

12   **288   Extent of operation of div 11.1**

13       This division—

- 14       (a) applies to all individuals, whether resident in the ACT or  
15       elsewhere in Australia or not and whether Australian citizens  
16       or not, and to all corporations or unincorporated bodies,  
17       whether incorporated or carrying on business in the ACT or  
18       elsewhere in Australia or not; and
- 19       (b) extends to acts done or omitted to be done outside the ACT,  
20       whether in Australia or not.

21   **289   Registrar may give exemptions for div 11.1**

- 22       (1) The registrar may, in writing, exempt a person from this division or  
23       a provision of this division.
- 24       (2) An exemption may be unconditional or subject to conditions.

1 **Division 11.2**                    **Restrictions on certain share**  
2    **offers**

3 **290**    **Share offers to which div 11.2 applies**

4        (1) This division applies to the following offers to purchase shares in a  
5            trading cooperative:

6            (a) an offer made as part of a proposal for, or that is conditional  
7                    on, the sale of the undertaking or any part of the undertaking,  
8                    as a going concern, of the cooperative;

9            (b) an offer made as part of a proposal for, or that is conditional  
10                   on, the registration of the cooperative as a company under the  
11                   Corporations Act;

12           (c) an offer made as part of a proposal for, or that is conditional  
13                   on, the winding-up of the cooperative;

14           (d) an offer that would result in a contravention of section 280  
15                   (Maximum permissible level of share interest) were the offeror  
16                   to be registered (immediately after the offer is made) as the  
17                   holder of the shares that are the subject of the offer;

18           (e) an offer that would lead to the offeror having a substantial  
19                   share interest in the cooperative, or to a substantial change  
20                   taking place in a substantial share interest that the offeror has  
21                   in the cooperative, were the offeror to be registered  
22                   (immediately after the offer is made) as the holder of the shares  
23                   that are the subject of the offer.

24        (2) In this section:

25            *substantial change*—see section 278 (5).

26            *substantial share interest*—see section 278 (4).

1   **291   Requirements to be satisfied before share offer may be**  
2       **made**

- 3       (1) A person may make an offer to which this division applies only if  
4       the making of the offer has been approved—  
5           (a) by special resolution passed by a special postal ballot; and  
6           (b) by the registrar.  
7       (2) However, an offer mentioned in section 290 (1) (e) that is made in  
8       accordance with the regulations may be made even if it has not been  
9       approved as mentioned in subsection (1) of this section.

10   **292   Some offers totally prohibited if they discriminate**

- 11       An offer mentioned in section 290 (1) (a) to (d) must not be made at  
12       all if it operates or would operate to discriminate between members  
13       who are active members and members who are not active members.

14   **293   Offers to be submitted to board first**

- 15       (1) Any proposal to make an offer to which this division applies must in  
16       the first instance be submitted to the board of the cooperative.  
17       (2) The board may decline to put a proposed offer to a special postal  
18       ballot unless arrangements satisfactory to the board have been made  
19       for payment to the cooperative of the expenses involved in holding  
20       the ballot.  
21       (3) The board may require payment in advance under subsection (2).  
22       (4) A requisition for a special postal ballot for this division must not be  
23       served until the board has had a reasonable opportunity to consider  
24       the proposed offer.  
25       (5) A period of 28 days is taken to be a reasonable opportunity for  
26       considering a proposed offer but the registrar may extend that period  
27       in a particular case by notice to the cooperative.

1 **294 Announcements of proposed takeovers affecting**  
2 **proposed company**

- 3 (1) This section applies to an offer to buy shares in a trading  
4 cooperative made as part of a proposal for, or that is conditional on,  
5 the registration of the cooperative as a company (the *proposed*  
6 *company*) under the Corporations Act.
- 7 (2) A person must not make a public announcement to the effect that  
8 the person proposes, or that the person and someone else together  
9 propose, to make takeover offers, or to cause a takeover  
10 announcement to be made, in relation to the proposed company if—
- 11 (a) the person knows that the announcement is false or is  
12 recklessly indifferent about whether it is true or false; or
- 13 (b) the person has no reasonable grounds for believing that the  
14 person, or the person and the other person, will be able to  
15 perform obligations arising under the scheme or announcement  
16 under the Corporations Act in relation to the scheme or  
17 announcement if a substantial proportion of the offers or the  
18 offers made under the announcement are accepted.

19 Maximum penalty: 200 penalty units, imprisonment for 2 years or  
20 both.

- 21 (3) If a person makes a public announcement to the effect that the  
22 person proposes, or that the person and someone else together  
23 propose, to make a takeover bid in relation to the proposed  
24 company, the person must proceed to make a takeover bid in  
25 relation to shares in the company in accordance with the public  
26 announcement within 2 months after the day the company is  
27 incorporated.

28 Maximum penalty: 100 penalty units, imprisonment for 1 year or  
29 both.

- 30 (4) A person is not liable to be convicted of more than 1 offence against  
31 subsection (3) in relation to a single public announcement.

- 1 (5) A person who contravenes this section (whether or not the person is  
2 found guilty of an offence for the contravention) is liable to pay  
3 compensation to anyone else who suffered loss as a result of  
4 entering into a transaction in relation to shares in reliance on the  
5 public announcement concerned.
- 6 (6) The amount of that compensation is the difference between the price  
7 of the shares at which the transaction was entered into and the price  
8 of the shares at which the transaction would have been likely to  
9 have been entered into if the person had not made the public  
10 announcement.
- 11 (7) A person does not commit an offence for a contravention of  
12 subsection (3), and is not liable to pay compensation in relation to  
13 the contravention, if it is proved that the person could not  
14 reasonably have been expected to make the takeover bid  
15 concerned—
- 16 (a) because of circumstances that existed at the time of the making  
17 of the public announcement but of which the person had no  
18 knowledge and could not reasonably have been expected to  
19 have knowledge; or
- 20 (b) because of a change in circumstances after the making of the  
21 announcement, other than a change in circumstances caused  
22 directly or indirectly by the person.
- 23 (8) Words and expressions used in this section have the same meanings  
24 as in the Corporations Law, section 746 as in force on 12 March  
25 2000.

26 **295 Additional disclosure requirements for offers involving**  
27 **conversion to company**

28 If an offer to which this division applies is part of a proposal for, or  
29 is conditional on, the registration of the cooperative as a company  
30 under the Corporations Act, the disclosure statement required to be  
31 sent to members for the special postal ballot must contain the  
32 following additional information:

- 1 (a) full particulars of any proposal under which any of the  
2 directors will acquire a relevant interest in any share of the  
3 company to be formed;
- 4 (b) any other information that is—
- 5 (i) material to the making of a decision by a member  
6 whether or not to agree to the making of the offer; and
- 7 (ii) within the knowledge of the directors and has not  
8 previously been disclosed to the members;
- 9 (c) any other information the registrar, by notice, directs.

10 **296 Consequences of prohibited offer**

- 11 (1) If a person makes an offer to buy shares in a trading cooperative in  
12 contravention of this division—
- 13 (a) the person is not entitled to be registered as the holder of the  
14 shares; and
- 15 (b) if the transfer of the shares is registered—the person is not  
16 entitled to vote at any meeting of the cooperative.
- 17 (2) Any vote cast by or on behalf of a member who is not entitled to  
18 vote because of this section is to be disregarded.

19 **297 Registrar may give exemptions for div 11.2**

- 20 (1) The registrar may, in writing, exempt a trading cooperative from  
21 some or all of the provisions of—
- 22 (a) this division; or
- 23 (b) section 200 (Special postal ballots) in relation to anything to  
24 which this division applies.
- 25 (2) An exemption may be unconditional or subject to conditions.

**Part 12**                      **Mergers, transfers of  
engagements and winding-up**

**Division 12.1**            **Mergers and transfers of  
engagements**

**298**    **Application of div 12.1**

This division does not apply to a merger or transfer of engagements to which part 14 applies.

**299**    **Mergers and transfers of engagements of local  
cooperatives**

Any 2 or more cooperatives may consolidate all or any of their assets, liabilities and undertakings by way of merger or transfer of engagements approved under this division.

**300**    **Requirements before making application for merger etc  
approval**

(1) Before cooperatives 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 cooperatives by—

(a) a special resolution passed by a special postal ballot; or

(b) if permitted by subsection (2)—a resolution of the board of the cooperative.

(2) The proposed merger or transfer of engagements may be approved by resolution of the board of a cooperative if the registrar consents to that procedure applying in the particular case.

**301**    **Disclosure statement required for div 12.1**

(1) A resolution of a cooperative is effective for this division only if this section has been complied with.

- 1 (2) Each cooperative must send to each of its members a disclosure  
2 statement, approved in writing by the registrar, that specifies—
- 3 (a) the financial position of each cooperative concerned in the  
4 proposed merger or transfer of engagements, as shown in  
5 financial statements that have been prepared at a date not  
6 earlier than 6 months before the date of the statement; and
- 7 (b) any interest that any officer of each cooperative has in the  
8 proposed merger or transfer of engagements; and
- 9 (c) any compensation or other consideration proposed to be paid,  
10 or any other incentive proposed to be given, to any officer or  
11 member of each cooperative in relation to the proposed merger  
12 or transfer of engagements; and
- 13 (d) whether the proposal is a merger or transfer of engagements  
14 and the reason for the merger or transfer or engagements; and
- 15 (e) for a transfer of engagements—whether it is a total or partial  
16 transfer of engagements; and
- 17 (f) any other information that the registrar directs.
- 18 (3) The disclosure statement must be sent to the members of each  
19 cooperative so that it will in the ordinary course of post reach each  
20 member who is entitled to vote on the special resolution not later  
21 than 21 days before the day on or before which the ballot papers  
22 must be returned by members voting in the special postal ballot.
- 23 (4) The registrar may, in writing, exempt a cooperative from this  
24 section or any provision of this section.
- 25 (5) The registrar may, in writing, approve a disclosure statement.
- 26 (6) An exemption or approval may be unconditional or subject to  
27 conditions.



1   **302 Making application for merger approval etc**

- 2       (1) An application for approval of a merger or transfer of engagements  
3       under this division must be made to the registrar.

4       *Note*     If a form is approved under s 468 (Approved forms) for an application,  
5       the form must be used.

- 6       (2) An application for approval of a merger must be accompanied by 2  
7       copies of the proposed rules of the merged cooperative and any  
8       other particulars required by the registrar.

9   **303 Approval of merger**

- 10       (1) The registrar must approve a merger specified in an application  
11       under this division if satisfied that—

12           (a) this division has been complied with in relation to the  
13           application; and

14           (b) the proposed rules of the merged cooperative are consistent  
15           with this Act and may reasonably be approved under this Act;  
16           and

17           (c) the certificates of registration of the cooperatives have been  
18           surrendered to the registrar; and

19           (d) there is no good reason why the merged cooperative and its  
20           rules should not be registered.

- 21       (2) On approving an application for merger, the registrar must—

22           (a) cancel the registration of the cooperatives involved in the  
23           merger; and

24           (b) register the merged cooperative and its rules; and

25           (c) issue to the merged cooperative a certificate of registration  
26           under this Act.

- 27       (3) A merger takes effect on the issue of the certificate of registration  
28       for the merged cooperative.

1 **304 Approval of transfer of engagements**

- 2 (1) The registrar must approve a transfer of engagements specified in an  
3 application under this division if satisfied that—  
4 (a) this division has been complied with in relation to the  
5 application; and  
6 (b) the rules or proposed rules of the transferee cooperative are  
7 adequate; and  
8 (c) for a total transfer of engagements from a cooperative—the  
9 certificate of registration of the cooperative has been  
10 surrendered to the registrar; and  
11 (d) there is no good reason why the transfer of engagements  
12 should not take effect.  
13 (2) A transfer of engagements takes effect on the day stated in the  
14 approval of the registrar.

15 **305 Transfer of engagements by direction of registrar**

- 16 (1) The registrar may, by notice, direct a cooperative—  
17 (a) to transfer its engagements to a cooperative approved in  
18 writing by the registrar; and  
19 (b) within the period stated in the direction (or, if the registrar  
20 allows a further period, the further period), to enter into an  
21 agreement approved in writing by the registrar to give effect to  
22 the transfer of engagements directed.  
23 (2) The registrar may give the direction only if—  
24 (a) the Minister has given approval; and  
25 (b) the necessary grounds exist, under section 338, for giving the  
26 direction; and  
27 (c) the grounds are stated, fully or in summary form, in the notice.

- 
- 1       (3) The transfer of engagements must make provision, in a way  
2       approved in writing by the registrar, for members of the transferor  
3       cooperative to become members of the transferee cooperative if they  
4       wish to do so.
- 5       (4) If a cooperative fails to comply with a direction under this section,  
6       the registrar may elect to treat the failure as the necessary grounds—  
7       (a) for the winding-up of the cooperative on a certificate of the  
8       registrar; or  
9       (b) for the appointing of an administrator of the cooperative.
- 10      (5) The registrar must give notice to the cooperative of the registrar's  
11      decision under subsection (4).
- 12      (6) The registrar may revoke a direction under this section at any time  
13      up until the cooperative has agreed to transfer its engagements in  
14      accordance with the direction.
- 15      (7) The registrar must, in writing, fix the date the transfer of  
16      engagement directed under this section takes effect.
- 17      (8) An instrument under subsection (7) is a notifiable instrument.
- 18      *Note*     A notifiable instrument must be notified under the *Legislation Act 2001*.
- 19      (9) An officer of a cooperative must take all reasonable steps to ensure  
20      that the cooperative complies with a direction given to it under this  
21      section.
- 22      Maximum penalty: 20 penalty units.
- 23      (10) An officer of a cooperative must not, by wilful act or omission,  
24      cause the cooperative to fail to comply with a direction given to it  
25      under this section.
- 26      Maximum penalty: 20 penalty units.

1 **Division 12.2** **Transfer of registration or**  
2 **incorporation**

3 **306** **Meaning of *new body* and *transfer* in div 12.2**

4 In this division:

5 *new body* means a body the registration or incorporation of which  
6 has been transferred.

7 *transfer* means the transfer of the registration or incorporation of a  
8 cooperative because of an application under this division.

9 **307** **Application for transfer of registration etc**

10 (1) A cooperative may apply to become registered or incorporated as 1  
11 of the following bodies:

12 (a) a company under the Corporations Act;

13 (b) an association incorporated, or taken to be incorporated, under  
14 the *Associations Incorporation Act 1991*;

15 (c) a building society;

16 (d) a credit union;

17 (e) a corporation incorporated, registered or otherwise established  
18 under a law, prescribed under the regulations for this section,  
19 of a place outside the ACT.

20 (2) An application must be made in accordance with, and is subject to,  
21 the law applying to the relevant kind of body.

22 (3) An application must be accompanied by—

23 (a) if applicable—an amount equal to the amount of any fee  
24 payable under that law on application for registration or  
25 incorporation as a body of the relevant kind; and

- 1 (b) either—
- 2 (i) the certificate of registration of the cooperative under this
- 3 Act or, if applicable, the former Act; or
- 4 (ii) if the certificate of registration is not available—an
- 5 affidavit by a director or the secretary of the cooperative
- 6 setting out why it is not available and, if it cannot be
- 7 found, the searches and inquiries that have been made for
- 8 it.

9 **308 Requirements before making application for transfer of**

10 **registration etc**

- 11 (1) Before an application is made under section 307, the cooperative
- 12 must by special resolution passed by a special postal ballot—
- 13 (a) approve the proposed application; and
- 14 (b) decide under what name the cooperative is to apply to be
- 15 incorporated or registered; and
- 16 (c) adopt any memorandum or articles of association, constitution,
- 17 replaceable rules or other rules, as may be necessary or
- 18 considered desirable.
- 19 (2) The name applied for need not be the same as that of the cooperative
- 20 and must not include the word ‘cooperative’ or any other word with
- 21 a similar meaning.
- 22 (3) The registrar may, in writing, exempt a cooperative from some or all
- 23 of the provisions of—
- 24 (a) this section; or
- 25 (b) section 200 (Special postal ballots) in relation to anything to
- 26 which this section applies.
- 27 (4) An exemption may be unconditional or subject to conditions.

- 1 **309 Transfer of registration not to impose greater liability etc**
- 2 (1) A memorandum or articles of association, constitution, replaceable  
3 rules or other rules applied for the transfer must not—
- 4 (a) impose on the members of the new body who were members of  
5 the cooperative at the date of transfer any greater or different  
6 liability to contribute to the assets of the new body than the  
7 liability to which they were subject as members of the  
8 cooperative; or
- 9 (b) deprive any member of the new body of any preferential rights  
10 in relation to dividend or capital to which the member was  
11 entitled as a member of the cooperative at the date of transfer.
- 12 (2) The transfer must result in every member of the cooperative at the  
13 date of transfer becoming a member of the new body.
- 14 (3) For a transfer of a cooperative that has a share capital to a new body  
15 that has a share capital, the transfer must result in every member of  
16 the cooperative at the date of transfer who held shares in the  
17 cooperative becoming the holder of shares in the capital of the new  
18 body equal in number and nominal value to the shares held by the  
19 member as a member of the cooperative.
- 20 **310 Effect of new certificate of registration etc**
- 21 (1) A certificate of registration or incorporation as a new body is  
22 conclusive evidence of compliance with all the requirements of this  
23 division in relation to the registration or incorporation.
- 24 (2) If a new body first receives a certificate of that kind in relation to its  
25 registration or incorporation, it must immediately file a copy of the  
26 certificate with the registrar.
- 27 Maximum penalty: 10 penalty units.

1   **311   New body ceases to be registered as cooperative**

2           On the issue of a certificate of registration or incorporation as a new  
3           body in relation to a cooperative, the cooperative ceases to be  
4           registered as a cooperative under this Act.

5   **312   New body is continuation of cooperative**

6       (1) If a cooperative transfers to a new body, the new body is taken to be  
7       the same entity as the cooperative.

8       (2) Without limiting subsection (1), division 12.6 applies to a transfer  
9       under this division.

10   **313   Stamp duty on transfer of registration etc**

11       (1) This section applies if a cooperative that transfers under this  
12       division was before its registration as a cooperative under this Act a  
13       company under the Corporations Act and stamp duty had been paid  
14       on its incorporation as a company in relation to the amount of the  
15       nominal capital of the company (or, if the nominal capital was  
16       subsequently increased, on the amount of its nominal capital as  
17       increased).

18       (2) Any stamp duty paid is taken into account and included in assessing  
19       the stamp duty payable on its incorporation or registration in  
20       accordance with the transfer.

21   **Division 12.3           Winding-up and deregistration**

22   **314   Methods of winding-up**

23       (1) A cooperative may be wound up voluntarily or by the Supreme  
24       Court or on a certificate of the registrar.

25       (2) For a winding-up voluntarily or by the Supreme Court, the  
26       cooperative may be wound up in the same way and in the same  
27       circumstances as a company under the Corporations Act may be so  
28       wound up.

1 **315 Winding-up on registrar's certificate**

- 2 (1) A cooperative may be wound up on a certificate of the registrar only  
3 if, under section 338, the necessary grounds exist for taking that  
4 action.
- 5 (2) A winding-up on a certificate of the registrar begins when the  
6 certificate is given.
- 7 (3) On the giving of a certificate, the registrar may appoint a person to  
8 be the liquidator of the cooperative.
- 9 (4) The liquidator need not be a registered liquidator under the  
10 Corporations Act.
- 11 (5) The registrar must prepare written notice of the liquidator's  
12 appointment.
- 13 (6) The notice is a notifiable instrument.
- 14 *Note* A notifiable instrument must be notified under the *Legislation Act 2001*.
- 15 (7) The liquidator must give the security (if any) for the exercise of the  
16 liquidator's functions that the registrar directs.
- 17 (8) The liquidator is entitled to receive the fees decided by the registrar.
- 18 (9) Any vacancy in the office of liquidator is to be filled by a person  
19 appointed by the registrar.

20 **316 Method of deregistration**

- 21 A cooperative may be deregistered in the same way and in the same  
22 circumstances as a company may be deregistered under the  
23 Corporations Act.

24 **317 Application of Corporations Act—winding-up and**  
25 **deregistration of cooperatives**

- 26 (1) The following provisions of the Corporations Act apply to the  
27 winding-up or deregistration of a cooperative, and a deregistered  
28 cooperative:



- 1           • part 5.4 (Winding up in insolvency)  
2           • part 5.4A (Winding up by the Court on other grounds)  
3           • part 5.4B (Winding up in insolvency or by the Court)  
4           • part 5.5 (Voluntary winding up)  
5           • part 5.6 (Winding up generally)  
6           • part 5.7 (Winding up bodies other than companies)  
7           • chapter 5A (Deregistration, and transfer of registration, of  
8           companies).
- 9       (2) The provisions apply subject to the following modifications:
- 10           (a) a reference in the provisions to a special or extraordinary  
11           resolution is taken to be a reference to a special resolution  
12           within the meaning of this Act;
- 13           (b) section 513B (Voluntary winding up) is taken to be amended  
14           by inserting the following paragraph after paragraph (d):
- 15               ‘(da) if the winding up is on the certificate of the registrar—on  
16               the date the certificate is given; or’;
- 17           (c) section 461 (1) (h) (General grounds on which company may  
18           be wound up by Court) is taken to be amended by omitting  
19           ‘ASIC has stated in a report prepared under division 1 of part 3  
20           of the ASIC Act that, in its opinion:’, and substituting ‘the  
21           registrar has, because of an inquiry conducted under the  
22           *Cooperatives Act 2001*, division 15.2 (Inquiries) or division  
23           15.4 (Miscellaneous powers of registrar), stated that—’;
- 24           (d) section 464 (1) (Application for winding up in connection with  
25           investigation under ASIC Act) is taken to be amended by  
26           omitting ‘Where ASIC is investigating, or has investigated,  
27           under division 1 of part 3 of the ASIC Act:’, and substituting  
28           ‘If the registrar is holding or has held an inquiry under the  
29           *Cooperatives Act 2001*, division 15.2 (Inquiries) or division  
30           15.4 (Miscellaneous powers of registrar)—’;

- 1 (e) section 516 (Company limited by shares) is taken to be  
2 amended by inserting after the words ‘past member’ the words  
3 ‘together with any charges payable by the member to the  
4 cooperative in accordance with the rules’;
- 5 (f) a reference in the provisions to a registered liquidator is taken  
6 to include a reference to a person approved by the registrar as a  
7 liquidator of a cooperative;
- 8 (g) a reference in the provisions to a part 2F.1 (Oppressive conduct  
9 of affairs) is taken to be a reference to division 4.5 (Oppressive  
10 conduct of affairs) of this Act;
- 11 (h) for the application of the provisions to a winding-up on a  
12 certificate of the registrar, the winding-up is taken to be a  
13 voluntary winding-up (but the Corporation Act, section 490  
14 (When company cannot wind up voluntarily) does not apply);
- 15 (i) section 542 (3) (Books of company) is taken to be amended by  
16 inserting the following word and paragraph after paragraph (c):  
17 ‘; and
- 18 (d) for a winding up on a certificate of the registrar under the  
19 *Cooperatives Act 2001*, section 314 (Methods of  
20 winding-up)—with the registrar’s consent.’;
- 21 (j) for the application of the provisions to decide the liability of  
22 members and former members to contribute on a winding-up  
23 of a cooperative, the provisions are taken to be subject to  
24 section 71 (Liability of members to cooperative) and section  
25 323 (Liability of member to contribute in winding-up where  
26 shares forfeited etc).

27 **318 Restrictions on voluntary winding-up**

- 28 (1) A cooperative may be wound up voluntarily only—  
29 (a) by a creditors’ voluntary winding-up; or

- 1 (b) if a special resolution is passed by a special postal ballot in  
2 favour of voluntary winding-up.
- 3 (2) The registrar may, in writing, exempt a cooperative from some or all  
4 of the provisions of—
- 5 (a) this section; or
- 6 (b) section 200 (Special postal ballots) in relation to anything to  
7 which this section applies.
- 8 (3) An exemption may be unconditional or subject to conditions.
- 9 (4) If a special postal ballot is held, the members may, by the same  
10 ballot, by simple majority—
- 11 (a) appoint 1 or more liquidators for the purpose of winding up the  
12 affairs and distributing the assets of the cooperative; and
- 13 (b) fix the remuneration to be paid to the liquidator.

14 **319 Beginning of members' voluntary winding-up**

15 A members' voluntary winding-up of a cooperative begins when the  
16 result of the special postal ballot is noted in the minute book by the  
17 secretary of the cooperative.

18 **320 Distribution of surplus—non-trading cooperatives**

- 19 (1) On a winding-up of a non-trading cooperative, the surplus property  
20 of the cooperative must be distributed as required by the rules of the  
21 cooperative.
- 22 (2) The rules of a non-trading cooperative must make provision about  
23 the distribution of the surplus property of the cooperative in a  
24 winding-up.
- 25 (3) In this section:
- 26 *surplus property* means the property of the cooperative that remains  
27 after satisfaction of the debts and liabilities of the cooperative and  
28 the costs, charges and expenses of the winding-up.

1 **321 Liquidator—vacancy may be filled by registrar**

2 If a cooperative is being wound up voluntarily and a vacancy  
3 happens in the office of liquidator that in the registrar's opinion is  
4 unlikely to be filled in the way provided by the Corporations Act,  
5 the registrar may appoint a person to be liquidator.

6 **322 Review of liquidator's remuneration**

7 Any member or creditor of a cooperative or the liquidator may at  
8 any time before the completion of the winding-up of the cooperative  
9 apply to the Supreme Court to review the amount of the  
10 remuneration of the liquidator.

11 **323 Liability of member to contribute in winding-up where**  
12 **shares forfeited etc**

13 (1) If a person's membership of a cooperative is cancelled under part 6  
14 within 2 years before the beginning of the winding-up of the  
15 cooperative, the person is liable on the winding-up to contribute to  
16 the property of the cooperative the nominal value, immediately  
17 before the cancellation, of any shares forfeited in relation to the  
18 cancellation.

19 (2) If under section 173 a cooperative—

20 (a) buys any share of a member in the cooperative; or

21 (b) repays to a member all or any part of the amount paid up on  
22 any share held by a member;

23 within 2 years before the beginning of the winding-up of the  
24 cooperative, the member or former member is liable on the winding-  
25 up to contribute to the property of the cooperative the amount that  
26 was paid by the cooperative to the member or former member in  
27 relation to the purchase or repayment together with any amount  
28 unpaid on the shares immediately before the purchase or repayment.

- 1 (3) If a person contributes to the property of a cooperative under a  
2 liability under this section, the amount contributed is, for the  
3 winding-up concerned, to be treated as having been paid up by the  
4 person on shares of the cooperative.
- 5 (4) The liability of a member or former member of a cooperative under  
6 this section is in addition to any other liability of the member or  
7 former member to contribute to the property of the cooperative on a  
8 winding-up of the cooperative.

9 **Division 12.4 Administration of cooperatives**

10 **324 Application of Corporations Act—administration of**  
11 **cooperatives**

- 12 (1) The Corporations Act, part 5.3A (Administration of a company's  
13 affairs with a view to executing a deed of company arrangement)  
14 and part 5.9 (Miscellaneous), division 3 (Provisions applying to  
15 various kinds of external administration) apply in relation to a  
16 cooperative.
- 17 (2) The provisions apply subject to the following modifications:
- 18 (a) the provisions are taken to include the provisions of  
19 section 325 (Appointment of administrator) of this Act;
- 20 (b) a reference in the provisions to the Corporations Act,  
21 section 128 (Entitlement to make assumptions) and section 129  
22 (Assumptions that can be made under section 128) is taken to  
23 be a reference to the following provisions of this Act:
- 24 • section 43 (When assumptions may be made)
  - 25 • section 44 (The assumptions)
  - 26 • section 45 (Person who knows or ought to know is not  
27 entitled to make assumptions)
  - 28 • section 47 (Effect of fraud);

- 1 (c) a reference in the provisions to an administrator appointed  
2 under a provision of the Corporations Act, part 5.3A is taken to  
3 include a reference to an administrator appointed by the  
4 registrar under the provisions included by paragraph (a).

5 **Division 12.5 Appointment of administrator**

6 **325 Appointment of administrator**

- 7 (1) The registrar may, by notice, appoint an administrator to conduct the  
8 affairs of a cooperative.  
9 (2) A notice of appointment must state—  
10 (a) the date of the appointment; and  
11 (b) the appointee's name; and  
12 (c) the appointee's business address.  
13 (3) If the appointee's name or business address changes, the appointee  
14 must immediately give notice of the change to the registrar.  
15 (4) The registrar may appoint an administrator only if the necessary  
16 grounds exist, under section 338, for the taking of that action.

17 **326 Effect of appointment of administrator**

- 18 (1) On the appointment of an administrator of a cooperative—  
19 (a) the directors of the cooperative cease to hold office; and  
20 (b) all contracts of employment with the cooperative are  
21 terminated; and  
22 (c) all contracts for the provision of secretarial or administrative  
23 services for the cooperative are terminated; and  
24 (d) the administrator may terminate any contract for providing  
25 other services to the cooperative.  
26 (2) An administrator of a cooperative has the functions of the board of  
27 the cooperative (including the board's powers of delegation).

- 1       (3) A director of a cooperative may be appointed or elected while the  
2       administrator is in office only as provided by this division.

3       **327 Termination of appointment of administrator**

- 4       (1) An administrator holds office until—  
5       (a) the administrator—  
6           (i) resigns by notice signed by the administrator and  
7           received by the registrar; or  
8           (ii) dies; or  
9       (b) the administrator's appointment is revoked under subsection  
10       (2).  
11       (2) The registrar may, by notice, revoke the appointment of an  
12       administrator.  
13       (3) If a liquidator of a cooperative is appointed, the appointment of any  
14       administrator of the cooperative is automatically revoked.  
15       (4) Immediately on the revocation of an administrator's appointment,  
16       the administrator must prepare and give a report to the registrar  
17       showing how the administration was carried out and, for that  
18       purpose, an administrator has access to the cooperative's records  
19       and documents.  
20       (5) On providing the report and accounting fully in relation to the  
21       administration of the cooperative to the satisfaction of the registrar,  
22       the administrator is released from any further duty to account in  
23       relation to the administration of the cooperative other than on  
24       account of fraud, dishonesty, negligence or wilful failure to comply  
25       with this Act.  
26       (6) Before revoking the appointment of an administrator of a  
27       cooperative (otherwise than by appointing a liquidator), the registrar  
28       must—  
29       (a) appoint another administrator of the cooperative; or

- 1 (b) ensure that directors of the cooperative have been elected in  
2 accordance with the rules of the cooperative at a meeting called  
3 by the administrator in accordance with the rules; or  
4 (c) appoint directors of the cooperative.  
5 (7) Directors so elected or appointed—  
6 (a) take office on revocation of the administrator's appointment;  
7 and  
8 (b) for directors appointed under subsection (6)—hold office until  
9 the next annual general meeting of the cooperative after the  
10 revocation of that appointment.

11 **328 Expenses of administration**

- 12 (1) The expenses of and incidental to the conduct of a cooperative's  
13 affairs by an administrator are payable from the cooperative's funds.  
14 (2) The expenses of conducting a cooperative's affairs include—  
15 (a) if the administrator is not a public servant—remuneration of  
16 the administrator at a rate approved in writing by the registrar;  
17 or  
18 (b) if the administrator is a public servant—the amount that the  
19 registrar certifies should be paid to the Territory as repayment  
20 of the administrator's remuneration.  
21 (3) An amount certified under subsection (2) (b) may be recovered in a  
22 court of competent jurisdiction as a debt to the Territory.  
23 (4) An administrator of a cooperative has, in relation to the expenses  
24 mentioned in this section, the same priority on the winding-up of the  
25 cooperative as a liquidator of the cooperative.

26 **329 Liabilities arising from administration**

- 27 (1) If a cooperative incurs any loss because of any fraud, dishonesty,  
28 negligence or wilful failure by an administrator to comply with this



1 Act or the rules of the cooperative, the administrator is liable for the  
2 loss.

3 (2) An administrator is not liable for any other loss but must account for  
4 the loss in a report given under section 327.

5 **330 Additional powers of registrar in relation to**  
6 **administration**

7 (1) If the registrar appoints directors of a cooperative under section 327,  
8 the registrar may, by notice given to the cooperative, specify—

9 (a) a time during which this section is to apply in relation to the  
10 cooperative; and

11 (b) the terms on which all or any of the directors hold office; and

12 (c) the rules that are to be the cooperative's rules.

13 (2) While this section applies to a cooperative, the registrar may, in  
14 writing—

15 (a) remove and appoint directors; and

16 (b) vary, revoke or specify new terms in place of all or any of the  
17 terms specified under subsection (1); and

18 (c) amend all or any of the rules specified under subsection (1).

19 (3) The registrar may, by notice given to the cooperative, extend the  
20 time for which this section is to apply to a cooperative.

21 (4) A rule specified by the registrar under this section as a rule of a  
22 cooperative—

23 (a) is not to be altered except in the way set out in this section; and

24 (b) if it is inconsistent with any other rule of the cooperative—  
25 prevails over the other rule, and the other rule is invalid to the  
26 extent of the inconsistency; and

27 (c) has the same evidentiary value as the cooperative's rules (and  
28 copies of them) have under this Act.

1 **331 Stay of proceedings on appointment of administrator**

- 2 (1) If the registrar appoints an administrator to conduct a cooperative's  
3 affairs, a person must not begin or continue any proceeding in a  
4 court against the cooperative until the administrator's appointment  
5 is revoked except with the leave of the Supreme Court and, if the  
6 Supreme Court gives leave, in accordance with any conditions that  
7 the Supreme Court imposes.
- 8 (2) A person intending to apply for leave of the Supreme Court under  
9 subsection (1) must give the registrar not less than 10 days notice of  
10 intention to apply.
- 11 (3) On the hearing of an application under subsection (1), the registrar  
12 may be represented and may oppose the granting of the application.

13 **332 Administrator to report to registrar**

14 On the receipt of a request from the registrar, the administrator of a  
15 cooperative must, without delay, prepare and give to the registrar a  
16 report showing how the administration is being carried out.

17 **Division 12.6 Effect of merger, transfer of**  
18 **engagements and transfer of**  
19 **incorporation**

20 **333 How div 12.6 applies to merger**

- 21 (1) This division applies to a merger of cooperatives under this part.
- 22 (2) In the application of this division to the merger, the following  
23 definitions apply:
- 24 *new body* means the cooperative that results from the merger.
- 25 *original body* means each cooperative that is a party to the merger.
- 26 *relevant day* means the day the merged cooperative is registered  
27 under this Act.

1   **334   How div 12.6 applies to transfer of engagements**

2       (1) This division applies to a transfer of the engagements of a  
3           cooperative to another cooperative under division 12.1.

4       (2) In the application of this division to the transfer of engagements, the  
5           following definitions apply:

6           *new body* means the cooperative to which the engagements are  
7           transferred.

8           *original body* means the cooperative that transfers its engagements.

9           *relevant day* means the day the transfer of engagements takes effect.

10   **335   How div 12.6 applies to transfer of incorporation**

11       (1) This division applies to a transfer of incorporation under  
12           division 12.2.

13       (2) In the application of this division to the transfer of incorporation, the  
14           following definitions apply:

15           *new body* means the corporation that results from the transfer.

16           *original body* means the cooperative that transfers its incorporation.

17           *relevant day* means the day the transfer takes effect.

18   **336   Effect of merger etc on assets, liabilities etc**

19       (1) In this section:

20           *assets* includes contingent assets.

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

25       (2) On and from the relevant day for an event to which this division  
26           applies—

**Part 12**  
**Division 12.6**

Mergers, transfers of engagements and winding-up  
Effect of merger, transfer of engagements and transfer of  
incorporation

Section 337

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- 1           (a) the assets of the original body vest in the new body without the  
2           need for any conveyance, transfer, assignment or assurance;  
3           and  
4           (b) the rights and liabilities of the original body become the rights  
5           and liabilities of the new body; and  
6           (c) all proceedings by or against the original body that are pending  
7           immediately before the relevant day are taken to be  
8           proceedings pending by or against the new body; and  
9           (d) anything done or omitted to be done by, in relation to the  
10          original body before the relevant day is (to the extent to which  
11          it has any force or effect) taken to have been done or omitted  
12          by, in relation to the new body; and  
13          (e) a reference in an instrument or in any document of any kind to  
14          the original body is to be read as, or as including, a reference to  
15          the new body.  
16       (3) Any act or omission happening because of, or arising from, the  
17       operation of this section is not to be regarded—  
18       (a) as a breach of contract or confidence or otherwise as a civil  
19       wrong; or  
20       (b) as a breach of any contractual provision prohibiting, restricting  
21       or regulating the assignment or transfer of assets, rights or  
22       liabilities; or  
23       (c) as giving rise to any remedy by a party to an instrument, or as  
24       causing or permitting the termination of any instrument,  
25       because of a change in the beneficial or legal ownership of any  
26       asset, right or liability.

27       **337    Certain instruments not liable to stamp duty etc**

28           An instrument executed or registered in relation to a transfer of  
29           property to give effect to section 336 is not liable to stamp duty or to  
30           any fee payable under any law for registration.

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**Division 12.7                      Miscellaneous**

**338      Grounds for winding-up, transfer of engagements,  
         appointment of administrator**

(1) This section applies to the following actions:

- (a) a direction by the registrar to a cooperative to transfer its engagements under section 305;
- (b) the appointment of an administrator of a cooperative under division 12.5;
- (c) the winding-up of a cooperative on a certificate of the registrar under section 315.

(2) The necessary grounds for the taking of action to which this section applies exist if the registrar certifies—

- (a) that the number of members is reduced to less than the minimum number of people allowed, as mentioned in section 69; or
- (b) that the cooperative has not begun business within 1 year of registration or has suspended business for longer than 6 months; or
- (c) that the registration of the cooperative has been obtained by mistake or fraud; or
- (d) that the cooperative exists for an illegal purpose; or
- (e) that the cooperative has wilfully, and after notice from the registrar, breached a provision of this Act or the rules of the cooperative; or
- (f) that the board of the cooperative has, after notice from the registrar, failed to ensure that the rules of the cooperative contain active membership provisions in accordance with part 6; or

- 1 (g) that there are, and have been for 1 month immediately before  
2 the date of the registrar's certificate, insufficient directors of  
3 the cooperative to form a quorum as provided under the rules  
4 of the cooperative; or
- 5 (h) following an inquiry under the provisions of this Act into the  
6 affairs of a cooperative or the working and financial condition  
7 of a cooperative, that in the interests of members or creditors of  
8 the cooperative or the public the action should be taken.
- 9 (3) Alternatively, the necessary grounds for the winding-up of a  
10 cooperative on a certificate of the registrar exist if the registrar  
11 certifies—
- 12 (a) that the period (if any) fixed under the cooperative's rules for  
13 its duration has ended; or
- 14 (b) that a winding-up event stated in the certificate has happened.
- 15 (4) The registrar may certify about any matter under this section only if  
16 the matter has been proved to the registrar's satisfaction.
- 17 (5) In this section:
- 18 *winding-up event* means an event on the happening of which the  
19 regulations or the cooperative's rules provide that the cooperative is  
20 to be wound up.
- 21 **339 Application of Corporations Act—insolvent cooperatives**
- 22 The Corporations Act, part 5.7B (Recovering property or  
23 compensation for the benefit of creditors of insolvent company),  
24 other than section 588G (Director's duty to prevent insolvent trading  
25 by company), applies to a cooperative.

**Part 13 Arrangements and reconstructions**

**Division 13.1 General requirements**

**340 Requirements for binding compromise or arrangement**

- (1) A compromise or arrangement is binding only if it is approved by order of the Supreme Court and it is agreed to—
- (a) if the compromise or arrangement is between the cooperative and any of its creditors—at a court ordered meeting by a majority in number of those creditors who are present and voting (in person or by proxy) and whose debts or claims against the cooperative amount to at least 75% of the total of the debts and claims of all those creditors who are present and voting (in person or by proxy); or
- (b) if the compromise or arrangement is between the cooperative and any of its members—by those members by special resolution passed by a special postal ballot.
- (2) The court ordered meeting mentioned in subsection (1)(a) is a meeting called in accordance with an order of the Supreme Court under this part.
- (3) The Supreme Court may approve a compromise or arrangement subject to any changes or conditions it considers just.
- (4) An order of the Supreme Court approving a compromise or arrangement does not have any effect until an office copy of the order is lodged with the registrar.
- (5) On the office copy being lodged, the order takes effect from the date of lodgment or, if an earlier date is stated in the order, the earlier date.

1 **341 Supreme Court ordered meeting of creditors**

- 2 (1) If a compromise or arrangement is proposed between a cooperative  
3 and any of its creditors, the Supreme Court may on application by  
4 an appropriate person order a meeting or meetings of the creditors  
5 concerned.
- 6 (2) An *appropriate person* to apply for an order is—  
7 (a) the cooperative; or  
8 (b) any member of the cooperative; or  
9 (c) any of the creditors concerned; or  
10 (d) for a cooperative being wound up—the liquidator.
- 11 (3) The meeting must be called in the way, and be held in the place or  
12 places (in the ACT or elsewhere), that the Supreme Court directs.
- 13 (4) In considering whether to make an order for a meeting to be held  
14 outside the ACT, the Supreme Court may have regard to where  
15 creditors live.

16 **342 Registrar to be given notice and opportunity to make**  
17 **submissions**

- 18 (1) The Supreme Court may make an order under this division if the  
19 Supreme Court is satisfied that—  
20 (a) at least 14 days notice of the hearing of the application for the  
21 order, or such shorter period of notice as the Supreme Court or  
22 the registrar permits, has been given to the registrar; and  
23 (b) the registrar has had a reasonable opportunity to examine the  
24 terms of and make submissions to the Supreme Court in  
25 relation to the proposed compromise or arrangement concerned  
26 and a draft explanatory statement relating to it.
- 27 (2) The draft explanatory must—  
28 (a) explain the effect of the proposed compromise or arrangement  
29 and, in particular, state—



- 1 (i) any material interests of the directors of the cooperative,  
2 whether as directors, members or creditors of the  
3 cooperative or otherwise; and  
4 (ii) the effect on the interests of the proposed compromise or  
5 arrangement so far as the effect is different from the  
6 effect on the like interests of other people; and  
7 (b) set out—  
8 (i) any information prescribed under the regulations; and  
9 (ii) any other information that is—  
10 (A) material to the making of a decision by a creditor or  
11 member of the cooperative whether or not to agree  
12 to the proposed compromise or arrangement; and  
13 (B) within the knowledge of the directors of the  
14 cooperative and has not previously been disclosed  
15 to the creditors or members of the cooperative.

16 **343 Results of 2 or more meetings**

17 If the Supreme Court orders 2 or more meetings of creditors to be  
18 held in relation to a proposed compromise or arrangement—

- 19 (a) the meetings are taken to form a single meeting; and  
20 (b) the votes in favour of the proposed compromise or  
21 arrangement cast at each of the meetings are to be totalled; and  
22 (c) the votes against the proposed compromise or arrangement cast  
23 at each of the meetings are to be totalled.

24 **344 People disqualified from administering compromise etc**

- 25 (1) This section applies to a person (a *designated person*) who —  
26 (a) is a mortgagee of any property of a cooperative; or  
27 (b) is an auditor or officer of a cooperative; or

- 1 (c) is an officer of a corporation that is a mortgagee of property of  
2 a cooperative; or
- 3 (d) is an officer of a corporation related to a cooperative; or
- 4 (e) unless the registrar directs in writing that this paragraph does  
5 not apply in relation to the person, has at any time within the  
6 last year been an officer or promoter of a cooperative or a  
7 related corporation of a cooperative.
- 8 (2) A designated person may not be appointed to, and must not,  
9 administer a compromise or arrangement (a *relevant compromise* or  
10 *arrangement*), approved under this Act, between the cooperative  
11 and any of its creditors or members.
- 12 (3) A person also may not be appointed to, and must not, administer a  
13 relevant compromise or arrangement unless—
- 14 (a) the person is a registered liquidator; or
- 15 (b) the person is authorised to administer the compromise or  
16 arrangement under another Territory law.
- 17 (4) However, despite subsection (2) or (3), the Supreme Court may give  
18 leave for a person to be appointed to administer, and administer, a  
19 relevant compromise or arrangement—
- 20 (a) on the application of the person; or
- 21 (b) with the person's consent, on the application of someone else.
- 22 (5) This section does not disqualify a person from administering a  
23 compromise or arrangement under an appointment validly made  
24 before the commencement of this section.
- 25 (6) Subsection (5) and this subsection expire 1 year after this section  
26 commences.

1 **345 Application of sch 4 and Corporations Act—person**  
2 **appointed to administer compromise etc**

- 3 (1) Schedule 4, clauses 16, 18, 19 (2), 23 and 25 apply to a person  
4 appointed to administer a compromise or arrangement as if—  
5 (a) the appointment were an appointment of the person as a  
6 receiver and manager of property of the cooperative; and  
7 (b) a reference in any of the provisions to a receiver, or to a  
8 controller, were a reference to the person.  
9 (2) The Corporations Act, section 536 (Supervision of liquidators)  
10 applies to a person appointed to administer a compromise or  
11 arrangement in relation to a cooperative.  
12 (3) The section applies subject to the following modifications:  
13 (a) the appointment is taken to be an appointment of the person as  
14 a liquidator of the cooperative;  
15 (b) a reference in the section to a liquidator is taken to be a  
16 reference to the person appointed.

17 **346 Copy of order to be attached to rules**

- 18 (1) A cooperative must ensure that a copy of an order of the Supreme  
19 Court approving a compromise or arrangement is attached to each  
20 copy of the rules of the cooperative issued after the order is made.  
21 Maximum penalty: 20 penalty units.  
22 (2) The Supreme Court may, by order, exempt a cooperative from  
23 complying with this section or fix the period during which the  
24 cooperative must comply.

25 **347 Directors to arrange for reports in relation to compromise**  
26 **etc**

- 27 (1) If a compromise or arrangement in relation to a cooperative has  
28 been proposed (whether or not in relation to a scheme for the

- 1 reconstruction of the cooperative or the merger of the cooperative  
2 with another cooperative), the directors of the cooperative must—
- 3 (a) if a meeting of the members of the cooperative directs by  
4 resolution—instruct the accountants or solicitors named in the  
5 resolution to report on the proposal and give their report to the  
6 directors as soon as practicable; and
- 7 (b) make the report available at the registered office of the  
8 cooperative for inspection by the members and creditors of the  
9 cooperative at least 7 days before the day of the meeting  
10 ordered by the Supreme Court or the holding of the special  
11 postal ballot, as appropriate.
- 12 (2) If this section is not complied with, each director of the cooperative  
13 commits an offence.
- 14 Maximum penalty (subsection (2)): 20 penalty units.

15 **348 Power of Supreme Court to restrain further proceedings**

- 16 (1) If a proposed compromise or arrangement is between a cooperative  
17 and any of its creditors and no order has been made or resolution  
18 passed for the winding-up of the cooperative, the Supreme Court  
19 may restrain further proceedings in any action or other civil  
20 proceeding against the cooperative except by leave of the Supreme  
21 Court and subject to the conditions that the Supreme Court imposes.
- 22 (2) The Supreme Court's power under this section is in addition to any  
23 of its other powers and must not be exercised except on application  
24 by the cooperative or a creditor or member of the cooperative.

25 **349 Supreme Court need not approve compromise or**  
26 **arrangement takeovers**

- 27 (1) The Supreme Court need not approve a compromise or arrangement  
28 unless—
- 29 (a) it is satisfied that the compromise or arrangement has not been  
30 proposed to avoid any of the provisions of division 11.2; and

1 (b) there is produced to the Supreme Court a written statement by  
2 the registrar stating that the registrar has no objection to the  
3 compromise or arrangement.

4 (2) The Supreme Court need not approve a compromise or arrangement  
5 only because a statement by the registrar stating that the registrar  
6 has no objection to the compromise or arrangement has been  
7 produced to the Supreme Court.

## 8 **Division 13.2 Explanatory statements**

### 9 **350 Explanatory statement required to accompany notice of** 10 **meeting etc**

11 (1) An explanatory statement must accompany every notice—

12 (a) sent to a creditor of a cooperative calling the court ordered  
13 meeting to obtain agreement to the compromise or  
14 arrangement; or

15 (b) sent to a member of a cooperative for the purpose of the  
16 conduct of the special postal ballot to obtain agreement to the  
17 compromise or arrangement.

18 (2) In every notice of a meeting mentioned in subsection (1) that is  
19 given by advertisement there must be included either a copy of the  
20 explanatory statement or notification of where and how creditors  
21 entitled to attend the meeting may obtain copies of the explanatory  
22 statement.

23 (3) The explanatory statement must—

24 (a) explain the effect of the compromise or arrangement and, in  
25 particular, state—

26 (i) any material interests of the directors of the cooperative,  
27 whether as directors, as members or creditors of the  
28 cooperative or otherwise; and

- 1 (ii) the effect on the interests of the compromise or  
2 arrangement so far as the effect is different from the  
3 effect on the like interests of other people; and  
4 (b) set out—  
5 (i) any information prescribed under the regulations; and  
6 (ii) any other information that—  
7 (A) is material to the making of a decision by a creditor  
8 or member whether or not to agree to the  
9 compromise or arrangement; and  
10 (B) is within the knowledge of the directors and has not  
11 previously been disclosed to the creditors or  
12 members of the cooperative.  
13 (4) Subsection (1) (a) applies to a creditor whose debt is not more than  
14 \$200 only if the Supreme Court orders that it applies.  
15 (5) The notice calling the meeting that is sent to a creditor mentioned in  
16 subsection (1) (a) must state where a copy of the explanatory  
17 statement can be obtained on request.  
18 (6) The cooperative must comply with a request under subsection (5) as  
19 soon as practicable.

20 **351 Requirements for explanatory statement**

- 21 (1) An explanatory statement must be as approved in writing by the  
22 registrar.  
23 (2) If the compromise or arrangement affects the rights of debenture  
24 holders, the explanatory statement must specify—  
25 (a) any material interests of the trustees for the debenture holders,  
26 whether as such trustees, as members or creditors of the  
27 cooperative or otherwise; and

- 1 (b) the effect on the interests of the compromise or arrangement to  
2 the extent that the effect is different from the effect on the like  
3 interests of other people.
- 4 (3) If a notice given by advertisement includes a notification that copies  
5 of the explanatory statement can be obtained in a particular way, the  
6 cooperative must provide a copy of the statement free of charge to  
7 each creditor or member entitled to attend the meeting or vote in the  
8 ballot who applies for it in the appropriate way.
- 9 (4) Each person who is a director or trustee for debenture holders must  
10 give notice to the cooperative of such matters relating to the person  
11 as are required to be included in the explanatory statement.

12 **352 Contravention div 13.2—offence by cooperative etc**

- 13 (1) If a provision of this division is contravened, the cooperative  
14 concerned and anyone else involved in the contravention commits  
15 an offence.
- 16 Maximum penalty: 20 penalty units.
- 17 (2) It is a defence to a prosecution for an offence against subsection (1)  
18 if the defendant satisfies the court that the contravention was caused  
19 by the failure of someone else who is a director of the cooperative,  
20 or a trustee for debenture holders of the cooperative, to supply  
21 particulars of the person's interests for the explanatory statement.

22 **353 Provisions for facilitating reconstructions and mergers**

- 23 (1) In this section:
- 24 *cooperative* includes a foreign cooperative registered, formed or  
25 incorporated under a law of a State or another Territory.
- 26 (2) This section applies if an application is made to the Supreme Court  
27 under this part for the approval of a compromise or arrangement and  
28 it is shown to the court that—

- 1 (a) the compromise or arrangement has been proposed in relation  
2 to a scheme for the reconstruction of a cooperative or the  
3 merger of a cooperative with another cooperative or with  
4 another corporation; and
- 5 (b) under the scheme all or any part of the undertaking or of the  
6 property of a cooperative concerned in the scheme (the  
7 *transferor*) is to be transferred to another corporation (the  
8 *transferee*) except a company.
- 9 (3) If this section applies, the Supreme Court may, either by the order  
10 approving the compromise or arrangement or by a later order,  
11 provide for any 1 or more of the following:
- 12 (a) the transfer to the transferee of all or part of the undertaking  
13 and of the property or liabilities of the transferor;
- 14 (b) the allotting or appropriation by the transferee of shares,  
15 debentures, policies or other interests in the transferee that,  
16 under the compromise or arrangement, are to be allotted or  
17 appropriated by the transferee to or for anyone else;
- 18 (c) the bringing by or against the transferee of any legal  
19 proceeding pending by or against the transferor;
- 20 (d) the deregistration, without winding-up, of the transferor;
- 21 (e) the provision to be made for anyone dissents from the  
22 compromise or arrangement in the way and within the time  
23 directed by the court;
- 24 (f) the transfer or allotment of any interest in property to anyone  
25 concerned in the compromise or arrangement;
- 26 (g) any incidental, consequential or supplemental matters  
27 necessary to ensure that the reconstruction or merger is fully  
28 and effectively carried out.
- 29 (4) If an order under this section provides for the transfer of property,  
30 the property is transferred to and vests in the transferee because of  
31 the order and, if the order so directs, the property is transferred and



- 1 vests free of any charge that is to cease to have effect because of the  
2 compromise or arrangement.
- 3 (5) If an order under this section provides for the transfer of liabilities,  
4 the liabilities are transferred to and become liabilities of the  
5 transferee because of the order.
- 6 (6) If an order is made under this section, each body to which the order  
7 relates must, within 14 days after the making of the order, lodge  
8 with the registrar an office copy of the order.
- 9 (7) In this section:
- 10 *liabilities* includes duties of any description (including duties that  
11 are of a personal character or cannot, under the general law, be  
12 assigned or performed vicariously).
- 13 *property* includes rights and powers of any description (including  
14 rights and powers that are of a personal character and cannot, under  
15 the general law, be assigned or performed vicariously).

16 **Division 13.3**                      **Acquisition of shares of dissenting**  
17 **shareholders**

18 **354**    **Definitions for div 13.3**

19 In this division:

20 *dissenting shareholder*, in relation to a scheme or contract, means a  
21 shareholder who has not assented to the scheme or contract or who  
22 has failed to transfer shares in accordance with the scheme or  
23 contract.

24 *excluded shares*, in relation to a scheme or contract involving a  
25 transfer to a person of shares in a class of shares in a cooperative,  
26 means shares in that class that, when the offer relating to the scheme  
27 or contract is made, are held by—

28 (a) in any case—the person or a nominee of the person; or

29 (b) if the person is a corporation—a subsidiary of the body.

1 **355 Schemes and contracts to which div 13.3 applies**

- 2 (1) This division applies to a scheme or contract involving a transfer of  
3 shares in a cooperative (the *transferor*) to a person (the *transferee*)  
4 that has, within 4 months after the making of the offer relating to the  
5 scheme or contract by the transferee, been approved by the holders  
6 of at least 90% in nominal value of all the shares concerned (other  
7 than excluded shares).
- 8 (2) This division does not apply to a scheme or contract arising out of  
9 the making of an offer to which division 11.2 applies.

10 **356 Acquisition of shares under notice to dissenting**  
11 **shareholder**

- 12 (1) The transferee under the scheme or contract may, within 2 months  
13 after the offer is approved, give written notice (a *compulsory*  
14 *acquisition notice*) to a dissenting shareholder that the transferee  
15 wishes to acquire the shares held by the shareholder.

16 *Note* If a form is approved under s 468 (Approved forms) for a compulsory  
17 acquisition notice, the form must be used.

- 18 (2) If a compulsory acquisition notice is given, the dissenting  
19 shareholder may, by notice given to the transferee within 1 month  
20 after the day the compulsory acquisition notice was received, ask for  
21 a written statement of the names and addresses of all other  
22 dissenting shareholders as shown in the register of members.
- 23 (3) The transferee must give the requested statement to the dissenting  
24 shareholder.
- 25 (4) Having given the compulsory acquisition notice, the transferee is,  
26 unless the Supreme Court orders to the contrary, entitled and bound  
27 to acquire the dissenting shareholder's shares on the terms on which,  
28 under the scheme or contract, the shares of the approving  
29 shareholders are to be transferred to the transferee.
- 30 (5) The Supreme Court may make an order to the contrary only on the  
31 application of the dissenting shareholder made within 28 days after  
32 the compulsory acquisition notice was received or within 14 days

1 after any statement asked for under subsection (2) was received,  
2 whichever is the later.

3 (6) If alternative terms are offered to the approving shareholders—

4 (a) the dissenting shareholder is entitled to elect which of the  
5 terms are preferred, but must make the election within the time  
6 allowed for making an application to the Supreme Court under  
7 subsection (5); and

8 (b) if the dissenting shareholder does not make the election within  
9 that time—the transferee may, unless the Supreme Court  
10 otherwise orders, decide which of the terms is to apply to the  
11 acquisition of the shares of the dissenting shareholder.

12 **357 Restrictions when excluded shares exceed 10%**

13 If the nominal value of excluded shares exceeds 10% of the  
14 aggregate nominal value of all the shares (including excluded  
15 shares) to be transferred under the scheme or contract, section 356  
16 applies only if—

17 (a) the transferee offers the same terms to all holders of the shares  
18 (other than excluded shares) to be transferred under the scheme  
19 or contract; and

20 (b) the holders who approve the scheme or contract together hold  
21 at least 90% in nominal value of the shares (other than  
22 excluded shares) to be transferred under the scheme or contract  
23 and are also at least 75% in number of the holders of those  
24 shares (with joint owners of shares being counted as a single  
25 person).

26 **358 Remaining shareholders may require acquisition**

27 (1) If, under a scheme or contract to which this division applies, the  
28 transferee becomes beneficially entitled to shares in the transferor  
29 that, together with any other shares in the transferor to which the  
30 transferee or a corporation related to the transferee is beneficially  
31 entitled, comprise or include 90% of nominal value of the shares—

- 1 (a) the transferee must, within 28 days after becoming beneficially  
2 entitled to the shares, give notice of the fact as prescribed  
3 under the regulations to the holders of the remaining shares  
4 who, when the notice was given, had not agreed to the scheme  
5 or contract or been given a compulsory acquisition notice by  
6 the transferee under this division; and
- 7 (b) a holder of shares who is given notice by the transferee may,  
8 within 3 months after being given the notice, by notice to the  
9 transferee require the transferee to acquire the holder's shares  
10 and, if alternative terms were offered to the approving  
11 shareholders, elect which of the terms the holder will accept.
- 12 (2) If a shareholder gives notice under this section in relation to the  
13 shareholder's shares, the transferee is entitled and bound to acquire  
14 the shares—
- 15 (a) on the terms on which, under the scheme or contract, the shares  
16 of the approving shareholders were transferred to the transferee  
17 and, if alternative terms were offered to the shareholders, on  
18 the terms for which the shareholder has elected or, if no  
19 election is made, for whichever of the terms the transferee  
20 decides; or
- 21 (b) on the other terms that are agreed or the Supreme Court orders  
22 on the application of the transferee or shareholder.
- 23 **359 Transfer of shares in accordance with compulsory**  
24 **acquisition**
- 25 (1) A transferee who has given a compulsory acquisition notice must—
- 26 (a) send a copy of the notice to the transferor together with an  
27 instrument of transfer that relates to the shares that the  
28 transferee is entitled to acquire under this division and that is  
29 executed, on the shareholder's behalf, by a person appointed  
30 by the transferee and, on the transferee's own behalf, by the  
31 transferee; and

- 
- 1 (b) pay, allot or transfer to the transferor the consideration for the  
2 share.
- 3 (2) The transferee must comply with subsection (1) within 14 days after  
4 whichever of the following happens last:
- 5 (a) the period of 28 days after the day the compulsory acquisition  
6 notice was given ends;
- 7 (b) the period of 14 days after a statement of the names and  
8 addresses of dissenting shareholders is supplied under this  
9 division ends;
- 10 (c) if an application has been made to the Supreme Court by a  
11 dissenting shareholder—the application is disposed of.
- 12 (3) When the transferee has complied with this section, the transferor  
13 must register the transferee as the holder of the shares.
- 14 (4) This section does not apply if the Supreme Court on the application  
15 of the dissenting shareholder orders to the contrary.
- 16 **360 Disposal of consideration for shares compulsorily**  
17 **acquired**
- 18 (1) All amounts received by the transferor under this division must be  
19 paid into a separate bank account and the amounts, and any other  
20 consideration received under this division, are to be held by the  
21 transferor in trust for the people entitled to the shares in relation to  
22 which they were respectively received.
- 23 (2) If an amount or other consideration received by the transferor under  
24 this division has been held in trust by the transferor for a person for  
25 at least 2 years, the transferor must pay the amount or transfer the  
26 consideration to the registrar, together with any accretions to it and  
27 any property that has become substituted for it or part of it.
- 28 (3) The Corporations Act, part 9.7 (Unclaimed property) applies to  
29 anything paid or transferred to the registrar under subsection (2).

- 1 (4) The part applies subject to the modification mentioned in  
2 subsection (5).
- 3 (5) A reference in the part to *unclaimed property* is taken to be a  
4 reference to the thing paid or transferred to the registrar under  
5 subsection (2).
- 6 (6) The transferor must comply with subsection (2) before the end of 10  
7 years after the day the amount was paid, or the consideration was  
8 allotted or transferred, to the transferor.

9 **Division 13.4 Miscellaneous**

10 **361 Notice of appointment of scheme manager**

11 Within 14 days after being appointed to administer a compromise or  
12 arrangement approved under this part, a person must lodge with the  
13 registrar a notice of the appointment.

14 Maximum penalty: 10 penalty units.

15 **362 Power of Supreme Court to require reports in relation to**  
16 **proposed compromise etc**

17 If an application is made to the Supreme Court under this part in  
18 relation to a proposed compromise or arrangement, the Supreme  
19 Court may—

20 (a) before making any order on the application, require the  
21 registrar or anyone else to give to the court a report about—

22 (i) the terms of the compromise or arrangement or of the  
23 scheme for or in relation to which the compromise or  
24 arrangement has been proposed; and

25 (ii) the conduct of the officers of the entities concerned; and

26 (iii) any other matters that, in the opinion of the registrar or  
27 the person, ought to be brought to the attention of the  
28 court; and

1 (b) in deciding the application, have regard to anything contained  
2 in the report; and

3 (c) make orders about the payment of the costs of preparing and  
4 giving the report.

5 **363 Effect of out-of-jurisdiction compromise or arrangement**

6 (1) A compromise or arrangement that is binding on any creditors of a  
7 foreign cooperative because of a provision of the law of a State or  
8 another Territory that corresponds to this part is also binding on the  
9 creditors of the foreign cooperative whose debts are recoverable by  
10 proceeding in an ACT court.

11 (2) If a court of a State or another Territory makes an order under a  
12 provision of the law of the State or other Territory that is prescribed  
13 under the regulations as corresponding to a provision of this part,  
14 the order is taken to have been made by the Supreme Court of the  
15 ACT under the corresponding provision of this Act and has effect  
16 and may be enforced accordingly.

17 **364 Jurisdiction to be exercised in harmony with**  
18 **Corporations Act jurisdiction**

19 The jurisdiction of the Supreme Court under this part is intended to  
20 complement the Supreme Court's jurisdiction under the  
21 Corporations Act and should be exercised in harmony with that  
22 jurisdiction.

23 **365 Registrar may appear in pt 13 proceedings**

24 In a proceeding in the Supreme Court under this part, the registrar is  
25 entitled to appear and be heard, either in person or by a lawyer or  
26 representative.

**Part 14 Foreign cooperatives**

**Division 14.1 Introductory**

**366 Definitions for pt 14**

In this part:

*cooperatives law* means a law declared under section 367 to be a cooperatives law for this part.

*nonparticipating cooperative* means a foreign cooperative other than a participating cooperative.

*participating cooperative* means a foreign cooperative registered, incorporated or formed under, or subject to, a cooperatives law.

*participating State* means a State in which a cooperatives law is in force.

*State* includes another Territory.

**367 Declaration of cooperatives laws**

(1) The Minister may, in writing, declare that a law of a State is a cooperatives law for this part.

(2) However, a declaration may be made under subsection (1) in relation to a law of a State only if the Minister is satisfied that the law—

(a) substantially corresponds to the provisions of this Act; and

(b) contains provisions that are mentioned in this part as provisions of a cooperatives law that correspond to specified provisions of this Act.

(3) A declaration under this section is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.



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1 **Division 14.2**                      **Registration of foreign**  
2    **cooperatives**

3 **368**    **Operation of foreign cooperatives in ACT**

4            A foreign cooperative must not carry on business in the ACT unless  
5            it is registered under section 374 as a foreign cooperative.

6            Maximum penalty: 200 penalty units.

7 **369**    **What constitutes carrying on business in ACT**

8            (1) A foreign cooperative carries on business in the ACT if it—

9                      (a) solicits for members in the ACT; or

10                   (b) seeks share capital in the ACT; or

11                   (c) provides any goods or services within the ACT.

12            (2) A foreign cooperative is not to be regarded as carrying on business  
13            in the ACT only because in the ACT it—

14                   (a) is or becomes a party to a proceeding or arbitration, settles a  
15                   proceeding or settles a claim or dispute; or

16                   (b) holds meetings of its directors or members or carries on other  
17                   activities concerning its internal affairs; or

18                   (c) maintains any bank account; or

19                   (d) effects any sale through an independent contractor; or

20                   (e) solicits or procures any offer that becomes a binding contract  
21                   only if the offer is accepted outside the ACT; or

22                   (f) creates evidence of any debt or creates a charge on real and  
23                   personal property; or

24                   (g) secures or collects any of its debts or enforces its rights in  
25                   relation to any securities relating to the debts; or

- 1 (h) conducts an isolated transaction that is completed within a  
2 period of 31 days, other than a transaction that is one of a  
3 number of similar transactions repeated from time to time.

4 **370 Application for registration of participating cooperative**

- 5 (1) A participating cooperative that proposes to carry on business as a  
6 cooperative in the ACT may apply to the registrar to be registered as  
7 a foreign cooperative.

8 *Note 1* A fee may be determined under s 467 (Determination of fees) for this  
9 section.

10 *Note 2* If a form is approved under s 468 (Approved forms) for an application  
11 under this section, the form must be used.

- 12 (2) An application by a participating cooperative must be accompanied  
13 by—

14 (a) a certificate, not more than 2 months old, from the registrar of  
15 the participating State, in which the participating cooperative is  
16 registered, incorporated or formed, stating that the cooperative  
17 is complying with the provisions of the cooperatives law of  
18 that State prescribed under the regulations for the provision of  
19 that law that corresponds with section 379; and

20 (b) the documents prescribed under the regulations for the  
21 provision of the cooperatives law of that State that corresponds  
22 with section 379; and

23 (c) a copy of the current rules of the cooperative; and

24 (d) a statement, verified as prescribed, setting out—

25 (i) the full name and address of each person who will act as  
26 agent of the cooperative in the ACT; and

27 (ii) the address of the proposed registered office of the  
28 cooperative in the ACT; and

- 1 (iii) a copy of an instrument appointing a person resident in  
2 the ACT (other than a corporation incorporated outside  
3 the ACT) as a person on whom all notices and legal  
4 process may be served on behalf of the cooperative; and  
5 (e) any other documents or information prescribed under the  
6 regulations.

7 **371 Application for registration of nonparticipating**  
8 **cooperative**

- 9 (1) A nonparticipating cooperative that proposes to carry on business as  
10 a cooperative in the ACT may apply to the registrar to be registered  
11 as a foreign cooperative.

12 *Note 1* A fee may be determined under s 467 (Determination of fees) for this  
13 section.

14 *Note 2* If a form is approved under s 468 (Approved forms) for an application  
15 under this section, the form must be used.

- 16 (2) An application by a nonparticipating cooperative must be  
17 accompanied by—

- 18 (a) a copy of the current rules of the cooperative; and  
19 (b) a statement, verified as prescribed under the regulations,  
20 setting out—  
21 (i) the full name and address of each person who will act as  
22 agent of the cooperative in the ACT; and  
23 (ii) the address of the proposed registered office of the  
24 cooperative in the ACT; and  
25 (iii) a copy of an instrument appointing a person resident in  
26 the ACT (other than a corporation incorporated outside  
27 the ACT) as a person on whom all notices and legal  
28 process may be served on behalf of the cooperative; and  
29 (c) any other documents or information prescribed under the  
30 regulations.

1 **372 Registrar to approve rules of nonparticipating**  
2 **cooperative**

- 3 A nonparticipating cooperative is eligible for registration only if the  
4 registrar is satisfied that the rules of the cooperative—  
5 (a) comply with cooperative principles; and  
6 (b) include acceptable active membership provisions; and  
7 (c) provide procedures acceptable to the registrar for disclosure of  
8 information; and  
9 (d) provide that a member has 1 vote only; and  
10 (e) make adequate provision for the duties of directors; and  
11 (f) provide for acceptable accounting standards for the  
12 cooperative.

13 **373 Name of foreign cooperative**

- 14 (1) A foreign cooperative is eligible for registration under section 374 if  
15 the name under which it proposes to carry on business in the ACT is  
16 not such as is likely to be confused with the name of a corporation  
17 or a registered business name.  
18 (2) If the registrar tells the foreign cooperative that the name under  
19 which it proposes to carry on business in the ACT is likely to be  
20 confused with the name of a corporation or registered business  
21 name, the cooperative may amend its application by substituting  
22 another name.

23 **374 Registration of foreign cooperative**

- 24 (1) If, on application under this division, the registrar is satisfied that a  
25 foreign cooperative is eligible for registration, the registrar must  
26 register the foreign cooperative as a foreign cooperative and issue a  
27 certificate of registration in accordance with the requirements (if  
28 any) of the regulations.

- 1 (2) If—  
2 (a) a nonparticipating cooperative (the *relevant cooperative*) is  
3 registered as a foreign cooperative; and  
4 (b) the law under which the relevant cooperative is registered,  
5 incorporated or formed, or to which the relevant cooperative is  
6 subject, subsequently becomes a cooperatives law;  
7 the relevant cooperative becomes a participating cooperative.  
8 (3) The relevant cooperative does not, only because it has become a  
9 participating cooperative, cease to be registered under this section as  
10 a foreign cooperative.

11 **375 Application of Act to foreign cooperatives**

12 The regulations may prescribe provisions of this Act that apply, with  
13 all necessary changes and any changes prescribed under the  
14 regulations, to a foreign cooperative registered under section 374 as  
15 if the foreign cooperative were a cooperative.

16 **376 Registrar to be notified of certain changes in relation to**  
17 **foreign cooperatives**

- 18 (1) Within 28 days after the happening of a notifiable change in relation  
19 to a foreign cooperative registered under section 374, the foreign  
20 cooperative must lodge with the registrar particulars of the change  
21 accompanied by any documents prescribed under the regulations.  
22 (2) In this section:  
23 *notifiable change*, in relation to the foreign cooperative, means a  
24 change in—  
25 (a) the rules or constitution of the foreign cooperative; or  
26 (b) the directors of the foreign cooperative; or  
27 (c) the agents of the foreign cooperative (or their addresses); or

- 1 (d) the person appointed as the person on whom notices and legal  
2 process may be served on behalf of the foreign cooperative; or  
3 (e) the address of the registered office in the ACT or elsewhere of  
4 the foreign cooperative; or  
5 (f) the name under which the foreign cooperative carries on  
6 business.

7 **377 Balance sheets of foreign cooperatives**

- 8 (1) A foreign cooperative registered under section 374 must, within 6  
9 months (or such longer period as the registrar may allow) of the end  
10 of each of its financial years, lodge with the registrar—

- 11 (a) for a participating cooperative—a copy of the balance sheet  
12 relating to its financial affairs as at the end of the financial  
13 year, in the form, and with any accompanying documents,  
14 required by the cooperatives law of the relevant participating  
15 State; and  
16 (b) for a nonparticipating cooperative—a copy of the balance sheet  
17 relating to its financial affairs as at the end of the financial year  
18 and any accompanying documents required by the registrar.

19 Maximum penalty: 20 penalty units.

20 *Note* If a form is approved under s 468 (Approved forms) for a balance sheet  
21 mentioned in par (b), the form must be used.

- 22 (2) If the registrar is of the opinion that a balance sheet lodged with the  
23 registrar under this section does not sufficiently disclose the  
24 financial affairs of the foreign cooperative, the registrar may, by  
25 notice, require the foreign cooperative to give the registrar further  
26 information or documents.

- 27 (3) A foreign cooperative must comply with a notice given to it under  
28 subsection (2) within the period stated in the notice.

29 Maximum penalty (subsection (3)): 50 penalty units.

1   **378   Cessation of business by foreign cooperatives**

- 2       (1) A foreign cooperative registered under section 374 must, within 7  
3       days of ceasing to carry on business as a cooperative in the ACT,  
4       notify the registrar in writing of that fact.

5       Maximum penalty: 50 penalty units.

- 6       (2) On notifying the registrar that it has ceased to carry on business as a  
7       cooperative in the ACT, a foreign cooperative is no longer obliged  
8       to comply with this part.

- 9       (3) Unless the registrar has been notified in writing that the foreign  
10      cooperative has resumed carrying on business as a cooperative in  
11      the ACT, the registrar must, 1 year after receiving the notification  
12      under subsection (1), cancel the registration of the foreign  
13      cooperative.

14   **379   Cooperative proposing to register as foreign cooperative**

- 15      (1) A cooperative that proposes to apply to be registered as a foreign  
16      cooperative in another participating State may apply to the registrar  
17      for a certificate that it is complying with all provisions of this Act  
18      prescribed under the regulations, including, if the registrar has  
19      varied a requirement in relation to that cooperative, the provision as  
20      varied.

- 21      (2) The registrar must issue the certificate to the cooperative unless the  
22      registrar is of the opinion that the cooperative is not complying with  
23      the provisions prescribed under the regulations.

- 24      (3) If the registrar issues the certificate, the registrar must also give to  
25      the cooperative the documents prescribed under the regulations.

26   **Division 14.3                      Mergers and transfers of**  
27   **engagements**

28   **380   Definitions for div 14.3**

29       In this division:

1 *appropriate registrar*, in relation to a proposed merger or transfer of  
2 engagements, means—

- 3 (i) the Territory registrar, if the merger is to result in a  
4 Territory cooperative or the transfer is to a Territory  
5 cooperative; or  
6 (ii) the registrar for the relevant participating State, if the  
7 merger is to result in a cooperative under the cooperatives  
8 law of a participating State or the transfer is to such a  
9 cooperative.

10 *Territory cooperative* means a cooperative registered under part 2  
11 (Formation).

12 *Territory registrar* means the registrar under this Act.

13 **381 Authority for merger or transfer of engagements**

14 (1) A Territory cooperative and a participating cooperative may  
15 consolidate all or any of their assets, liabilities and undertakings by  
16 way of merger or transfer of engagements approved under this  
17 division.

18 (2) A Territory cooperative and a nonparticipating cooperative may  
19 consolidate all or any of their assets, liabilities and undertakings by  
20 way of merger or transfer of engagements approved under this  
21 division if—

- 22 (a) the merger is to result in a Territory cooperative; or  
23 (b) the transfer is to a Territory cooperative.

24 **382 Requirements before application may be made**

25 (1) A Territory cooperative and a participating cooperative may apply  
26 for approval under this division of a merger or transfer of  
27 engagements only if the proposed merger or transfer has been  
28 approved by each of the cooperatives—



- 1           (a) by a special resolution passed by a special postal ballot; or
- 2           (b) if the criteria mentioned in subsection (2) apply—by a special
- 3               resolution of the cooperative or a resolution of the board of the
- 4               cooperative.
- 5       (2) The criteria for subsection (1) (b) are—
- 6           (a) that the Territory registrar consents in writing to the procedure
- 7               applying in the particular case; and
- 8           (b) that the registrar for the relevant participating State also
- 9               consents to the procedure applying in the particular case.
- 10       (3) A Territory cooperative and a nonparticipating cooperative may
- 11           apply for approval under this division of a merger or transfer of
- 12           engagements only if the proposed merger or transfer of engagements
- 13           has been approved—
- 14           (a) for the nonparticipating cooperative—
- 15               (i) by a special resolution of cooperative; or
- 16               (ii) if the Territory registrar consents in writing to the
- 17                   procedure applying in the particular case—by a
- 18                   resolution of the board of the cooperative; and
- 19           (b) for the Territory cooperative—
- 20               (i) by a special resolution passed by a special postal ballot;
- 21                   or
- 22               (ii) if the Territory registrar consents in writing to the
- 23                   procedure applying in the particular case—by a special
- 24                   resolution of the cooperative or a resolution of the board
- 25                   of the cooperative.
- 26       (4) The consent of the Territory registrar under this section may be
- 27           given on conditions.

1 **383 Disclosure statement required for certain mergers etc**

- 2 (1) A special resolution of the Territory cooperative or foreign  
3 cooperative is effective for this division only if this section has been  
4 complied with.
- 5 (2) Each cooperative must send to each of its members a disclosure  
6 statement approved in writing by the appropriate registrar  
7 specifying—
- 8 (a) the financial position of the Territory cooperative and the  
9 foreign cooperative as shown in financial statements that have  
10 been prepared as at a date not earlier than 6 months before the  
11 date of the statement; and
- 12 (b) any interest that any officer of the Territory cooperative or the  
13 foreign cooperative has in the proposed merger or transfer of  
14 engagements; and
- 15 (c) any compensation or other consideration proposed to be paid,  
16 or any other incentive proposed to be given, to any officer or  
17 member of the Territory cooperative or foreign cooperative in  
18 relation to the proposed merger or transfer of engagements;  
19 and
- 20 (d) whether the proposal is a merger or transfer of engagements  
21 and the reason for the merger or transfer or engagements; and
- 22 (e) for a transfer of engagements—whether it is a total or partial  
23 transfer of engagement; and
- 24 (f) for a merger—whether the merged cooperative will result in a  
25 Territory cooperative or a cooperative under the cooperatives  
26 law of the relevant participating State; and
- 27 (g) any other information that the appropriate registrar directs.
- 28 (3) The disclosure statement must be sent to the members of the  
29 Territory cooperative or foreign cooperative so that it will in the  
30 ordinary course of post reach each member who is entitled to vote  
31 on the special resolution not later than—

- 1 (a) if the resolution is to be decided at a meeting—21 days before  
2 the date of the meeting; or
- 3 (b) if the resolution is to be decided by a postal ballot—21 days  
4 before the day on or before which the ballot papers must be  
5 returned by members voting in the ballot.
- 6 (4) The appropriate registrar may, in writing, exempt the Territory  
7 cooperative or foreign cooperative from this section or a provision  
8 of this section.
- 9 (5) The appropriate registrar may give an exemption, or approve a  
10 disclosure statement, subject to conditions.

11 **384 Making application for approval of merger etc**

- 12 (1) An application for approval of a merger or transfer of engagements  
13 under this division must be made to the Territory registrar and, if the  
14 merger or transfer affects a participating cooperative, to the registrar  
15 for the relevant participating State in the way and form required by  
16 that registrar.
- 17 (2) An application for approval of a merger must be accompanied by—
- 18 (a) 2 copies of the proposed rules of the merged cooperative; and
- 19 (b) for a nonparticipating cooperative—details of voting on the  
20 special resolution (if any) of the cooperative; and
- 21 (c) any other information required by the registrar to whom the  
22 application is made.

23 **385 Approval of merger**

- 24 (1) If the Territory registrar is the appropriate registrar, the Territory  
25 registrar must approve a merger specified in an application under  
26 this division if satisfied that—
- 27 (a) this division has been complied with in relation to the  
28 application; and
- 29 (b) the proposed rules of the merged cooperative are adequate; and

- 1 (c) the certificate of registration of the Territory cooperative has  
2 been surrendered to the Territory registrar; and
- 3 (d) for a merger with a participating cooperative—the certificate of  
4 registration of the participating cooperative has been  
5 surrendered to the registrar for the relevant participating State;  
6 and
- 7 (e) for a merger with a nonparticipating cooperative—the merged  
8 cooperative will comply with this Act; and
- 9 (f) there is no good reason why the merged cooperative and its  
10 rules should not be registered.
- 11 (2) If the Territory registrar is not the appropriate registrar, the Territory  
12 registrar must approve a merger specified in an application under  
13 this division if satisfied that the merger has been approved under the  
14 provision of the cooperatives law of the participating State that  
15 corresponds with subsection (1).
- 16 (3) On approving an application for merger, the Territory registrar  
17 must—
- 18 (a) cancel the registration of the Territory cooperative involved in  
19 the merger; and
- 20 (b) if the merger is to result in a Territory cooperative—register  
21 the merged cooperative and its rules and issue to it a certificate  
22 of registration under this Act.
- 23 (4) A merger takes effect on the issue of the certificate of registration  
24 for the merged cooperative (whether under this Act or under the  
25 cooperatives law of the relevant participating State).

26 **386 Approval of transfer of engagements**

- 27 (1) If the Territory registrar is the appropriate registrar, the Territory  
28 registrar must approve a transfer of engagements specified in an  
29 application under this division if satisfied that—

- 1 (a) this division has been complied with in relation to the  
2 application; and
- 3 (b) the rules or proposed rules of the transferee cooperative are  
4 adequate; and
- 5 (c) for a total transfer of engagements from a participating  
6 cooperative—the certificate of registration of the participating  
7 cooperative has been surrendered to the registrar for the  
8 relevant participating State; and
- 9 (d) for a total transfer of engagements from a nonparticipating  
10 cooperative—the certificate of registration of the  
11 nonparticipating cooperative has been surrendered to the  
12 Territory registrar; and
- 13 (e) for a transfer of engagements by a nonparticipating  
14 cooperative—the transferee cooperative will comply with this  
15 Act; and
- 16 (f) there is no good reason why the transfer of engagements  
17 should not take effect.
- 18 (2) If the Territory registrar is not the appropriate registrar, the Territory  
19 registrar must approve a transfer of engagements specified in an  
20 application under this division if satisfied that the transfer has been  
21 approved under the provision of the cooperatives Act of the  
22 participating State that corresponds with subsection (1).
- 23 (3) A transfer of engagements takes effect on the day stated in the  
24 approval of the Territory registrar.

25 **387 Effect of merger or transfer of engagements**

- 26 (1) In this section:

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

- 1        **instrument** means an instrument (other than this Act) that creates,  
2        changes or extinguishes rights or liabilities (or would do so if  
3        lodged, filed or registered in accordance with any law) and includes  
4        any judgment, order and process of a court.
- 5        **liabilities** means liabilities, debts and obligations (whether present  
6        or future and whether vested or contingent).
- 7        **original cooperative** means—
- 8        (a) for a transfer of engagements—the transferor cooperative; or  
9        (b) for a merger—each of the cooperatives that are merging.
- 10       **successor cooperative** means—
- 11       (a) for a transfer of engagements—the transferee cooperative; or  
12       (b) for a merger—the cooperative formed by the merger.
- 13       **transfer day** means the day when a merger or transfer of  
14       engagements takes effect under this division.
- 15       (2) On and from the transfer day, the following provisions apply to the  
16       extent necessary to give effect to the merger or transfer:
- 17       (a) the members of the original cooperative immediately before  
18       the transfer day are members of the successor cooperative in  
19       accordance with its rules;
- 20       (b) the assets of the original cooperative vest in the successor  
21       cooperative without the need for any conveyance, transfer,  
22       assignment or assurance;
- 23       (c) the rights and liabilities of the original cooperative become the  
24       rights and liabilities of the successor cooperative;
- 25       (d) all proceedings by or against the original cooperative that are  
26       pending immediately before the transfer day are taken to be  
27       proceedings pending by or against the successor cooperative;

- 
- 1 (e) anything done or omitted to be done by, to or in relation to the  
2 original cooperative before the transfer day is taken (to the  
3 extent to which it has any force or effect) to have been done or  
4 omitted by, to or in relation to the successor cooperative;
- 5 (f) a reference in an instrument to the original body is to be read  
6 as, or as including, a reference to the new body.
- 7 (3) An act or omission happening because of, or arising from, this  
8 section is not to be regarded as—
- 9 (a) a breach of contract or confidence or otherwise as a civil  
10 wrong; or
- 11 (b) a breach of any contractual provision prohibiting, restricting or  
12 regulating the assignment or transfer of assets, rights or  
13 liabilities; or
- 14 (c) giving rise to any remedy by a party to an instrument, or as  
15 causing or permitting the termination of any instrument,  
16 because of a change in the beneficial or legal ownership of any  
17 asset, right or liability.
- 18 (4) A document or an instrument executed or registered in relation to a  
19 transfer of any property to give effect to this section in relation to a  
20 transfer of engagements is not liable to stamp duty or to any fee  
21 payable under any law for registration.
- 22 (5) A document or an instrument executed or registered in relation to a  
23 transfer of any property to give effect to this section in relation to a  
24 merger is not liable to stamp duty or to any fee payable under any  
25 law for registration if the cooperative formed by the merger is a  
26 non-trading cooperative.
- 27 **388 Div 14.3 applies instead of certain other provisions of Act**
- 28 (1) This division applies, instead of division 12.1 (Mergers and transfers  
29 of engagements), in relation to the merger of a Territory cooperative  
30 with a foreign cooperative.

**Part 14** Foreign cooperatives  
**Division 14.3** Mergers and transfers of engagements  
**Section 388**

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- 1 (2) This division applies, instead of division 12.1, in relation to a  
2 transfer of engagements between a Territory cooperative and a  
3 foreign cooperative.



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**Part 15                      Supervision and protection of  
cooperatives**

**Division 15.1              Supervision and inspection**

**389      Definitions for div 15.1**

In this division:

*cooperative venture* means—

- (a) any corporation or unit trust formed by a cooperative or in the formation of which a cooperative participated; or
- (b) any partnership, joint venture or association of entities formed or entered into by a cooperative.

*premises* includes any structure, building, aircraft, vehicle, vessel and place (whether built on or not), and any part of the structure, building, aircraft, vehicle, vessel or place.

*relevant documents* means records or other documents that relate to the promotion, formation, membership, control, transactions, dealings, business or property of a cooperative.

**390      Cooperative includes subsidiaries, foreign cooperatives  
and cooperative ventures**

A reference in this part to a *cooperative* includes a reference to each of the following:

- (a) a foreign cooperative;
- (b) a subsidiary of a cooperative or foreign cooperative;
- (c) a cooperative venture;
- (d) a cooperative or foreign cooperative, or a subsidiary of either, or a cooperative venture, that is in the course of being wound up or has been deregistered.

1    **391    Appointment of inspectors**

2                      The Minister may appoint a person to be an inspector for this Act.

3    **392    Registrar and investigators have functions of inspectors**

4                      The registrar, and any investigator, may exercise all the functions of  
5                      an inspector and for that purpose is taken to be an inspector.

6    **393    Inspector's identity card**

7                      (1) The registrar must provide each inspector with an identity card.

8                      (2) An inspector must produce the inspector's identity card on request  
9                      on applying for admission to any premises.

10                     (3) A person who ceases to be an inspector must return the person's  
11                     identity card to the registrar within 7 days after ceasing to be an  
12                     inspector.

13                     Maximum penalty (subsection (3)): 1 penalty unit.

14    **394    Inspectors may require certain people to appear, answer**  
15                     **questions and produce documents**

16                     (1) An inspector may, by notice—

17                            (a) require a cooperative to produce to the inspector, at a time and  
18                            place stated in the notice, stated relevant documents relating to  
19                            the cooperative; or

20                            (b) require anyone who is involved in the activities of a  
21                            cooperative to produce to the inspector, at a time and place  
22                            stated in the notice, stated relevant documents relating to the  
23                            cooperative; or

24                            (c) require any person who appears to the inspector to be involved  
25                            in the activities of a cooperative—

26                                    (i) to attend before the inspector at a time and place stated in  
27                                    the notice; and

- 1                   (ii) to answer any questions put to the person by the inspector  
2                   relating to the promotion, formation, membership,  
3                   control, transactions, dealings, business or property of the  
4                   cooperative.
- 5       (2) A person is taken to be *involved* in the activities of a cooperative if  
6       the person—
- 7           (a) is or has been an officer or employee of, or an agent, banker,  
8           solicitor, auditor or other person acting in any capacity for or  
9           on behalf of, the cooperative; or
- 10          (b) is a person who has any relevant documents relating to the  
11          cooperative in the person's possession or control; or
- 12          (c) is a person who was a party to the creation of any relevant  
13          documents relating to the cooperative.
- 14       (3) A person is not subject to any civil or criminal liability because of  
15       complying honestly with a requirement made or purportedly made  
16       under this section.

17       **395 Inspector's powers of entry**

- 18       (1) An inspector has power to enter any of the following premises:
- 19           (a) any premises where the affairs or activities of a cooperative are  
20           managed or conducted;
- 21           (b) any premises where the inspector believes, on reasonable  
22           grounds, there is evidence of the commission of an offence  
23           against this Act;
- 24           (c) any premises where the inspector believes, on reasonable  
25           grounds, there are relevant documents.
- 26       (2) However, the consent of the occupier or the authority of a search  
27       warrant is required to enter—
- 28           (a) any part of premises not used for the management or conduct  
29           of the affairs or activities of a cooperative; or

1 (b) any part of premises used for residential purposes (whether or  
2 not the part is also used for the management or conduct of the  
3 affairs or activities of a cooperative).

4     **396 Powers of inspectors on premises entered**

5 An inspector has the following powers on premises that the  
6 inspector is authorised to enter:

- 7 (a) power to search for evidence of any contravention of this Act;  
8  
9 (b) power to search for relevant documents and to require anyone  
10 on the premises to produce to the inspector any relevant  
11 documents in the person's custody or under the person's  
12 control;  
13  
14 (c) power to require anyone on the premises who is apparently  
15 involved in the management or conduct of the affairs or  
16 activities of a cooperative to answer questions or provide  
17 information;  
18  
19 (d) power to exercise the functions of an inspector under section  
20 397 in relation to any relevant documents found on the  
21 premises or produced to the inspector.

19 **397 Functions of inspectors in relation to relevant documents**

- (1) An inspector has the following powers in relation to a relevant document found by the inspector on premises entered by the inspector or produced to the inspector in accordance with a requirement made under this division:
- (a) power to take possession of the document or secure it against interference;
  - (b) power to make copies, or take extracts from, the document;

- 1 (c) power to require anyone who was party to the creation of the  
2 document to make a statement providing any explanation that  
3 the person can provide about anything relating to the creation  
4 of the document or about anything to which the document  
5 relates;
- 6 (d) power to keep possession of the document for the period  
7 necessary to allow it to be inspected, and copies of, or extracts  
8 from, the document to be made or taken.
- 9 (2) While an inspector keeps possession of a document, the inspector  
10 must allow a person who would be entitled to inspect the document  
11 if it were not in the possession of the inspector to inspect the  
12 document at any reasonable time and make a copy of, or take  
13 extracts from, the document.
- 14 (3) If an inspector takes possession of or secures against interference  
15 any relevant document and a person has a lien on the document, the  
16 inspector's actions do not prejudice the lien.
- 17 **398 Offence—failing to comply with requirements of**  
18 **inspector etc**
- 19 (1) A person must comply with a requirement made of the person by an  
20 inspector under this part.  
21 Maximum penalty: 50 penalty units.
- 22 (2) A person must not, in purported compliance with a requirement  
23 under this division, give information or make a statement that is  
24 false or misleading in a material particular.  
25 Maximum penalty: 50 penalty units, imprisonment for 6 months or  
26 both.
- 27 (3) A person must not, without reasonable excuse, obstruct or hinder an  
28 inspector exercising functions under this Act.  
29 Maximum penalty: 50 penalty units, imprisonment for 6 months or  
30 both.
-

- 1        (4) The occupier or person in charge of any premises must provide a  
2            person who enters the premises under the authority of this part or  
3            under a search warrant mentioned in section 400 with all reasonable  
4            facilities and assistance for the effective exercise of the person's  
5            powers under this part or under the warrant.

6            Maximum penalty: 50 penalty units.

- 7        (5) It is a defence to a prosecution of a person for an offence against  
8            subsection (1) if the person satisfies the court that the person had a  
9            reasonable excuse for failing to comply with the requirement.

- 10       (6) It is a defence to a prosecution of a person for an offence against  
11           subsection (2) if the person satisfies the court that the person  
12           believed, on reasonable grounds, that the statement was true and not  
13           misleading.

#### 14       **399    Protection from incrimination**

- 15       (1) A person is not excused from making a statement in accordance  
16           with a requirement under this division on the ground that the  
17           statement might tend to incriminate the person.

- 18       (2) However, if the person claims before making a statement that the  
19           statement might tend to incriminate the person, the statement is not  
20           admissible in evidence against the person in a criminal proceeding  
21           other than a proceeding under this division.

- 22       (3) Except as provided by subsection (2), a statement made by a person  
23           in compliance with a requirement under this division may be used in  
24           evidence in any criminal or civil proceedings against the person.

#### 25       **400    Search warrants**

- 26       (1) An inspector may apply to a magistrate for the issue of a search  
27           warrant in relation to premises if the inspector suspects on  
28           reasonable grounds—

- 29           (a) that the affairs or activities of a cooperative are being managed  
30                or conducted on the premises; and

- 1 (b) that there is evidence on the premises of the commission of an  
2 offence against this Act; and
- 3 (c) that there are relevant documents on the premises.
- 4 (2) If a magistrate is satisfied by evidence on oath, whether oral or by  
5 affidavit, that there are reasonable grounds for doing so, the  
6 magistrate may issue a search warrant authorising an inspector  
7 named in the warrant and any assistants the inspector considers  
8 necessary to enter the premises and exercise all or stated functions  
9 of an inspector on the premises.
- 10 (3) In addition to any other requirement, a search warrant issued under  
11 this section must state—
- 12 (a) the grounds for the issue of the warrant; and
- 13 (b) the premises to be searched; and
- 14 (c) any conditions to which the warrant is subject; and
- 15 (d) whether entry is authorised to be made at any time or during  
16 stated hours; and
- 17 (e) a day, not later than 7 days after the issue of the warrant, when  
18 the warrant ceases to have effect.
- 19 (4) A police officer may accompany an inspector executing a search  
20 warrant issued under this section and may take all reasonable steps  
21 to assist in the exercise of the functions of the inspector under this  
22 Act.

23 **401 Copies or extracts of records to be admitted in evidence**

- 24 (1) In any legal proceeding (whether a proceeding under this Act or  
25 otherwise), a copy of or extract from a record relating to affairs of a  
26 cooperative is admissible in evidence as if it were the original record  
27 or the relevant part of the original record.
- 28 (2) However, a copy of or extract from a record is admissible in  
29 evidence under subsection (1) only if it is proved that the copy or  
30 extract is a true copy of the record or the relevant part of the record.

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

6 **402 Legal professional privilege for certain requirements**

- 7 (1) A lawyer is entitled to refuse to comply with a requirement under  
8 section 394 or 397 relating to a relevant document if—  
9 (a) the document contains a privileged communication made by,  
10 on behalf of or to the lawyer in his or her capacity as a lawyer;  
11 or  
12 (b) the lawyer cannot comply with the requirement without  
13 disclosing a privileged communication made by, on behalf of  
14 or to the lawyer in his or her capacity as a lawyer.  
15 (2) The lawyer is not entitled to refuse to comply with the requirement  
16 to the extent that the lawyer can comply with it without disclosing  
17 the privileged communication.  
18 (3) The lawyer is also not entitled to refuse to comply with the  
19 requirement if the person by or on behalf of whom the  
20 communication was made (or, if the person is an entity under  
21 administration under the Corporations Act, part 5.3A  
22 (Administration of a company's affairs with a view to executing a  
23 deed of company arrangement) as applied by this Act, or in the  
24 course of being wound up, the administrator or liquidator of the  
25 entity) agrees to the lawyer complying with the requirement.  
26 (4) If the lawyer fails to comply with the requirement, the lawyer must  
27 immediately provide in writing to the registrar—  
28 (a) the name and address of the person to whom, by or on behalf  
29 of whom the privileged communication was made (if known to  
30 the lawyer); and



- 1           (b) sufficient particulars to identify the document containing the  
2           privileged communication (if the communication was made in  
3           writing).

4           Maximum penalty (subsection (4)): 50 penalty units.

5       **403 Police aid for inspectors**

- 6       (1) An inspector may call a police officer to the inspector's aid if the  
7       inspector is obstructed, or believes on reasonable grounds that the  
8       inspector will be obstructed, in the exercise of the inspector's  
9       functions.
- 10       (2) A police officer has, while acting in aid of an inspector, all the  
11       functions of an inspector.

12       **Division 15.2           Inquiries**

13       **404 Definitions for div 15.2**

14       In this division:

15       *affairs*, of a cooperative, includes—

- 16       (a) the promotion, formation, membership, control, transactions,  
17       dealings, business and property of the cooperative; and
- 18       (b) loans made to the cooperative; and
- 19       (c) matters that are concerned with identifying people who are, or  
20       have been, financially interested in the success or failure, or  
21       apparent success or failure, of the cooperative or who are, or  
22       have been, able to control or influence materially the policies  
23       of the cooperative; and
- 24       (d) the circumstances in which a person placed, withdrew or  
25       disposed of funds with, or loans to, the cooperative.

- 1                      *costs*, in relation to an inquiry under this division, includes—
- 2                      (a) the expenses of, and incidental to, the inquiry; and
- 3                      (b) the expenses payable by the registrar in any proceeding
- 4                              brought by the registrar under this division in the name of the
- 5                              cooperative the subject of the inquiry; and
- 6                      (c) so much of the remuneration of an officer or employee of the
- 7                              Territory as is decided by the Minister to be attributable to
- 8                              matters connected with the inquiry.
- 9                      *involved person*, in relation to an inquiry into the affairs of a
- 10                      cooperative, means—
- 11                      (a) an officer of the cooperative; or
- 12                      (b) a person who acts, or has at any time acted, as banker, solicitor,
- 13                              auditor or actuary, or in any other capacity, for the cooperative;
- 14                              or
- 15                      (c) a person who has, or at any time had, in the person's
- 16                              possession any property of the cooperative; or
- 17                      (d) a person who is indebted to the cooperative; or
- 18                      (e) a person who can give information relating to the affairs of the
- 19                              cooperative; or
- 20                      (f) a person whom an investigator believes, on reasonable
- 21                              grounds, to be a person mentioned in paragraphs (a) to (e).

22                      **405 Appointment of investigators**

- 23                      (1) The Minister may appoint a person (an *investigator*) to hold an
- 24                              inquiry into the affairs of a cooperative if the Minister considers that
- 25                              it is desirable to hold the inquiry for the protection or otherwise in
- 26                              the interests of the public or of the members or creditors of the
- 27                              cooperative.
- 28                      (2) The Minister may amend the terms and conditions of appointment
- 29                              of an investigator if the investigator agrees to the amendment.

1 (3) In the course of an inquiry into the affairs of a cooperative, an  
2 investigator may inquire into the affairs of a subsidiary of the  
3 cooperative that, if the subsidiary were the cooperative, would be  
4 affairs of the cooperative.

5 (4) An inquiry into the affairs of a subsidiary of a cooperative may be  
6 conducted as if the subsidiary were the cooperative.

7 **406 Powers of investigators**

8 (1) An investigator inquiring into the affairs of a cooperative may, by  
9 giving an involved person a notice, require the person—

10 (a) to produce any document of which the person has custody or  
11 control and that relates to those affairs; or

12 (b) to give the investigator all reasonable assistance in relation to  
13 the inquiry; or

14 (c) to appear before the investigator for examination on oath or  
15 affirmation.

16 *Note* If a form is approved under s 468 (Approved forms) for a notice, the  
17 form must be used.

18 (2) An investigator may administer an oath or affirmation to an  
19 involved person given a notice under subsection (1).

20 (3) An investigator may take possession of a document produced by an  
21 involved person under subsection (1) and may keep it for the period  
22 that the investigator decides is necessary for the inquiry.

23 (4) While an investigator keeps possession of a document, the  
24 investigator must allow a person who would be entitled to inspect  
25 the document were it not in the possession of the investigator to  
26 inspect the document at any reasonable time and make a copy of, or  
27 take extracts from, the document.

28 **407 Examination of involved person**

29 (1) A lawyer acting for an involved person—

- 1                      (a) may attend an examination of the involved person by an  
2                                      investigator; and
- 3                      (b) may, to the extent that the investigator permits, address the  
4                                      investigator and examine the involved person.
- 5                      (2) An involved person is not excused from answering a question asked  
6                                      by the investigator even if seeking to be excused on the ground of  
7                                      possible selfincrimination.
- 8                      (3) If an involved person answers a question of an investigator after  
9                                      having claimed possible selfincrimination by doing so, neither the  
10                                      question nor the answer is admissible in evidence in any criminal  
11                                      proceeding other than—
- 12                                      (a) a prosecution for an offence against section 409 for giving a  
13    false or misleading answer to the question; or
- 14                                      (b) a prosecution for perjury in relation to the answer.
- 15                      (4) An involved person who attends for examination by an investigator  
16                                      is entitled to be paid the allowances and expenses prescribed under  
17                                      the regulations.
- 18                      **408      Legal professional privilege of involved person who is a**  
19                                      **lawyer**
- 20                      (1) An involved person who is a lawyer is entitled to refuse to produce a  
21                                      document to an investigator if the document contains a privileged  
22                                      communication made by, on behalf of or to the lawyer in his or her  
23                                      capacity as a lawyer.
- 24                      (2) The lawyer is not entitled to refuse to produce the document if the  
25                                      person by or on behalf of whom the communication was made (or, if  
26                                      the person is an entity under administration under the Corporations  
27                                      Act, part 5.3A (Administration of a company's affairs with a view to  
28                                      executing a deed of company arrangement) as applied by this Act,  
29                                      or in the course of being wound up, the administrator or the  
30                                      liquidator of the entity) agrees to the lawyer producing the  
31                                      document.

1 (3) If the lawyer fails to comply with the requirement to produce a  
2 document, the lawyer must immediately provide in writing to the  
3 investigator—

4 (a) the name and address of the person to whom, by or on behalf  
5 of whom the communication was made (if known to the  
6 lawyer); and

7 (b) sufficient particulars to identify the document.

8 Maximum penalty (subsection (3)): 50 penalty units.

9 **409 Offences by involved person**

10 (1) An involved person must not fail to comply with a lawful  
11 requirement of an investigator without showing reasonable cause for  
12 the refusal or failure.

13 Maximum penalty: 50 penalty units, imprisonment for 6 months or  
14 both.

15 (2) An involved person must not—

16 (a) give an investigator information knowing the information to be  
17 false or misleading in a material particular; or

18 (b) when appearing before an investigator—

19 (i) make a statement knowing the statement to be false or  
20 misleading in a material particular; or

21 (ii) fail, without reasonable excuse, to be sworn or to make  
22 an affirmation.

23 Maximum penalty: 50 penalty units, imprisonment for 6 months or  
24 both.

25 (3) If an investigator considers that a failure by a person to comply with  
26 a requirement of the investigator is an offence against  
27 subsection(1), the investigator may certify the failure to the  
28 Supreme Court.

- 1        (4) If the investigator certifies the failure to the Supreme Court, the  
2        court may—  
3        (a) order the involved person to comply with the requirement of  
4        the investigator within a stated period; or  
5        (b) instead of, or in addition to, making that order, punish the  
6        involved person as for a contempt of the court if satisfied that  
7        there was no lawful excuse for the failure to comply with the  
8        requirement of the investigator.

9        **410 Offences relating to documents**

- 10       (1) If an inquiry into the affairs of a cooperative is being held under this  
11       division, a person must not—  
12       (a) conceal, destroy, mutilate or alter a document relating to the  
13       cooperative; or  
14       (b) send, or cause to be sent, out of the ACT a document or other  
15       property that belongs to, or is under the control of, the  
16       cooperative.  
17       Maximum penalty: 50 penalty units, imprisonment for 6 months or  
18       both.  
19       (2) It is a defence to a prosecution if the person satisfies the court that  
20       the person did not intend to defeat, delay or obstruct the inquiry.

21       **411 Record of examination**

- 22       (1) Except as provided by section 407, a record of an examination may  
23       be used in a proceeding against the person examined, but this  
24       subsection does not prevent the admission of other written or oral  
25       evidence.  
26       (2) A person examined is, on written application made to the  
27       investigator, entitled to a free copy of the record of examination.  
28       (3) The registrar may provide a lawyer with a copy of a record of  
29       examination made by an investigator if the registrar is satisfied that

1           the lawyer is conducting, or is honestly contemplating, a legal  
2           proceeding in relation to affairs of the cooperative to which the  
3           record relates.

4       (4) A lawyer must not—

5           (a) use a copy of a record of examination otherwise than in  
6           relation to preparing for, bringing or conducting a legal  
7           proceeding; or

8           (b) publish or communicate the record or any part of it for any  
9           other purpose.

10       Maximum penalty (subsection (4)): 50 penalty units.

#### 11   **412 Report of investigator**

12       (1) An investigator may make interim reports to the registrar on any  
13       inquiry being held by the investigator.

14       (2) An investigator must make an interim report to the registrar on any  
15       inquiry being held by the investigator if the registrar directs the  
16       registrar to make an interim report.

17       (3) As soon as practicable after the end of an inquiry, the investigator  
18       must report to the registrar—

19           (a) the opinion of the investigator in relation to the affairs of the  
20           cooperative the subject of the inquiry; and

21           (b) the findings on which the opinion is based.

22       (4) An investigator's report may include a recommendation whether or  
23       not an application should be made under section 415 (3), (4) or (5).

24       (5) A report by an investigator may be accompanied by any document  
25       of which the investigator has taken possession after being produced  
26       under this division.

- 1        (6) The registrar—
- 2            (a) may keep the document for the period that the registrar
- 3                considers necessary to decide whether a legal proceeding
- 4                should be brought because of the inquiry; and
- 5            (b) may keep the document for any further period that the registrar
- 6                considers necessary for a legal proceeding; and
- 7            (c) may allow the use of the document for a legal proceeding
- 8                brought because of the inquiry; and
- 9            (d) must allow inspection of the document by a person who would
- 10                be entitled to inspect it if it were returned to its former custody;
- 11                and
- 12            (e) may allow inspection of the document by anyone else while it
- 13                is in the possession of the registrar but only if the registrar
- 14                considers that the person has an interest in the inquiry and,
- 15                because of that interest, refusal of the inspection would be
- 16                unjust.

17        **413 Proceedings following inquiry**

- 18            (1) If a legal proceeding is to be, or has been, brought by the registrar
- 19                because of an inquiry under this division, the registrar may, by
- 20                notice, require a person who was an involved person in relation to
- 21                the inquiry to give all assistance in relation to the proceeding that
- 22                the person can reasonably give.
- 23            (2) The Supreme Court may, on the application of the registrar, order
- 24                the person to comply with a requirement under subsection (1) if it
- 25                appears to the court that—
- 26                (a) the person has unreasonably failed to comply with the
- 27                      requirement; and
- 28                (b) it is just and proper to order the person to comply with the
- 29                requirement.



- 1       (3) The registrar may bring a proceeding in the name of a cooperative  
2       if, the registrar considers that, because of an inquiry under this  
3       division, it is in the public interest that the proceeding should be  
4       brought for the recovery of—  
5       (a) damages for fraud or other misconduct in relation to the affairs  
6       of the cooperative; or  
7       (b) property of the cooperative.

8       **414 Admission of investigator's report as evidence**

- 9       (1) A document certified by the registrar as being a copy of a report of  
10       an inquiry under this division is admissible as evidence of any  
11       findings made by the investigator.  
12       (2) Subsection (1) does not authorise the admission of evidence that is  
13       inadmissible under section 407.

14       **415 Costs of inquiry**

- 15       (1) The costs of an inquiry under this division are to be paid out of  
16       money appropriated by the Legislative Assembly.  
17       (2) At the direction of the Minister, the registrar must apply under 1 or  
18       more of subsections (3), (4) and (5).  
19       (3) The Supreme Court may, on the application of the registrar on  
20       notice served on a cooperative, order the cooperative to pay to the  
21       Territory all or part of the costs of an inquiry under this division into  
22       the affairs of the cooperative.  
23       (4) If a proceeding is brought by the registrar under section 413 in the  
24       name of a cooperative, the court may, in the course of the  
25       proceeding and on the application of the registrar, order that all or  
26       part of the costs of the inquiry that led to the proceeding be paid to  
27       the Territory by a party to the proceeding.  
28       (5) If a person is found guilty of an offence in a proceeding certified by  
29       the registrar to have been brought because of an inquiry into the  
30       affairs of a cooperative, the court may, on the application of the

1 registrar made at the time of the finding or not more than 14 days  
2 later, order the person to pay to the Territory all or part of the costs  
3 of the inquiry.

4 (6) An order under this section must state—

5 (a) the amount to be paid; and

6 (b) the time or times for payment; and

7 (c) how the amount is to be paid.

## 8 **Division 15.3**      **Prevention of fraud and certain** 9 **other conduct**

10 **416 Falsification of records**

11 A person must not make, order or allow to be made, any entry or  
12 erasure in, or any omission from—

13 (a) any financial records or financial statements of a cooperative  
14 or of a subsidiary of a cooperative; or

15 (b) any return, document or other record required to be sent, kept  
16 or delivered for this Act:

17 with intent to falsify them or it, or to evade any of the provisions of  
18 this Act.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

21 **417 Fraud or misappropriation**

22 (1) A person must not—

23 (a) by false representation or imposition, obtain possession of any  
24 property of a cooperative; or

- 1 (b) having any property of a cooperative in the person's  
2 possession, withhold or misapply it or wilfully apply any part  
3 of it to purposes other than purposes authorised under this Act  
4 or the rules of the cooperative.

5 Maximum penalty: 50 penalty units, imprisonment for 6 months or  
6 both.

- 7 (2) A person who is found guilty of an offence against subsection (1)  
8 must, if ordered to do so by the court, deliver up all such property  
9 and repay all money improperly applied.

10 Maximum penalty: 50 penalty units, imprisonment for 6 months or  
11 both.

12 **418 Offering or paying commission**

13 A person must not offer or pay any commission, fee or reward,  
14 whether financial or otherwise, to an officer of a cooperative in  
15 relation to a transaction or proposed transaction between the person  
16 and the cooperative.

17 Maximum penalty: 50 penalty units, imprisonment for 6 months or  
18 both.

19 **419 Accepting commission**

- 20 (1) An officer of a cooperative must not accept any commission, fee or  
21 reward, whether pecuniary or otherwise, from anyone in relation to  
22 a transaction or proposed transaction between the person and the  
23 cooperative.

24 Maximum penalty: 50 penalty units, imprisonment for 6 months or  
25 both.

- 26 (2) An officer of a cooperative who is found guilty of an offence against  
27 subsection (1) is also liable to make good to the cooperative double  
28 the value or amount of the commission, fee or reward.

1 **420 False statements in loan application etc**

2 (1) A person must not in or in relation to an application, request or  
3 demand for money made to or of a cooperative—

4 (a) give information or make a statement to the cooperative, or an  
5 officer, employee or agent of the cooperative, knowing or  
6 believing it to be false or misleading in a material particular; or

7 (b) give to the cooperative, or an officer, employee or agent of the  
8 cooperative, information or a statement provided by someone  
9 else knowing or believing it to be false or misleading in a  
10 material particular.

11 Maximum penalty: 50 penalty units, imprisonment for 6 months or  
12 both.

13 (2) If a person is found guilty of an offence against subsection (1), a  
14 cooperative from which money has been obtained by the person in  
15 relation to the commission of the offence may exercise all such  
16 rights under a mortgage or other security given to it by the person to  
17 secure the repayment of money as it could exercise if there were a  
18 breach of a covenant or of a term of any contract by which the  
19 security was given.

20 (3) The cooperative may exercise those rights whether the mortgage or  
21 other security was executed by the person alone or by the person  
22 and someone else.

23 **Division 15.4 Miscellaneous powers of registrar**

24 **421 Application for special meeting or inquiry**

25 (1) The registrar must, on the application of a majority of the members  
26 of the board or of not less than  $\frac{1}{3}$  of the members of a  
27 cooperative—

28 (a) call a special meeting of the cooperative; or

29 (b) hold, or appoint an inspector to hold, an inquiry into the affairs  
30 of the cooperative or of a subsidiary of the cooperative.

- 
- 1       (2) An application must be supported by such evidence as the registrar  
2       directs for the purpose of showing that the applicants have good  
3       reason for requiring the meeting or inquiry and that the application  
4       is made without malicious motive.
- 5       (3) Notice of the application must be given to the cooperative as the  
6       registrar directs.
- 7       (4) The applicants must give any security for the expenses of the  
8       meeting or inquiry that the registrar, by notice, directs.

9       **422 Holding of special meeting**

- 10       (1) The registrar may direct the time when and place where the special  
11       meeting is to be held and the matters that are to be discussed and  
12       decided at the meeting.
- 13       (2) The registrar must give the notice to members of the holding of the  
14       special meeting that the registrar considers appropriate (despite any  
15       provision in the cooperative's rules about the giving of notice).
- 16       (3) The special meeting has all the powers of a meeting called in  
17       accordance with the rules of the cooperative and has power to  
18       appoint its own chairperson (despite any rule of the cooperative to  
19       the contrary).
- 20       (4) The registrar or anyone nominated by the registrar may attend and  
21       address the meeting.

22       **423 Expenses of special meeting or inquiry**

- 23       The expenses of and incidental to any meeting called, or any inquiry  
24       held, under this division must be paid, in the proportions that the  
25       registrar directs—
- 26       (a) by the applicants (if any); or
- 27       (b) out of the funds of the cooperative to which the meeting or  
28       inquiry related or whose subsidiary was the subject of the  
29       inquiry; or

- 1                      (c) by any officer, member, former officer or former member of  
2                      the cooperative.

3        **424    Power to hold special inquiry into cooperative**

- 4                      The registrar may without any application hold, or appoint an  
5                      inspector to hold, an inquiry into the working and financial  
6                      condition of a cooperative or a subsidiary of a cooperative.

7        **425    Special meeting following inquiry**

- 8                      (1) On completion of any inquiry under this division, the registrar may  
9                      call a special meeting of the cooperative.  
10                     (2) Section 422 applies to the meeting.

11       **426    Information and evidence**

- 12                    (1) On any application for registration of a cooperative or registration or  
13                    approval of any rule or document under this Act, the registrar may  
14                    require from the applicant the information and evidence that is  
15                    reasonable to show that the application should be granted.  
16                    (2) The registrar may, by notice, require from a cooperative the  
17                    information and evidence that is reasonable to show that the  
18                    cooperative is genuinely carrying on business in accordance with the  
19                    provisions of this Act.  
20                    (3) The registrar may, by notice, require from a cooperative the  
21                    evidence that the registrar considers appropriate of anything  
22                    required to be done under this Act or of an entry in a document  
23                    required to be provided to the registrar under this Act.

24       **427    Extension or shortening of time**

- 25                    (1) The registrar may, by notice, extent or shorten the time for doing  
26                    anything required to be done by a cooperative under this Act, or the  
27                    rules of the cooperative, on the conditions (if any) that the registrar  
28                    decides.

- 1       (2) The registrar may grant an extension of time even if the time for  
2       doing the thing has ended.

3       **428 Power of registrar to intervene in proceedings**

- 4       (1) The registrar may intervene in any proceeding relating to a matter  
5       arising under this Act.
- 6       (2) If the registrar intervenes in a proceeding, the registrar is taken to be  
7       a party to the proceeding and, subject to this Act, has all the rights,  
8       duties and liabilities of a party to the proceeding.
- 9       (3) The registrar may appear and be represented in a proceeding in  
10      which the registrar wishes to intervene under this section—
- 11      (a) by a delegate in relation to a matter to which the proceeding  
12      relates; or
- 13      (b) by a public servant engaged in the administration of this Act;  
14      or
- 15      (c) by a lawyer.

1

2                      **Part 16                      Administration of Act**

3                      **Division 16.1           Registrar**

4                      **429      Appointment of registrar**

5                      The Minister must appoint a Registrar of Cooperatives.

6                      **430      Registrar's functions**

7                      (1) Subject to this Act, the registrar is responsible for the general  
8                      administration of this Act.

9                      (2) The registrar has the functions given to the registrar under this Act  
10                      and any other Territory law.

11                      (3) The registrar must have a seal of office.

12                      (4) The registrar may enter into any arrangements or agreements with  
13                      any entity to act as the agent of the registrar in the carrying out of  
14                      the registrar's functions.

15                      **431      Deputy registrar and other staff**

16                      (1) The Minister may appoint a deputy registrar and assistant registrars.

17                      (2) Subject to any direction of the registrar, the deputy registrar or an  
18                      assistant registrar may exercise any of the functions given to the  
19                      registrar by this Act or any other Territory law.

20                      **432      Delegation by registrar**

21                      (1) The registrar may delegate to a public servant any of the registrar's  
22                      functions including this power of delegation.

23                      (2) A delegate may subdelegate to another public servant any function  
24                      delegated to the delegate under this section if the delegate is  
25                      authorised by the delegation to do so.



1   **433   Register of cooperatives**

- 2       (1) The registrar must keep a register of cooperatives.
- 3       (2) The registrar must record in the register the documents relating to
- 4           cooperatives and proposed cooperatives lodged with the registrar
- 5           that the Minister directs.

6   **434   Keeping of registers etc**

- 7       (1) The registrar must keep the cooperatives register and the other
- 8           registers that the registrar considers necessary or desirable for this
- 9           Act.
- 10      (2) Subject to section 433, the cooperatives register must be kept in the
- 11          form and contain the particulars that the registrar considers
- 12          appropriate.
- 13      (3) Subject to section 435, any document lodged with, provided to or
- 14          registered by the registrar under this Act must be kept in the office
- 15          of the registrar.

16   **435   Disposal of records by registrar**

- 17       The registrar may, if in the opinion of the registrar it is no longer
- 18       necessary or desirable to keep them, destroy or dispose of any of the
- 19       following:
- 20       (a) any annual return or balance sheet lodged longer than 7 years
- 21           ago;
- 22       (b) any document creating or evidencing a charge, or the complete
- 23           or partial satisfaction of a charge, if a memorandum of
- 24           satisfaction of the charge was registered longer than 7 years
- 25           ago;
- 26       (c) any other document (except the rules or any document
- 27           affecting the rules of a cooperative) that was lodged, provided
- 28           or registered longer than 15 years ago;

- 1 (d) any document lodged, provided or registered in relation to a  
2 cooperative that was deregistered or ceased to be registered  
3 longer than 15 years ago;
- 4 (e) any document a transparency or electronic image of which has  
5 been incorporated with a register kept by the registrar or is  
6 otherwise kept in the office of the registrar.

7 **436 Inspection of cooperatives register etc**

- 8 (1) A person may—
- 9 (a) inspect the cooperatives register; and
- 10 (b) inspect documents kept by the registrar that are prescribed  
11 under the regulations; and
- 12 (c) obtain a copy, or a certified copy, of a document that the  
13 person may inspect under paragraph (b).
- 14 *Note* A fee may be determined under s 467 (Determination of fees) for this  
15 subsection.
- 16 (2) If a reproduction or transparency of a document, or an extract of  
17 information contained in a document, recorded in the cooperatives  
18 register is produced for inspection, a person is not entitled under  
19 subsection (1) to require the production of the original of the  
20 document.

21 **437 Approvals by registrar**

- 22 (1) This section applies to any provision of this Act that imposes a  
23 requirement for the registrar's approval of anything.
- 24 (2) The registrar may indicate in writing to an applicant for an approval  
25 that the approval is taken to have been given at the end of a stated  
26 period unless the registrar tells the applicant in writing within the  
27 period that the approval has not been given or is still being  
28 considered.

1   **438   Lodgment of documents**

2           A document is taken to have been lodged under this Act only if all  
3           information required to be provided in or with the document is  
4           provided.

5           *Note*     A fee may be determined under s 467 (Determination of fees) for this  
6           section.

7   **439   Method of lodgment**

8       (1) Subject to section 438, it is sufficient compliance with a requirement  
9       under this Act that a document be lodged with the registrar if the  
10       registrar receives a copy of the document by fax or electronic  
11       transmission.

12       (2) If the registrar receives from a person a copy of a document under  
13       subsection (1), the registrar may require the person to produce and  
14       lodge the original within the time stated by the registrar.

15       (3) If the person does not comply with a requirement of the registrar  
16       within the stated time, the person is taken not to have lodged the  
17       document.

18   **440   Power of registrar to refuse to register or reject**  
19   **documents**

20       (1) The registrar must refuse to register or may reject a document  
21       submitted to the registrar if the registrar considers that the  
22       document—

23           (a) contains matter contrary to Act; or

24           (b) contains matter that, in a material particular, is false or  
25           misleading in the form or context in which it is included; or

26           (c) because of an omission or misdescription, has not been  
27           properly completed; or

28           (d) does not comply with the requirements of this Act; or

- 1 (e) contains any error, alteration or erasure of such a nature that  
2 the document should not be registered or should be rejected.
- 3 (2) If the registrar refuses to register or rejects a document under  
4 subsection (1), the registrar may require—
- 5 (a) that the document be appropriately amended; or  
6 (b) that a fresh document be submitted in its place; or  
7 (c) if the document has not been properly completed—that a  
8 supplementary document be submitted.
- 9 *Note* If a form is approved under s 468 (Approved forms) for a  
10 supplementary document, the form must be used.

11 **Division 16.2 Evidence**

12 **441 Certificate of registration**

- 13 (1) A certificate of registration of a cooperative issued under this Act is  
14 conclusive evidence that the cooperative is incorporated under this  
15 Act and that all the requirements of this Act in relation to  
16 registration have been complied with.
- 17 (2) This section does not affect any provisions of this Act for the  
18 winding-up or deregistration of the cooperative or the cancellation  
19 of its registration.

20 **442 Certificate evidence**

- 21 (1) If a function under this Act is given to the registrar because of  
22 something being done or omitted to be done within a particular  
23 period, the registrar may certify that the thing had or had not been  
24 done within the period or by a stated date.
- 25 (2) The registrar may issue a certificate stating that a requirement of this  
26 Act stated in the certificate—
- 27 (a) had, or had not, been complied with at a date or within a period  
28 stated in the certificate; or

- 1 (b) had been complied with at a date stated in the certificate but  
2 not before that date.
- 3 (3) The registrar may issue a certificate stating that on a date stated in  
4 the certificate a body stated in the certificate was not or had ceased  
5 to be registered as a cooperative under this Act.
- 6 (4) A certificate given by the registrar under this section is evidence of  
7 the matters stated in the certificate.

8 **443 Records kept by cooperatives**

- 9 (1) A record kept by a cooperative under a requirement of this Act is  
10 admissible in evidence in any proceeding and is evidence of  
11 anything stated or recorded in the record.
- 12 (2) A document purporting to be a record kept by a cooperative is,  
13 unless the contrary is proved, taken to be a record kept by the  
14 cooperative under a requirement of this Act.
- 15 (3) A copy of any entry in a record regularly kept by a cooperative in  
16 the course of its business is, if verified by statutory declaration of  
17 the secretary to be a true copy of the entry, to be received in  
18 evidence in any case where and to the same extent as the original  
19 entry itself is admissible.

20 **444 Minutes**

- 21 (1) Every entry in the minutes purporting to be a minute of the business  
22 transacted at a meeting of a cooperative or of the board, and  
23 purporting to have been signed by the chairperson at a subsequent  
24 meeting, is evidence that the business recorded in the minute was  
25 transacted at the meeting and that the meeting was properly called  
26 and held.
- 27 (2) An entry in the minutes of a meeting of a cooperative to the effect  
28 that a resolution was carried or carried unanimously, or was lost, is  
29 evidence of the fact without proof of the number or proportion of  
30 votes recorded for or against the resolution.

1     **445    Official certificates**

- 2        (1) A certificate of registration given by the registrar must be received  
3            in evidence as if it were the original certificate.
- 4        (2) A certificate of registration or other official document relating to a  
5            cooperative signed by or bearing the seal of the registrar is to be  
6            received in evidence without further proof.
- 7        (3) A copy of rules certified by the registrar to be a true copy of the  
8            rules of a cooperative is evidence of the registered rules of the  
9            cooperative.

10    **446    Registrar and proceedings**

- 11        (1) Judicial notice is to be taken of the signature or the facsimile of the  
12            signature (by whatever process it is produced) and seal of any  
13            person who holds or has held the office of registrar, if the signature  
14            or facsimile signature or seal purports to be attached to any  
15            certificate or other official document.
- 16        (2) This section extends to any copy of the rules of a cooperative  
17            certified by the registrar to be a true copy of its registered rules.
- 18        (3) In any proceeding, no proof is required (until evidence is given to  
19            the contrary) of the appointment of the registrar or any former  
20            registrar.

21    **447    Evidence of rules**

- 22            A printed copy of the rules of a cooperative verified by statutory  
23            declaration of the secretary of the cooperative to be a true copy of its  
24            registered rules is in any proceeding evidence of the rules.

25    **448    Evidence of particulars in certain registers**

- 26            The register of directors, members and shares of a cooperative is  
27            evidence of the particulars required or authorised by this Act to be  
28            inserted in the register.

## Part 17 Offences and proceedings

### 449 Offences by officers of cooperatives

(1) If a cooperative contravenes a provision of this Act—

- (a) anyone who is a director of the cooperative or concerned in its management is taken to have contravened the provision if the person knowingly authorised or permitted the contravention; and
- (b) any other officer of the cooperative who by a wilful act or omission is the cause of the contravention is taken to have contravened the provision.

(2) A person may be proceeded against and found guilty of an offence against subsection (1) whether or not the cooperative has been proceeded against or found guilty of an offence against the subsection.

(3) This section does not affect any liability imposed on a cooperative for an offence committed by the cooperative against this Act.

### 450 Notice to be given of finding of guilt for offence

If a cooperative or an officer of a cooperative is found guilty of an offence against a provision of this Act, the cooperative must, not later than 28 days after the finding is recorded, give to each member of the cooperative notice of—

- (a) the finding; and
- (b) any penalty imposed in relation to the offence to which the finding relates; and
- (c) the nature of the offence to which the finding relates.

**1     451     Secrecy**

2        (1) Subject to this section, a person who is, or at any time was, engaged  
3            in the administration of this Act or the former Act, must not record,  
4            make use of, or communicate, divulge or make available, by any  
5            means, any information obtained in the course of that  
6            administration.

7            Maximum penalty: 50 penalty units, imprisonment for 6 months or  
8            both.

9        (2) Subsection (1) does not apply to—

- 10            (a) the recording, making use of or divulging of information in the  
11                course of the administration of this Act; or  
12            (b) the recording or making use of information for the purpose of  
13                divulging it as permitted by subsection (3) or (4); or  
14            (c) the divulging of information as permitted by subsection (3) or  
15                (4).

16        (3) Information may be divulged—

- 17            (a) for a criminal proceeding; or  
18            (b) for a proceeding under this Act or an inquiry authorised by a  
19                Territory law; or  
20            (c) with the consent of the person to whom the information relates;  
21                or  
22            (d) in accordance with a requirement under the *Ombudsman Act*  
23                1989; or  
24            (e) in accordance with a reciprocal arrangement under section 465.

25        (4) Information may be divulged to—

- 26            (a) the Minister; or  
27            (b) the Treasurer; or  
28            (c) the commissioner for revenue; or



- 1 (d) the auditor-general; or  
2 (e) the ombudsman; or  
3 (f) the Commissioner of Taxation, a Second Commissioner of  
4 Taxation or a Deputy Commissioner of Taxation holding office  
5 under a Commonwealth Act; or  
6 (g) the Australian Securities and Investments Commission; or  
7 (h) the person who, under a law of a State or another Territory,  
8 administers a law of the State or other Territory that relates to  
9 taxation or the imposition of a duty; or  
10 (i) a person seeking information under a reciprocal arrangement  
11 under section 465; or  
12 (j) a police officer exercising functions as a police officer; or  
13 (k) a person nominated by a person mentioned in paragraphs (a) to  
14 (h); or  
15 (l) anyone to whom, in the opinion of the registrar, it is in the  
16 public interest that the information be divulged.
- 17 (5) For this section, a person is, or was, engaged in the administration of  
18 this Act or the former Act if the person exercises, or at any time  
19 exercised, a function as—  
20 (a) the registrar holding office under this Act; or  
21 (b) the registrar of co-operative societies under the former Act; or  
22 (c) an inspector appointed under this Act or the former Act; or  
23 (d) an investigator; or  
24 (e) a person appointed or employed for this Act or the former Act.

25 **452 False or misleading statements**

- 26 (1) A person who, in a document required for this Act or lodged with  
27 the registrar makes, or authorises the making of, a statement

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1 knowing or believing it to be false or misleading in a material  
2 particular commits an offence.

3 Maximum penalty: 50 penalty units, imprisonment for 6 months or  
4 both.

5 (2) A person who, from a document required for this Act or lodged with  
6 the registrar omits, or authorises the omission of, anything knowing  
7 or believing that the omission makes the document misleading in a  
8 material particular commits an offence.

9 Maximum penalty: 50 penalty units, imprisonment for 6 months or  
10 both.

11 (3) A person who, in a document required for this Act or lodged with  
12 the registrar makes, or authorises the making of, a statement that is  
13 false or misleading in a material particular commits an offence.

14 Maximum penalty: 50 penalty units.

15 (4) If an omission makes a document required for this Act or lodged  
16 with the registrar false or misleading in a material particular, a  
17 person who made or authorised the omission commits an offence.

18 Maximum penalty: 50 penalty units.

19 (5) It is a defence to a prosecution of a person for an offence against  
20 subsection (3) if the person satisfies the court that the person had  
21 taken reasonable precautions to avoid the making or authorising of  
22 false or misleading statements in a document of the relevant kind.

23 (6) It is a defence to a prosecution of a person for an offence against  
24 subsection (4) if the person satisfies the court that the person had  
25 taken reasonable precautions to avoid the making or authorising of  
26 omissions that would make a document of the relevant kind false or  
27 misleading.

28 **453 Use of word cooperative etc**

29 (1) In this section:

30 *exempt body* means—

- 1           (a) a cooperative, including a foreign cooperative registered under  
2           section 374 (Registration of foreign cooperative); or
- 3           (b) a society (within the meaning of the former Act) that was  
4           registered as a company in accordance with the former Act,  
5           section 38A (3) and that remains registered as a company; or
- 6           (c) a building society; or
- 7           (d) a credit union; or
- 8           (e) an entity prescribed under the regulations; or
- 9           (f) a company or society in relation to which an exemption under  
10          subsection (6) of this section is in force.
- 11       (2) A person, other than an exempt body, must not—
- 12           (a) trade or carry on business under any name or title including—
- 13               (i) the word ‘cooperative’ or ‘co-operative’; or
- 14               (ii) any other word importing a similar meaning; or
- 15               (iii) the abbreviation ‘co-op’ or ‘co-op.’; or
- 16           (b) hold out in any way that its trade or business is cooperative in  
17          nature.
- 18          Maximum penalty: 50 penalty units.
- 19       (3) For subsection (2), it is immaterial whether letters in a word or  
20          abbreviation are capital letters or non-capital letters.
- 21       (4) If a corporation contravenes subsection (2), each person involved in  
22          the management of the corporation who knowingly or wilfully  
23          authorises or permits the contravention commits an offence against  
24          that subsection.

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- 1       (5) A company or society formed or incorporated elsewhere than in the  
2       ACT may apply in writing to the registrar to become an exempt  
3       body.

4       *Note*     A fee may be determined under s 467 (Determination of fees) for this  
5       section.

- 6       (6) On application under subsection (5), the registrar may issue a  
7       certificate of exemption to the applicant if the registrar is satisfied  
8       that the applicant trades or carries on business for the purpose of  
9       promoting the economic interests of its members in accordance with  
10      cooperative principles.

- 11      (7) The registrar may issue a certificate of exemption for the period, and  
12      subject to the conditions, that the registrar considers appropriate.

- 13      (8) A person must not, without reasonable excuse, contravene a  
14      condition of a certificate of exemption issued under subsection (6).

15      Maximum penalty: 50 penalty units.

16      **454 Further offence for continuing failure to do required act**

- 17      (1) If a provision of this Act requires an act to be done and it has not  
18      been done, the obligation to do the act continues until the act is  
19      done—

20          (a) even if a person has been found guilty of an offence in relation  
21          to the failure to do the act; and

22          (b) even if the provision required the act to be done within a  
23          particular period or before a particular time and that period has  
24          ended or that time has passed.

- 25      (2) If a person is found guilty of an offence against this Act for the  
26      failure to do the act (whether it is the first, or a second or  
27      subsequent, offence by the person in relation to the failure) and the  
28      failure of the person continues after the day of the finding, the  
29      person commits a further offence in relation to each day during the  
30      period—

- 1 (a) that begins on the day after the finding; and  
2 (b) that ends at the end of the day—  
3 (i) a proceeding for the further offence is begun; or  
4 (ii) the act is done;  
5 whichever happens first.  
6 Maximum penalty: 0.5 penalty unit.  
7 (3) For subsection (2) (b) (i), a proceeding for the further offence is  
8 taken to have begun on the day the information for the further  
9 offence is laid or on an earlier day stated in the information for that  
10 purpose.

#### 11 **455 Civil remedies**

- 12 (1) If a cooperative in making, guaranteeing or raising a loan or  
13 receiving a deposit contravenes a provision of this Act or the rules  
14 of the cooperative, the civil rights and liabilities of the cooperative  
15 or anyone else in relation to the recovery of the loan or deposit are  
16 not affected by the contravention but the amount becomes  
17 immediately payable.  
18 (2) The same remedies may be had for the recovery of the loan or  
19 deposit, and for the enforcement of any security for it, as if there had  
20 not been a contravention of this Act or the rules of the cooperative.

#### 21 **456 Injunctions**

- 22 (1) This section applies if the Supreme Court is satisfied on the  
23 application of the registrar or a person whose interests have been,  
24 are or would be, affected by the conduct that someone else has  
25 engaged, is engaging or is proposing to engage in conduct that  
26 constituted, constitutes or would constitute—  
27 (a) a contravention of this Act; or  
28 (b) attempting to contravene this Act; or

- 1 (c) aiding, abetting, counselling or procuring a person to  
2 contravene this Act; or
- 3 (d) inducing or attempting to induce, whether by threats, promises  
4 or otherwise, a person to contravene this Act; or
- 5 (e) being in any way, directly or indirectly, knowingly concerned  
6 in, or party to, the contravention by a person of this Act; or
- 7 (f) conspiring with others to contravene this Act.
- 8 (2) The Supreme Court may grant an injunction, on the conditions it  
9 considers appropriate, restraining the other person from engaging in  
10 the conduct and, if in the opinion of the court it is desirable to do so,  
11 requiring the other person to do anything.
- 12 (3) The Supreme court may grant an interim injunction pending  
13 determination of the application.
- 14 (4) The Supreme Court may discharge or vary an injunction granted  
15 under this section.
- 16 (5) The power of the Supreme Court to grant an injunction restraining a  
17 person from engaging in conduct may be exercised—
- 18 (a) whether or not it appears to the court that the person intends to  
19 engage again, or to continue to engage, in conduct of that kind;  
20 and
- 21 (b) whether or not the person has previously engaged in conduct of  
22 that kind; and
- 23 (c) whether or not there is an imminent danger of substantial  
24 damage to anyone else if the person engages in conduct of that  
25 kind.
- 26 (6) The power of the Supreme Court to grant an injunction requiring a  
27 person to do anything may be exercised—
- 28 (a) whether or not it appears to the court that the person intends to  
29 fail again, or to continue to fail, to do the thing; and

- 1           (b) whether or not the person has previously failed to do the thing;  
2           and  
3           (c) whether or not there is an imminent danger of substantial  
4           damage to anyone else if the person fails to do the thing.
- 5       (7) If the Supreme Court has power under this section to grant an  
6       injunction restraining a person from engaging in particular conduct,  
7       or requiring a person to do a particular thing, the court may, either in  
8       addition to or in substitution for the grant of the injunction, order  
9       that person to pay damages to anyone else.

10   **457 Proceedings for recovery of fines etc under cooperative**  
11   **rules**

12       A proceeding for the recovery of a fine or penalty imposed under  
13       the rules of a cooperative may be taken by the cooperative and not  
14       by anyone else.

**Part 18**                      **Review of registrar's  
decisions**

**458**    **Definitions for pt 18**

In this part:

*alteration*, of the rules of a cooperative, includes a proposed alteration of the rules.

*reviewable decision* means a decision of the registrar—

- (a) under section 20 (5) (b) (Approval of disclosure statement), to amend a draft disclosure statement, or require a stated amendment of a draft disclosure statement; or
- (b) under section 20 (5) (c), to approve a draft disclosure statement different from the draft disclosure statement as submitted to the registrar; or
- (c) under section 20 (5) (d), to refuse to approve a draft disclosure statement; or
- (d) under section 21 (4) (b) (Approval of rules), to approve different draft rules for a proposed cooperative to those submitted to the registrar; or
- (e) under section 21 (4) (c), to refuse to approve draft rules for a proposed cooperative; or
- (f) under section 23 (3) (a) (Registration of cooperative and its rules), to refuse to register a proposed cooperative and its rules; or
- (g) under section 28 (3) (Requirements for registration), to refuse to register an existing corporation and its rules; or



- 1 (h) under section 109 (3) (b) (Approval of alteration of rules), to  
2 approve a different proposed alteration of the rules of a  
3 cooperative to that submitted to the registrar; or
- 4 (i) under section 109 (3) (c), to refuse to approve a proposed  
5 alteration of the rules of a cooperative; or
- 6 (j) under section 112 (3) (Alteration does not take effect until  
7 registered), to refuse to register an alteration of the rules of a  
8 cooperative.

9 **459 Registrar must give notice of reviewable decisions to**  
10 **affected people**

- 11 (1) If the registrar makes a reviewable decision, the registrar must take  
12 reasonable steps to give written notice of the decision to each person  
13 whose interests are affected by the decision.
- 14 (2) A notice of a reviewable decision must be in accordance with the  
15 requirements of the code of practice in force under the  
16 *Administrative Appeals Tribunal Act 1989*, section 25B (1) and, in  
17 particular, the notice must tell the person—
- 18 (a) that, if the person is dissatisfied with the decision, the person  
19 has the right to apply to the AAT for review of the decision;  
20 and
- 21 (b) how to make the application; and
- 22 (c) about the options available under other ACT laws to have a  
23 decision reviewed by a court or the ombudsman.

24 **460 AAT review of reviewable decisions**

- 25 A person whose interests are affected by a reviewable decision may  
26 apply to the AAT for review of the decision.

## Part 19 Miscellaneous

### 461 Exemption from stamp duty for certain instruments

- (1) Stamp duty is not payable in relation to any of the following instruments:
  - (a) the certificate of registration of a cooperative;
  - (b) a share certificate or any other instrument issued or executed in relation to the capital of a cooperative, other than a transfer of shares.
- (2) This section, and any other provision of this Act about stamp duty, prevails over any inconsistent provision of another Act (including, in particular, any inconsistent provision of the *Duties Act 1999*).

### 462 Cooperative ceasing to exist

- (1) As soon as practicable after a cooperative has ceased to exist, other than on deregistration under division 12.3, the registrar must deregister the cooperative by registering the cessation and cancelling the registration of the cooperative.
- (2) The registrar may remove from any register kept by the registrar the name of any cooperative that has been deregistered or otherwise ceased to exist.
- (3) For this section, a cooperative that has transferred its engagements to another cooperative is taken to have ceased to exist.

### 463 Service of documents on cooperative

- (1) A document may be served on a cooperative by prepaid post or by leaving it at the registered office of the cooperative with a person who appears to be at least 16 years old.
- (2) A document may be served on a foreign cooperative—

- 1           (a) by prepaid post; or
- 2           (b) by leaving it with a person who appears to be at least 16 years
- 3               old and is at a place where the foreign cooperative carries on
- 4               business in the ACT; or
- 5           (c) by leaving it at the registered office in the ACT of a foreign
- 6               cooperative registered under part 14.
- 7       (3) For the purpose of serving a document under this section by post, it
- 8           is properly addressed if—
- 9           (a) for a cooperative—it is addressed to the registered office of the
- 10               cooperative; or
- 11           (b) for a foreign cooperative—it is addressed to a place in the ACT
- 12               where the foreign cooperative carries on business or to the
- 13               registered office of the foreign cooperative in its place of
- 14               registration, incorporation or formation.
- 15       (4) This section does not affect the operation of any provision of a law
- 16           or of the rules of a court authorising a document to be served on a
- 17           cooperative or a foreign cooperative in any other way.

18       **464 Service on member of cooperative**

19           A notice or other document required under this Act to be given to a

20           member of a cooperative may be given—

- 21           (a) personally; or
- 22           (b) by prepaid post; or
- 23           (c) by publishing the notice in a newspaper circulating generally in
- 24               the ACT or in the area served by the cooperative, if—
- 25               (i) the cooperative is a non-trading cooperative; or
- 26               (ii) the member's whereabouts are unknown to the
- 27               cooperative; or
- 28               (iii) the registrar permits notice to be given to members of the
- 29               cooperative in that way.

**1     465     Reciprocal arrangements**

- 2     (1) If a reciprocal arrangement with a State is in force, the registrar—
- 3         (a) may, at the request of the appropriate official of the State,  
4             provide the official with information or documents relating to a  
5             cooperative; or
- 6         (b) may request the appropriate official of the State to provide the  
7             registrar with documents or information relating to an  
8             organisation that, under the arrangement, is an organisation  
9             corresponding to a cooperative.
- 10    (2) A *reciprocal arrangement* with a State is an arrangement made  
11       between the Minister and a representative of the government of the  
12       State under which it is agreed—
- 13         (a) that the registrar will comply with a request mentioned in  
14             subsection (1) (a); and
- 15         (b) that a request made by the registrar to an official designated in  
16             the arrangement as the appropriate official for  
17             subsection (1) (b) will be complied with.

**18     466     Translations of documents**

19       A requirement under this Act to provide or lodge a document or  
20       make a document available for inspection is, for a document that is  
21       not in English, taken to include a requirement that a translation of  
22       the document be provided, lodged or made available for inspection  
23       at the same time.

**24     467     Determination of fees**

- 25    (1) The Minister may, in writing, determine fees for this Act.
- 26       *Note*     The *Legislation Act 2001* contains provisions about the making of  
27             determinations and regulations relating to fees (see pt 6.3).
- 28    (2) A determination is a disallowable instrument.
- 29       *Note*     A disallowable instrument must be notified, and presented to the  
30             Legislative Assembly, under the *Legislation Act 2001*.

1   **468   Approved forms**

- 2       (1) The registrar may, in writing, approve forms for this Act.
- 3       (2) If the registrar approves a form for a particular purpose, the
- 4           approved form must be used for that purpose.
- 5       (3) An approved form is a notifiable instrument.

6       *Note*     A notifiable instrument must be notified under the *Legislation Act 2001*.

7   **469   References to Co-operatives Societies Act etc**

8       In an Act (other than this Act) or instrument—

- 9       (a) a reference to the *Co-operatives Societies Act 1939* is taken to
- 10          be a reference to this Act; and
- 11       (b) a reference to a society or cooperative society registered under
- 12          that Act is taken to be a reference to a cooperative registered
- 13          under this Act.

14   **470   Regulation-making power**

- 15       (1) The Executive may make regulations for this Act.

16       *Note*     Regulations must be notified, and presented to the Legislative

17           Assembly, under the *Legislation Act 2001*.

- 18       (2) The regulations may make provision in relation to—

- 19       (a) the making of applications for the exercise of a function by the
- 20          registrar; and
- 21       (b) the lodgment of documents with the registrar (including
- 22          electronic lodgment and lodgment by fax).

- 23       (3) The regulations may modify this Act—

- 24       (a) by providing that a provision of the Corporations Act applied
- 25          by this Act for any purpose or in any respect—

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- 1                   (i) does not apply for that purpose or in that respect; or
- 2                   (ii) applies for that purpose or in that respect in the
- 3                         circumstances, or subject to the conditions or limitations,
- 4                         that the regulations prescribe; or
- 5           (b) by providing that a provision of the Corporations Act applied
- 6                 by this Act applies to cooperatives for the purposes, in the
- 7                 respects or circumstances, or subject to the conditions or
- 8                 limitations, that the regulations prescribe; or
- 9           (c) by changing a reference to a provision of the Corporations Act
- 10                 if the change is necessary because of an amendment of the
- 11                 Corporations Act.
- 12   (4) The regulations may also prescribe offences for contraventions of
- 13         the regulations and prescribe maximum penalties of not more than
- 14         10 penalty units for offences against the regulations.

## **Part 20                      Repeals and transitional**

### **471    Repeals**

- (1) The *Co-operative Societies Act 1939* No 9 is repealed.
- (2) The *Co-operative Societies Regulations* SL 1945 No 2 are repealed.

### **472    Transitional provisions**

Schedule 5 has effect.

### **473    Regulations may provide for transitional matters**

A regulation may make provision for matters of transitional nature consequent on the enactment or commencement of this Act.

### **474    Modification of pt 20 and sch 5**

The regulations may modify this part or schedule 5 to make provision in relation to anything that is not, or is not in the Executive's opinion adequately, dealt with in the part or schedule.

### **475    Sunsetting after 1 year**

The following provisions expire 1 year after the commencement of this section:

- (a) sections 473 and 474 and this section;
- (b) schedule 5, clauses 1 to 5, 7, 9, 10 and 12 to 14.

### **476    Sunsetting after 2 years**

The remaining provisions of this part and schedule 5 expire 2 years after the commencement of this section.

# Schedule 1 Associates and relevant interests

(see dict, def of *associate*, def of *relevant interest*)

## Part 1.1 Associates

### 1 Effect of pt 1.1

- (1) Nothing in this part limits anything else in it.
- (2) A person is an associate of someone else only as provided by this part.

### 2 Associates of a corporation

The *associates* of a corporation include the following:

- (a) a director or secretary of the corporation;
- (b) a related corporation;
- (c) a director or secretary of a related corporation.

### 3 Matters relating to voting rights

- (1) If a reference to an associate of a person relates to—
  - (a) the extent of power to exercise, or to control the exercise of, the voting power attached to voting shares in or arising from membership of a corporation; or
  - (b) the person's entitlement to shares in a corporation; or
  - (c) an offer to buy shares to which division 11.2 applies;the reference includes a reference to someone else with whom the person has, or proposes to enter into, an agreement mentioned in subclause (2).



- 1 (2) Subclause (1) applies to an agreement—
- 2 (a) because of which a person mentioned in subclause (1) has or
- 3 will have power (even if it is in any way qualified)—
- 4 (i) to exercise; or
- 5 (ii) to control, directly or indirectly, the exercise of; or
- 6 (iii) to influence substantially the exercise of;
- 7 any voting power attached to shares in the body; or
- 8 (b) for the purpose of controlling or influencing—
- 9 (i) the composition of the body's board; or
- 10 (ii) the conduct of affairs of the body; or
- 11 (c) under which a person mentioned in subclause (1)—
- 12 (i) will or may acquire; or
- 13 (ii) may be required by the other to acquire;
- 14 shares in the body in which the other person has a relevant
- 15 interest; or
- 16 (d) under which a person mentioned in subclause (1) may be
- 17 required to dispose of shares in the body in accordance with
- 18 the other person's directions.
- 19 (3) Subclause (1) applies despite any other effect the agreement may
- 20 have.
- 21 (4) In relation to a matter relating to shares in a corporation, a person
- 22 may be an associate of the body and the body may be an associate of
- 23 a person.

24 **4 Meaning of *associate* of a person**

- 25 (1) A reference to an *associate* of a person includes a reference to—
- 26 (a) anyone in concert with whom the person is acting or proposes
- 27 to act; or

- 1            (b) anyone who, under the regulations, is, for the provision in  
2            which the reference occurs, an associate of the person; or
- 3            (c) anyone with whom the person is or proposes to become  
4            associated, whether formally or informally, in any other way;  
5            in relation to the matter to which the reference relates.
- 6            (2) If a person has entered, or proposes to enter, into a transaction, or  
7            has done, or proposes to do, anything, to become associated with  
8            someone else as mentioned in an applicable provision of this part, a  
9            reference to an *associate* of the person includes a reference to the  
10          other person.

11      **5      Exclusions**

- 12          A person is not an associate of someone else because of clause 3 or  
13          4 (1), or because of clause 4 (2) as it applies in relation to clause 3  
14          or 4 (1), only because of 1 or more of the following:
- 15          (a) the person gives advice to the other person, or acts on the other  
16          person's behalf, in the proper exercise of the functions  
17          attaching to a professional capacity or a business relationship;
- 18          (b) the person, a client, gives specific instructions to the other  
19          person, whose ordinary business includes dealing in securities,  
20          to acquire shares on the client's behalf in the ordinary course  
21          of that business;
- 22          (c) the person has made, or proposes to make, to the other person  
23          an offer to which division 11.2 applies, in relation to shares  
24          held by the other person;
- 25          (d) the person has appointed the other person, otherwise than for  
26          valuable consideration given by the other person or by an  
27          associate of the other person, to vote as a proxy or  
28          representative at a meeting of members, or of a class of  
29          members, of a corporation.

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## Part 1.2 Relevant interests

### 6 Interpretation of pt 1.2

- (1) This clause applies for this part.
- (2) Power to vote in relation to a right to vote is power to exercise, or to control the exercise of, the right to vote.
- (3) A reference to *power* to dispose of a share includes a reference to power to exercise control over the disposal of the share.
- (4) A reference to *power* or *control* includes a reference to power or control that is direct or indirect or is, or can be, exercised because of, by means of, in breach of, or by revocation of, trusts, agreements and practices, or any of them, whether or not they are enforceable.
- (5) Power to vote in relation to a right to vote, or power to dispose of a share, that is exercisable by 2 or more people jointly is taken to be exercisable by either or any of them.
- (6) A reference to a *controlling interest* includes a reference to an interest that gives control.

### 7 Effect of pt 1.2

- (1) Nothing in this part limits anything else in it.
- (2) A person does not have a relevant interest in a share of a cooperative or right to vote in relation to a cooperative except as provided in this part.

### 8 Basic rules—relevant interests

- (1) A person who has power to vote in relation to a right to vote has a relevant interest in the right to vote.
- (2) A person who has power to dispose of a share has a relevant interest in the share.

- 1    **9      Control of corporation having power in relation to a share**  
2        **etc**
- 3        (1) This clause applies if a corporation has, or is by this part taken to  
4            have—  
5            (a) power to vote in relation to a right to vote; or  
6            (b) power to dispose of a share.
- 7        (2) A person is taken for this part to have in relation to the right to vote  
8            or share the same power as the corporation has, or is taken to have,  
9            if—  
10           (a) the corporation is, or its directors are, accustomed or under an  
11              obligation, whether formal or informal, to act in accordance  
12              with the directions, instructions or wishes of the person in  
13              relation to the exercise of the power mentioned in  
14              subclause (1) (a) or (b); or  
15           (b) the person has a controlling interest in the corporation.
- 16    **10     Control of 20% of voting power in corporation having**  
17        **power in relation to a share etc**
- 18        (1) This clause applies if a corporation or an associate of a corporation  
19            has, or is by this part (other than this clause) taken to have—  
20            (a) power to vote in relation to a right to vote; or  
21            (b) power to dispose of a share.
- 22        (2) A person is taken for this part to have in relation to the right to vote  
23            or share the same power as the corporation or associate has, or is  
24            taken to have, if—  
25            (a) the person has; or  
26            (b) an associate of the person has; or  
27            (c) associates of the person together have; or

- 1 (d) the person and an associate or associates of the person together  
2 have;  
3 power to vote in relation to the right to vote attached to not less than  
4 20% of the voting shares in the corporation.

5 **11 Deemed relevant interest in advance of performance of**  
6 **agreement that will give rise to a relevant interest**

- 7 (1) This clause applies if—

- 8 (a) a person—

9 (i) has entered into an agreement with someone else in  
10 relation to an issued share or right to vote in which the  
11 other person has a relevant interest; or

12 (ii) has a right enforceable against someone else in relation to  
13 an issued share or right to vote in which the other person  
14 has a relevant interest, whether the right is enforceable  
15 presently or in the future and whether or not on the  
16 fulfilment of a condition; or

17 (iii) has an option granted by someone else, or has granted to  
18 someone else an option, in relation to an issued share or  
19 right to vote in which the other person has a relevant  
20 interest; and

21 (b) on performance of the agreement, enforcement of the right, or  
22 exercise of the option, the person would have a relevant  
23 interest in the share or right to vote.

- 24 (2) If this clause applies, the person is taken for this part to have that  
25 relevant interest in the share or right to vote.

26 **12 Control of corporation having a relevant interest because**  
27 **of cl 11**

28 If a corporation is by clause 11 taken to have a relevant interest in a  
29 share in or right to vote at meetings of a cooperative, a person is

- 1 taken for this part to have a relevant interest in the share or right to  
2 vote if—
- 3 (a) the corporation is, or its directors are, accustomed or under an  
4 obligation, whether formal or informal, to act in accordance  
5 with the directions, instructions or wishes of the person in  
6 relation to the exercise of power to vote in relation to the right  
7 to vote or power to dispose of the shares; or
- 8 (b) the person has a controlling interest in the corporation; or
- 9 (c) the person has power to vote in relation to the right to vote  
10 attached to not less than 20% of the voting shares in the  
11 corporation.

12 **13 Matters not affecting application of pt 1.2**

- 13 (1) It is immaterial for this part whether or not power to vote in relation  
14 to a right to vote, or power to dispose of a share—
- 15 (a) is express or implied or formal or informal; or
- 16 (b) is exercisable by a person alone or jointly with another person;  
17 or
- 18 (c) cannot be related to a particular share; or
- 19 (d) is, or can be made, subject to restraint or restriction.
- 20 (2) A relevant interest in a share or right to vote is not to be disregarded  
21 only because of either or both of the following:
- 22 (a) its remoteness;
- 23 (b) how it arose.

24 **14 Corporation may have a relevant interest in its own**  
25 **shares**

- 26 A corporation may, because of this part, be taken to have a relevant  
27 interest in a share in or right to vote arising from membership of the  
28 corporation itself.

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1   **15   Exclusions—moneylenders**

2           A relevant interest of a person in a share or right to vote is to be  
3           disregarded if the person's ordinary business includes lending  
4           money and the person has authority to exercise powers as the holder  
5           of the relevant interest only because of a security given for a  
6           transaction entered into in the ordinary course of business in relation  
7           to lending money, other than a transaction entered into with an  
8           associate of the person.

9   **16   Exclusions—certain trustees**

10          A relevant interest of a person in a share or right to vote is to be  
11          disregarded if—

12           (a) the share or right is subject to a trust; and

13           (b) the person has the relevant interest as a trustee of the trust; and

14           (c) either—

15               (i) a beneficiary under the trust is by clause 11 taken to have  
16               a relevant interest in the share or right because the  
17               beneficiary has a presently enforceable and unconditional  
18               right mentioned in clause 11 (1) (a) (ii); or

19               (ii) the person is a bare trustee.

20   **17   Exclusions—instructions to securities dealer to dispose**  
21   **of share**

22          A relevant interest of a person in a share or right to vote is to be  
23          disregarded if—

24           (a) the person's ordinary business includes dealing in securities;  
25           and

26           (b) the person has authority to exercise powers as the holder of the  
27           relevant interest only because of instructions given to the  
28           person, by or on behalf of someone else, to dispose of the share  
29           on the other person's behalf in the ordinary course of the  
30           business.

1    **18      Exclusions—honorary proxies**

2            A relevant interest of a person in a share or right to vote is to be  
3            disregarded if the person has it only because of having been  
4            appointed, otherwise than for valuable consideration given by the  
5            person or an associate of the person, to vote as a proxy or  
6            representative at a meeting of members, or of a class of members, of  
7            a corporation.

8    **19      Exclusions—holders of prescribed offices**

9            A relevant interest of a person in a share or right to vote is to be  
10           disregarded if the person has it because of holding an office  
11           prescribed under the regulations.

12   **20      Prescribed exclusions**

13           The regulations may provide for relevant interests in shares to be  
14           disregarded for a provision of this Act in prescribed circumstances  
15           and subject to any prescribed conditions.

16   **21      Relevant interest—corporation other than cooperative**

17           A reference in this Act (including in this schedule) to a relevant  
18           interest in a share of a corporation other than a cooperative or a right  
19           to vote in relation to a corporation other than a cooperative is to be  
20           interpreted in accordance with the Corporations Act.



## Schedule 2      Matters for which rules must make provision

(see s 102)

### 1      Requirements for all cooperatives

The rules of all cooperatives must set out or make provision for each of the following matters:

- (a) the name of the cooperative;
- (b) active membership provisions;
- (c) 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;
- (d) the rights and liabilities of members, and of the estates of dead members, and the rights and liabilities of representatives of members under bankruptcy or mental incapacity;
- (e) the circumstances in which members may be expelled or suspended, and the rights and liabilities of expelled and suspended members;
- (f) the circumstances in which membership ceases;
- (g) any charges or subscriptions that are to be payable by a member to the cooperative;
- (h) the circumstances in which fines and forfeitures may be imposed on members of the cooperative, and the amount of the fines, not exceeding the maximum amount prescribed under the regulations;
- (i) the grievance procedures under the rules of the cooperative (as required by section 83) for settling disputes between the cooperative and any of its members, or between a member and another member;

**Schedule 2**      **Matters for which rules must make provision**

**Clause 1**

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- 1            (j) the restrictions (if any) on the powers of the cooperative and  
2            the board;
- 3            (k) the number of directors, the qualifications of directors, how  
4            directors are to be elected, remunerating and removing  
5            directors, the filling of director vacancies, the period for which  
6            directors are to hold office, whether directors are to retire by  
7            rotation or otherwise, and the holding of annual elections for  
8            directors;
- 9            (l) the quorum for meetings, and the procedure at meetings, of the  
10           board;
- 11           (m) the device, custody and use of the seal of the cooperative;
- 12           (n) how the funds of the cooperative are to be managed, and in  
13           particular the drawing and signing cheques, drafts, bills of  
14           exchange, promissory notes, and other negotiable instruments  
15           for the cooperative;
- 16           (o) provision for the custody of securities belonging to the  
17           cooperative;
- 18           (p) how debentures may be transferred;
- 19           (q) the financial year of the cooperative;
- 20           (r) provision for the financial statements of the cooperative to be  
21           audited annually or more frequently and how the auditor is to  
22           be appointed;
- 23           (s) how any loss that may result from the transactions of the  
24           cooperative is to be provided for;
- 25           (t) how general and special meetings are to be called, the notice  
26           required for meetings, and the quorum for meetings;
- 27           (u) the procedure at meetings of the cooperative (including the  
28           rights of members in voting at meetings, the way of voting, and  
29           the majority necessary for carrying resolutions);

- 1 (v) the conduct of postal ballots and special postal ballots  
2 (including the sending and lodgment of information and votes  
3 by fax or electronic means);
- 4 (w) how the rules are to be altered;
- 5 (x) how the cooperative may be wound up;
- 6 (y) anything prescribed under the regulations, whether in addition  
7 to or in substitution for anything mentioned in this clause;
- 8 (z) anything else that the cooperative considers necessary or  
9 desirable.

10 **2 Additional matters—cooperatives with share capital**

11 In addition to the matters mentioned in clause 1, the rules of a  
12 cooperative with a share capital must set out or make provision for  
13 each of the following matters:

- 14 (a) the nominal value of each share in the cooperative;
- 15 (b) the amount of the contingent liability (if any) attaching to  
16 shares;
- 17 (c) the terms on which shares, not including bonus shares, but  
18 including shares (if any) with a contingent liability attached to  
19 them are to be issued;
- 20 (d) the periodic subscriptions by which or how shares are to be  
21 paid for;
- 22 (e) for a trading cooperative—how any surplus may be distributed;
- 23 (f) the allocation of a deficiency on the winding-up of a  
24 cooperative;
- 25 (g) provision for the forfeiture of shares on expulsion or on failure  
26 to pay any subscription or call, the extent to which members  
27 whose shares have been forfeited are to remain liable for any  
28 amount still unpaid in relation to them, and the sale or  
29 cancellation of forfeited shares;

**Schedule 2**      Matters for which rules must make provision

**Clause 3**

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- 1            (h) how shares may be transferred;
- 2            (i) anything prescribed under the regulations, whether in addition
- 3            to or in substitution for anything mentioned in this clause.

4    **3      Additional matters—non-trading cooperatives**

5            In addition to the matters mentioned in clauses 1 and 2, the rules of

6            a non-trading cooperative must provide—

- 7            (a) that there must be no return or distribution on surplus or share
- 8            capital to members other than the nominal value of shares (if
- 9            any) at winding-up; and
- 10          (b) how the surplus property at winding-up is to be distributed.

## Schedule 3 Charges

(see s 270)

### Part 3.1 Preliminary

#### 1 Definitions for sch 3

In this schedule:

*charges register* means the register of cooperative charges mentioned in clause 18.

*cooperative* includes a foreign cooperative registered under part 14.

*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; and

(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 warehouse keeper'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.

*present liability*, in relation to a charge, means a liability that has arisen if the extent or amount of the liability is fixed or can be worked out, whether or not the liability is immediately owing.

Clause 2

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1      *property*, of a cooperative, means property within the ACT held by  
2      the cooperative, whether or not as trustee.

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

6      *registrable charge* means a charge in relation to which, because of  
7      clause 4, the provisions of this schedule mentioned in clause 4(1)  
8      apply.

9      **2      Application to charges mentioned in cl 17**

10      (1) A charge mentioned in clause 17 (Acquisition of property subject to  
11      charge) is, until the charge is registered, to be treated for this  
12      schedule as if it were not a registrable charge but, when the charge  
13      is so registered, it has the priority accorded to a registered charge as  
14      from the time of registration.

15      (2) The registration of a charge mentioned in clause 17 does not  
16      prejudice any priority that would have been accorded to the charge  
17      under any other law (whether or not a law of a place in Australia) if  
18      the charge had not been registered.

19      **3      Lodgment of documents**

20      For this schedule, a notice or other document is taken to be lodged  
21      when it is received at the office of the registrar by an officer  
22      authorised to receive it.

## Part 3.2 Registration

### Division 3.2.1 Charges

#### 4 Charges to which sch 3 applies

- (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 mentioned in subclause (2) (whether legal or equitable) on property of a cooperative; and
  - (b) do not apply in relation to any other charges.
- (2) Subclause (1) applies to the following charges:
- (a) a floating charge on all or a part of the property, business or undertaking of the cooperative;
  - (b) a charge on uncalled share capital or uncalled share premiums;
  - (c) a charge on a call, whether in relation to 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), other than a ship registered in an official register kept under a law of the Commonwealth or a State 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, other than—

- 1 (i) a charge created in whole or part by the deposit of a  
2 document of title to the marketable security; or  
3 (ii) a mortgage under which the marketable security is  
4 registered in the name of the chargee or a person  
5 nominated by the chargee;  
6 (h) a lien or charge on a crop, a lien or charge on wool or a stock  
7 mortgage;  
8 (i) a charge on a negotiable instrument other than a marketable  
9 security.

10 **5 Excluded charges**

11 The provisions of this schedule mentioned in clause 4 (1) do not  
12 apply in relation to—

- 13 (a) a charge, or a lien over property, arising by operation of law; or  
14 (b) a pledge of a personal chattel or of a marketable security; or  
15 (c) a charge created in relation to a negotiable instrument, or a  
16 document of title to goods, if the charge is by way of pledge,  
17 deposit, letter of hypothecation or trust receipt; or  
18 (d) a transfer of goods in the ordinary course of the practice of any  
19 profession or the carrying on of any trade or business; or  
20 (e) a dealing, in the ordinary course of the practice of any  
21 profession or the carrying on of any trade or business, in  
22 relation to goods outside Australia.

23 **6 Personal chattels**

24 The reference in clause 4 (2) (d) to *a charge on a personal chattel*  
25 is a reference to a charge on any article capable of complete transfer  
26 by delivery, whether at the time of the creation of the charge or at  
27 some later time, and includes a reference to a charge on a fixture or  
28 a growing crop that is charged separately from the land to which it is



1 attached or on which it is growing, but does not include a reference  
2 to a charge on—

3 (a) a document evidencing title to land; or  
4 (b) a chattel interest in land; or  
5 (c) a marketable security; or  
6 (d) a document evidencing a thing in action; or  
7 (e) stock or produce on a farm or land that because of a covenant  
8 or agreement ought not to be removed from the farm or land  
9 where the stock or produce is at the time of the creation of the  
10 charge.

11 **7 Book debts**

12 The reference in clause 4 (2) (f) to *a charge on a book debt*—

13 (a) is a reference to a charge on a debt owing to the cooperative, or  
14 to become owing to the cooperative at some future time, on  
15 account of or in relation to a profession, trade or business  
16 carried on by the cooperative, whether entered in a book or not;  
17 and  
18 (b) includes a reference to a charge on a future debt of the same  
19 nature although not incurred or owing at the time of the  
20 creation of the charge;

21 but does not include a reference to a charge on a marketable  
22 security, on a negotiable instrument or on a debt owing in relation to  
23 a mortgage, charge or lease of land.

24 **8 Crops or stock**

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

1     **9     Deposit of documents of title**

2             For this division, a cooperative is taken to have deposited a  
3             document of title to property with someone else (the *chargee*) in a  
4             case where the document of title is not in the possession of the  
5             cooperative if—

6             (a) the person who holds the document of title acknowledges in  
7             writing that the person holds the document of title on behalf of  
8             the chargee; or

9             (b) a government, an authority or a corporation that proposes to  
10            issue a document of title in relation to the property agrees, in  
11            writing, to deliver the document of title, when issued, to the  
12            chargee.

13    **10   Charges on land or fixtures on land**

14       (1) The provisions of this schedule mentioned in clause 4(1) do not  
15       apply in relation to a charge on land.

16       (2) The provisions of this schedule mentioned in clause 4(1) do not  
17       apply in relation to a charge on fixtures given by a charge on the  
18       land to which they are attached.

19    **11   Charges if other property is also charged**

20           For this division, a charge is taken to be a charge on property to  
21           which a particular paragraph of clause 4(2) applies even though the  
22           instrument of charge also charges other property of the cooperative  
23           (including property to which none of the paragraphs of the  
24           subclause applies).

25    **12   Effect of failure to lodge or give notice or document**

26           A charge on property of a cooperative is not invalid only because of  
27           the failure to lodge with the registrar, or give to the cooperative or  
28           someone else, a notice or other document required to be lodged or  
29           given under this part.

1     **Division 3.2.2            Notice of charge**

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

- 3       (1) If a cooperative creates a charge, the cooperative must ensure that  
4       there is lodged with the registrar, within 45 days after the creation of  
5       the charge, a notice setting out the following particulars:
- 6           (a) the name of the cooperative and the date of the creation of the  
7           charge;
- 8           (b) whether the charge is a fixed charge, a floating charge or both  
9           a fixed and floating charge;
- 10          (c) if the charge is a floating charge—whether there is any  
11          provision in the resolution or instrument creating or evidencing  
12          the charge that prohibits or restricts the creation of subsequent  
13          charges;
- 14          (d) a short description of the liability (whether present or  
15          prospective) secured by the charge;
- 16          (e) a short description of the property charged;
- 17          (f) whether the charge is created or evidenced by a resolution, by  
18          an instrument or by a deposit or other conduct;
- 19          (g) if the charge is constituted by the issue of a debenture or  
20          debentures—the name of the trustee (if any) for debenture  
21          holders;
- 22          (h) if the charge is not constituted by the issue of a debenture or  
23          debentures or there is no trustee for debenture holders—the  
24          name of the chargee;
- 25          (i) any other information prescribed under the regulations for this  
26          clause.

27       *Note*     If a form is approved under s 468 (Approved forms) for a notice, the  
28       form must be used.

Clause 14

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- 1 (2) If, in accordance with resolutions passed by the cooperative, the  
2 cooperative issues a series of debentures constituting a charge to the  
3 benefit of which all the holders of debentures in the series are  
4 entitled in equal priority, and the charge is evidenced only by the  
5 resolutions and the debentures, the notice under subclause (1) must  
6 be accompanied by—
- 7 (a) a copy of each of the resolutions verified by a written  
8 statement to be a true copy; and
- 9 (b) a copy of the first debenture issued in the series and a written  
10 statement verifying the execution of the first debenture.
- 11 (3) If, in a case to which subclause (2) does not apply, the charge  
12 created by the cooperative was created or evidenced by an  
13 instrument, the notice under subclause (1) must be accompanied  
14 by—
- 15 (a) the instrument; or
- 16 (b) a copy of the instrument verified by a written statement to be a  
17 true copy, and a written statement verifying the execution of  
18 the instrument.

19 **14 Series of debentures**

- 20 In a case to which clause 13 (2) applies—
- 21 (a) the charge is, for clause 13, taken to be created when the first  
22 debenture in the series of debentures is issued; and
- 23 (b) if, after the issue of the first debenture in the series, the  
24 cooperative passes a further resolution authorising the issue of  
25 debentures in the series, the cooperative must ensure that a  
26 copy of that resolution, verified by a written statement to be a  
27 true copy of that resolution, is lodged within 45 days after the  
28 resolution is passed.

1   **15    Operation of priority provisions in relation to issue of**  
2   **debentures**

3        If a notice in relation to an instrument creating a charge has been  
4        lodged under clause 13 (1), and the charge is in relation to an issue  
5        of several debentures whose holders have under the instrument the  
6        benefit of the charge in equal priority, clauses 48 to 51 apply as if  
7        any charges constituted by the debentures were registered when the  
8        charge to which the notice relates was registered.

9   **16    Discounts**

10    (1) This clause applies if a cooperative has allowed (directly or  
11        indirectly) a payment or discount to a person in return for the  
12        person—

13        (a) subscribing, or agreeing to subscribe (with or without  
14            conditions), for debentures; or

15        (b) obtaining, or agreeing to obtain (with or without conditions),  
16            subscriptions for debentures.

17    (2) A notice required under clause 13 (1) must include particulars about  
18        the amount or percentage rate of the payment or discount.

19    (3) The issue by a cooperative of debentures as security for a debt of the  
20        cooperative is not taken, for this clause, to be a discount.

21   **17    Acquisition of property subject to charge**

22    (1) If a cooperative acquires property that is subject to a charge, and the  
23        charge would have been registrable when it was created if it had  
24        been created by a cooperative, the cooperative must, within 45 days  
25        after acquiring the property—

Clause 18

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- 1 (a) lodge with the registrar a notice in relation to the charge that  
2 sets out—
- 3 (i) the name of the cooperative; and  
4 (ii) the date the property was acquired; and  
5 (iii) any other particulars required by clause 13 (1); and
- 6 (b) give to the chargee notice that it has acquired the property and  
7 the date it was acquired.
- 8 *Note* If a form is approved under s 468 (Approved forms) for a notice, the  
9 form must be used.
- 10 (2) If the charge mentioned in subclause (1) was created and evidenced  
11 as mentioned in clause 13 (2), the notice under subclause (1) (a)  
12 must be accompanied by—
- 13 (a) a copy of each of the resolutions mentioned in clause 13 (2)  
14 verified by a written statement to be a true copy; and
- 15 (b) a copy of the first debenture issued in the series mentioned in  
16 clause 13 (2) verified by a written statement to be a true copy.
- 17 (3) If the charge mentioned in subclause (1) was created or evidenced  
18 by an instrument (otherwise than as mentioned in clause 13 (2)), the  
19 notice under subclause (1) (a) must be accompanied by—
- 20 (a) the instrument; or
- 21 (b) a copy of the instrument verified by a written statement to be a  
22 true copy.

23 **Division 3.2.3 Registration**

24 **18 Register of cooperative charges**

25 The registrar must keep a register to be known as the register of  
26 cooperative charges.

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1 **19 Registration of documents relating to charge**

- 2 (1) If a notice is lodged with the registrar in accordance with  
3 division 3.2.2, the registrar must, as soon as practicable, enter in the  
4 charges register the time and date the notice was lodged and the  
5 following particulars in relation to the charge:
- 6 (a) if the charge is a charge created by the cooperative—the date it  
7 was created;
- 8 (b) if the charge was a charge existing on property acquired by the  
9 cooperative—the date the property was acquired;
- 10 (c) a short description of the liability (whether present or  
11 prospective) secured by the charge;
- 12 (d) a short description of the property charged;
- 13 (e) the name of the trustee for debenture holders or, if there is no  
14 trustee, the name of the chargee.
- 15 (2) Subclause (1) only applies if the notice contains the required  
16 particulars and is accompanied by the required documents.
- 17 (3) Subclause (1) applies whether the notice is lodged during or after  
18 the period within the notice is required to be lodged.
- 19 (4) Subject to this division, if particulars in relation to a charge are  
20 entered in the charges register in accordance with subclause (1), the  
21 charge is taken to be registered, and to have been registered from  
22 and including the time and date entered in the charges register under  
23 that subclause.
- 24 (5) The registrar may enter in the charges register in relation to a  
25 charge, in addition to the particulars expressly required by this  
26 division to be entered, any other particulars the registrar considers  
27 appropriate.

1   **20   Provisional registration if stamp duty not paid**

2       (1) If—

3           (a) a notice in relation to a charge on property of a cooperative is  
4               lodged under division 3.2.2; and

5           (b) the notice is not accompanied by a certificate to the effect that  
6               all documents accompanying the notice have been properly  
7               stamped as required by any applicable law relating to stamp  
8               duty;

9       the registrar must enter in the charges register the time and date the  
10       notice was lodged and the particulars mentioned in clause 19 (1) (a)  
11       to (e), and must also enter the word ‘provisional’ in the charges  
12       register next to the entry.

13       (2) Subclause (1) applies whether the notice was lodged during or after  
14       the period within which the notice was required to be lodged.

15       (3) The registrar must delete the word ‘provisional’ entered in the  
16       charges register under subclause (1) in relation to the entry if a  
17       certificate to the effect mentioned in subclause (1) (b) is produced to  
18       the registrar within—

19           (a) 28 days after the entry is made; or

20           (b) if a longer period is prescribed under the regulations—that  
21               period; or

22           (c) if the registrar allows a further period to the period applying  
23               under paragraph (a) or (b)—the further period.

24       (4) The registrar must delete from the charges register an entry in  
25       relation to a charge if—

26           (a) the word ‘provisional’ is entered in the charges register under  
27               subclause (1) in relation to the entry; and

28           (b) a certificate to the effect mentioned in subclause (1) (b) is not  
29               produced in relation to the entry within the period applying  
30               under subclause (3).



- 
- 1   **21   Provisional registration if required particulars not**  
2   **supplied**
- 3   (1) If a defective notice in relation to a charge on property is lodged  
4   with the registrar under clause 19, the registrar must enter in the  
5   charges register—
- 6       (a) the time and date the document was lodged; and  
7       (b) such of the particulars mentioned in clause 19 (1) as are  
8       ascertainable; and  
9       (c) the word ‘provisional’ next to the entry.
- 10   (2) If a defective notice in relation to a charge is lodged under clause  
11   19, the registrar must, by notice to the person who lodged the  
12   defective notice, direct the person to ensure that there is lodged, on  
13   or before the date stated in the notice, a notice in relation to the  
14   charge that complies with the requirements of division 3.2.2.
- 15   (3) Subclauses (1) and (2) apply whether the defective notice was  
16   lodged during or after the period within which the notice was  
17   required to be lodged.
- 18   (4) The giving by the registrar of a direction to the person under  
19   subclause (2) does not affect any liability that the cooperative may  
20   have incurred or may incur because of a contravention of  
21   division 3.2.2.
- 22   (5) If the registrar gives a direction to a person under subclause (2) in  
23   relation to a charge and the direction is complied with on or before  
24   the date stated in the notice containing the direction, the registrar  
25   must—
- 26       (a) delete from the charges register the word ‘provisional’ that was  
27       entered under subclause (1); and  
28       (b) enter in the charges register in relation to the charge any  
29       particulars mentioned in clause 19 (1) that have not previously  
30       been entered.

- 1 (6) If the registrar gives a direction to a person under subclause (2) in  
2 relation to a charge and the direction is not complied with on or  
3 before the date stated in the notice, the registrar must delete from the  
4 charges register all the particulars that were entered in relation to the  
5 charge.
- 6 (7) If the registrar gives a direction to a person under subclause (2) in  
7 relation to a charge and the direction is complied with after the date  
8 stated in the notice, the registrar must enter in the charges register in  
9 relation to the charge—
- 10 (a) the time and date the direction was complied with; and  
11 (b) the particulars mentioned in clause 19 (1).
- 12 (8) In this clause:
- 13 *defective notice*, in relation to a cooperative, means a document  
14 that—
- 15 (a) purports to be a notice in relation to a charge on property of the  
16 cooperative for division 3.2.2; and
- 17 (b) contains the name of the cooperative and the particulars  
18 mentioned in clause 13 (1) (g) or (h);
- 19 but does not contain some or all of the other particulars required to  
20 be included in the notice or is otherwise defective.
- 21 **22 Effect of provisional registration**
- 22 (1) If the word ‘provisional’ is entered in the charges register next to an  
23 entry specifying a time and date in relation to a charge, the charge is  
24 taken not to have been registered.
- 25 (2) However, if the word ‘provisional’ is deleted from the charges  
26 register under clause 20 or 21 (5), the charge is taken to be  
27 registered and to have been registered from the time and date stated  
28 in the charges register.

- 1 (3) Also, if the particulars in relation to the charge are deleted from the  
2 charges register under clause 21 (6) and the particulars and a time  
3 and date are subsequently entered in the charges register in relation  
4 to the charge under clause 21 (7), the charge is taken to be registered  
5 from that time and date.

6 **23 Two or more charges relating to same property**

- 7 (1) If, under clause 17, a cooperative lodges notices relating to 2 or  
8 more charges that are not already registered under this division on  
9 the same property acquired by the cooperative, the time and date to  
10 be entered in the charges register in relation to each of the charges is  
11 the time and date when the first notice was lodged.
- 12 (2) If, in accordance with subclause (1), the time and date entered in the  
13 charges register are the same in relation to 2 or more charges on  
14 property acquired by a cooperative, the charges have, as between  
15 themselves, the respective priorities that they would have had if they  
16 had not been registered under this division.

17 **24 Registration of assignment or variation of charge**

- 18 (1) If a notice is lodged under clause 36, the registrar must as soon as  
19 practicable enter in the charges register the time and date the notice  
20 was lodged and the particulars set out in the notice.
- 21 (2) This clause applies whether the notice was lodged during or after the  
22 period within which the notice was required to be lodged.

23 **25 Standard time for div 3.2.3**

- 24 (1) The registrar may, in writing, declare a standard time to be the  
25 standard time for this division.
- 26 (2) A declaration is a notifiable instrument.

27 *Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

<b>Schedule 3</b>	Charges
<b>Part 3.2</b>	Registration
<b>Division 3.2.4</b>	Certain charges void against liquidator or administrator
Clause 26	

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- 1       (3) If a declaration is in force under subclause (1), a reference in this  
2       division to entering the time when a particular event happened is a  
3       reference to entering that time as expressed in terms of the standard  
4       time stated in the declaration.

5       **Division 3.2.4           Certain charges void against**  
6       **liquidator or administrator**

7       **26       Definitions for div 3.2.4**

8       In this division:

9       *critical day*, in relation to a cooperative, means—

- 10       (a) if the cooperative is being wound up—the day the winding-up  
11       began; or  
12       (b) if the cooperative is under administration—the relevant day in  
13       relation to the administration; or  
14       (c) if the cooperative has executed a deed of arrangement—the  
15       relevant day in relation to the administration that ended when  
16       the deed was executed.

17       *relevant day*, in relation to the administration of a cooperative,  
18       means—

- 19       (a) if, when the administration began, a winding-up of the  
20       cooperative was in progress—the day the winding-up is taken  
21       to have begun because of the Corporations Act, part 5.6  
22       (Winding up generally), division 1A (When winding up taken  
23       to begin) as applied by this Act; or  
24       (b) in any other case—the day the administration began.

25       **27       Certain charges void against liquidator or administrator**

26       (1) Subject to this division, if—

- 27       (a) an order is made, or a resolution is passed, for the winding-up  
28       of a cooperative; or

- 1 (b) the registrar gives a certificate under section 315 for the
- 2 winding-up of the cooperative; or
- 3 (c) an administrator of a cooperative is appointed under
- 4 Corporations Act, part 5.3A (Administration of a company's
- 5 affairs with a view to executing a deed of company
- 6 arrangement) as applied by this Act; or
- 7 (d) a cooperative executes a deed of arrangement;
- 8 a registrable charge on property of the cooperative is void as a
- 9 security on the property as against the liquidator, the administrator
- 10 of the cooperative, or the administrator of the deed.
- 11 (2) However, the charge is not void under subclause (1) if—
- 12 (a) a notice in relation to the charge was lodged under clause 13 or
- 13 17, as the case requires—
- 14 (i) within the relevant period; or
- 15 (ii) at least 6 months before the critical day; or
- 16 (b) the required period in relation to the charge has not ended
- 17 before the critical day and a notice in relation to the charge is
- 18 lodged under a clause of this part (other than clause 36) before
- 19 the end of the required period; or
- 20 (c) for a charge to which clause 17 applies—the period of 45 days
- 21 after the chargee becomes aware that the property charged has
- 22 been acquired by a cooperative has not ended before the
- 23 critical day and the notice is lodged before the end of the 45
- 24 day period.
- 25 (3) In this clause:
- 26 *relevant period*, for a notice in relation to a charge mentioned in
- 27 subclause (2) (a) means—
- 28 (a) for a charge to which clause 13 applies—the period of 45 days
- 29 mentioned in that clause or, if the period is extended by the
- 30 Supreme Court under clause 29, the extended period; or

1 (b) for a charge to which clause 17 applies—45 days after the  
 2 chargee becomes aware that the property has been acquired by  
 3 a cooperative.

4 *required period*, for a notice in relation to a charge mentioned in  
 5 subclause (2) (b), means the period mentioned in the clause under  
 6 which the notice is lodged or, if the period is extended by the  
 7 Supreme Court under clause 29, the extended period.

8 **28 Certain varied charges void against liquidator or**  
 9 **administrator**

10 (1) Subject to this division, if, after there has been a variation in the  
 11 terms of a registrable charge on property of a cooperative having the  
 12 effect of increasing the amount of the debt or increasing the  
 13 liabilities (whether present or prospective) secured by the charge—

14 (a) an order is made, or a resolution is passed, for the winding-up  
 15 of the cooperative; or

16 (b) an administrator of a cooperative is appointed under  
 17 Corporations Act, part 5.3A (Administration of a company's  
 18 affairs with a view to executing a deed of company  
 19 arrangement) as applied by this Act; or

20 (c) a cooperative executes a deed of arrangement;

21 the registrable charge is void as a security on the property to the  
 22 extent that it secures the amount of the increase in the debt or  
 23 liability.

24 (2) However, the charge is not void under subclause (1) if—

25 (a) a notice in relation to the variation was lodged under clause  
 26 36—

27 (i) within the period of 45 days mentioned in clause 36 (2)  
 28 or, if the period is extended by the Supreme Court under  
 29 clause 29, the extended period; or

30 (ii) not later than 6 months before the critical day; or

- 1 (b) the period of 45 days mentioned in clause 36 (2) (or, if the  
2 period is extended by the Supreme Court under clause 29, the  
3 extended period) has not ended at the start of the critical day,  
4 and the notice is lodged before the end of the period.

5 **29 Supreme Court may extend required period for notice of**  
6 **charge**

7 If the Supreme Court is satisfied that—

- 8 (a) the failure to lodge a notice in relation to a charge, or in  
9 relation to a variation in the terms of a charge, as required by  
10 any provision of this schedule—

11 (i) was accidental or caused by inadvertence or some other  
12 sufficient cause; and

13 (ii) is not of a nature to prejudice the position of creditors or  
14 shareholders; or

- 15 (b) that on other grounds it is just and equitable to grant relief;

16 the court may, on the application of the cooperative or anyone  
17 interested and on any conditions the court considers just, extend the  
18 period.

19 **30 Certain later charges void**

20 (1) If—

21 (a) a registrable charge (the *later charge*) is created before the end  
22 of 45 days after the creation of an unregistered registrable  
23 charge (the *earlier charge*); and

24 (b) the later charge relates to all or any of the property to which  
25 the earlier charge related; and

- 1 (c) the later charge is given as a security for the liability secured  
2 by the earlier charge or any part of the liability;  
3 the later charge, to the extent to which it is a security for the liability  
4 or part of the liability, and so far as it relates to property to which  
5 the earlier charge related, is void as a security on the property as  
6 against a liquidator or administrator of the cooperative, or an  
7 administrator of a deed of arrangement executed by the cooperative.
- 8 (2) Subclause (1) applies even if a notice in relation to the later charge  
9 was lodged under clause 13 within the period mentioned in  
10 clause 27 (2) (a).
- 11 (3) Subclause (1) does not apply if it is proved to the satisfaction of the  
12 Supreme Court that the later charge was given honestly for the  
13 purpose of correcting some material error in the earlier charge or  
14 under other proper circumstances and not to avoid or evade the  
15 provisions of this division.
- 16 **31 Effect of provisions on honest purchaser**
- 17 (1) Clauses 27 and 28 do not affect the title of a person to property  
18 purchased for value from a chargee or from a receiver appointed by  
19 a chargee in the exercise of powers given by the charge or implied  
20 by law if that person purchased the property honestly and without  
21 notice of—
- 22 (a) the filing of an application for an order for the winding-up of  
23 the cooperative; or
- 24 (b) the passing of the necessary resolution for the voluntary  
25 winding-up of the cooperative; or
- 26 (c) an administrator of the cooperative being appointed under the  
27 Corporations Act, part 5.3A (Administration of a company's  
28 affairs with a view to executing a deed of company  
29 arrangement) as applied by this Act; or
- 30 (d) the cooperative executing a deed of arrangement.



- 1 (2) The burden of proving that a person purchased property honestly  
2 and without notice of any of the matters mentioned in  
3 subclause (1) (a), (b), (c) and (d) is on the person asserting that the  
4 property was so purchased.

5 **Division 3.2.5 Certain charges void**

6 **32 Definitions for div 3.2.5**

7 In this division:

8 *chargee*, in relation to a charge, means—

- 9 (a) in any case—the holder, or all or any of the holders, of the  
10 charge; and  
11 (b) for a charge that is an agreement to give or execute a charge in  
12 favour of a person or 2 or more people, whether on demand or  
13 otherwise—that person, or all or any of those people.

14 *officer*, of a foreign cooperative, includes a local agent of the  
15 foreign cooperative.

16 *receiver* includes a receiver and manager.

17 *relevant person*, in relation to a charge created by a cooperative,  
18 means—

- 19 (a) a person who is when the charge is created, or who was at any  
20 time during the 6 months before the charge was created, an  
21 officer of the cooperative; or  
22 (b) a person associated, in relation to the creation of the charge,  
23 with a person mentioned in paragraph (a).

24 **33 Charges in favour of certain people void in certain cases**

25 (1) If—

- 26 (a) a cooperative creates a charge on property of the cooperative in  
27 favour of a person who is, or in favour of 2 or more people at

- 1 least 1 of whom is, a relevant person in relation to the charge;  
2 and
- 3 (b) within 6 months after the creation of the charge, the chargee  
4 purports to take a step in the enforcement of the charge without  
5 the Supreme Court having, under clause 34, given leave for the  
6 charge to be enforced;
- 7 the charge, and any powers purported to be given by an instrument  
8 creating or evidencing the charge, are, and are to be considered  
9 always to have been, void.
- 10 (2) Without limiting subclause (1), if a person—
- 11 (a) appoints a receiver of property of a cooperative under powers  
12 given by an instrument creating or evidencing a charge created  
13 by the cooperative; or
- 14 (b) whether directly or by an agent, enters into possession, or  
15 assumes control, of any property of a cooperative for enforcing  
16 a charge created by the cooperative;
- 17 the person is taken, for subclause (1), to take a step in the  
18 enforcement of the charge.
- 19 **34 Supreme Court may give leave for enforcement of charge**
- 20 On application by the chargee under a charge, the Supreme Court  
21 may give leave for the charge to be enforced, if the court is satisfied  
22 that—
- 23 (a) immediately after the creation of the charge, the cooperative  
24 that created the charge was solvent; and
- 25 (b) in all the circumstances of the case, it is just and equitable for  
26 the court to do so.

1   **35    Certain transactions excluded**

- 2       (1) Clause 33 does not affect a debt or liability of a cooperative that  
3           would, if that clause had not been enacted, have been secured by a  
4           charge created by the cooperative.
- 5       (2) Clause 33 does not affect the title of a person to property (other than  
6           the charge concerned or an interest in the charge) purchased for  
7           value from—
- 8           (a) a chargee under a charge; or  
9           (b) an agent of a chargee under a charge; or  
10          (c) a receiver appointed by a chargee under a charge in the  
11             exercise of powers conferred by the charge or implied law;  
12          if the person purchased the property honestly and without notice that  
13          the charge was created in favour of a person who is, or in favour of  
14          2 or more people at least 1 of whom is, a relevant person in relation  
15          to the charge.
- 16       (3) The burden of proving that a person purchased property honestly  
17           and without notice that a charge was created as mentioned in  
18           subclause (2) is on the person asserting that the property was so  
19           purchased.

20   **Division 3.2.6           Assignment, variation and**  
21                           **satisfaction of charges**

22   **36    Assignment and variation of charges**

- 23       (1) If, after a registrable charge on property of a cooperative has been  
24           created, a person other than the original chargee becomes the holder  
25           of the charge, the person who becomes the holder of the charge  
26           must, within 45 days after the person becomes the holder of the  
27           charge—
- 28           (a) lodge a notice with the registrar stating that the person has  
29             become the holder of the charge; and

- 1 (b) give the cooperative a copy of the notice.
- 2 (2) If, after a registrable charge on property of a cooperative has been  
3 created, there is a variation in the terms of the charge having the  
4 effect of—
- 5 (a) increasing the amount of the debt or increasing the liabilities  
6 (whether present or prospective) secured by the charge; or
- 7 (b) prohibiting or restricting the creation of subsequent charges on  
8 the property;
- 9 the cooperative must, within 45 days after the variation happens,  
10 ensure that there is lodged with the registrar a notice setting out  
11 particulars of the variation and accompanied by the instrument (if  
12 any) effecting the variation or a certified copy of the instrument.
- 13 (3) If a charge created by a cooperative secures a debt of an unspecified  
14 amount or secures a debt of a specified amount and further  
15 advances, a payment or advance made by the chargee to the  
16 cooperative in accordance with the terms of the charge is taken, for  
17 subclause (2), not to be a variation in the terms of the charge having  
18 the effect of increasing the amount of the charge or the liabilities  
19 (whether present or prospective) secured by the charge.
- 20 (4) If a charge is constituted by a debenture or debentures and there is a  
21 trustee for debenture holders, a reference in this clause to the  
22 *chargee* in relation to the charge is a reference to the trustee for  
23 debenture holders.
- 24 (5) Clause 13 does not require the lodgment of a notice under the clause  
25 in relation to a charge if the terms of the charge are varied only in a  
26 way mentioned in this clause.
- 27 **37 Satisfaction of, and release of property from, charges**
- 28 (1) This clause applies if, in relation to a charge registered under this  
29 part—

- 1           (a) the debt or other liability secured by a charge over property of  
2           a cooperative has been paid or discharged completely or in  
3           part; or
- 4           (b) the property of a cooperative charged, or part of the property  
5           charged, is released from the charge.
- 6       (2) The cooperative may, by notice, require the person who held the  
7       charge at the time of the payment, discharge or release to give the  
8       cooperative a memorandum acknowledging that the debt or other  
9       liability was paid or discharged or the property or part of the  
10      property was released.
- 11      *Note*     If a form is approved under s 468 (Approved forms) for a memorandum,  
12      the form must be used.
- 13      (3) If the cooperative gives the person a notice under subsection (2), the  
14      person must, within 14 days after the day the person receives the  
15      notice, give the memorandum to the cooperative.
- 16      Maximum penalty: 10 penalty units.
- 17      (4) The cooperative may lodge the memorandum with the registrar and,  
18      on the memorandum being lodged, the registrar must enter in the  
19      charges register the particulars stated in the memorandum.
- 20      (5) If the charge is constituted by a debenture or debentures and there is  
21      a trustee for debenture holders, the reference in subclause (2) to the  
22      person who held the charge at the time of the payment, discharge or  
23      release is a reference to the trustee for debenture holders.

## 24      **Division 3.2.7           General**

### 25      **38      Lodgment of notices under pt 3.2**

- 26      (1) If a notice in relation to a charge on property of a cooperative is  
27      required to be lodged under clause 13, 17 or 36 (2), the notice may  
28      be lodged by the cooperative or by any interested person.

- 1 (2) If a document required by this part other than clause 36 (1) to be  
2 lodged with the registrar is lodged by a person other than the  
3 cooperative concerned, the person—
- 4 (a) must, within 7 days after the lodgment of the document, give to  
5 the cooperative a copy of the document; and
- 6 (b) may recover from the cooperative the amount of any fees  
7 properly paid by the person on lodgment of the document.

8 **39 Lodgment offences**

- 9 (1) If clause 13, 17 or 36 (2) is contravened in relation to a registrable  
10 charge on property of a cooperative, the cooperative and any officer  
11 of the cooperative who is knowingly concerned in or a party to the  
12 contravention commits an offence.

13 Maximum penalty: 10 penalty units.

- 14 (2) If a person who becomes the holder of a registrable charge fails to  
15 comply with clause 36 (1), the person and, if the person is a  
16 corporation, any officer of the corporation who is in default, each  
17 commit an offence.

18 Maximum penalty: 10 penalty units.

19 **40 Cooperative to keep documents relating to charges**

20 A cooperative must, at the place where the register mentioned in  
21 clause 41 is kept, keep a copy of—

- 22 (a) every document relating to a charge on property of the  
23 cooperative that is lodged with the registrar under this part; and
- 24 (b) every document given to the cooperative under this part.

25 Maximum penalty: 10 penalty units.

26 **41 Cooperative to keep charges register**

- 27 (1) A cooperative must keep a register.

- 1       (2) On the creation of a charge (whether registrable or not) on property  
2       of the cooperative, or on the acquisition of property subject to a  
3       charge (whether registrable or not), the cooperative must as soon as  
4       practicable enter in the register, the following particulars of the  
5       charge:
- 6           (a) if the charge is a charge created by the cooperative—the date  
7           of its creation;
- 8           (b) if the charge was a charge existing on property acquired by the  
9           cooperative—the date the property was acquired;
- 10          (c) a short description of the liability (whether present or  
11          prospective) secured by the charge;
- 12          (d) a short description of the property charged;
- 13          (e) the name of the trustee for debenture holders or, if there is not  
14          a trustee for debenture holders, the name of the chargee;
- 15          (f) the name of the person whom the cooperative believes to be  
16          the holder of the charge.
- 17       (3) A register kept by a cooperative under subclause (1) must be open  
18       for inspection during the cooperative's normal business hours—
- 19           (a) by a creditor or member of the cooperative, without charge;  
20           and
- 21           (b) by anyone else, on payment for each inspection of the amount  
22           (not exceeding any amount prescribed under the regulations)  
23           the cooperative requires or, if the cooperative does not require  
24           payment, without charge.
- 25       (4) A person may ask a cooperative to provide the person with a copy of  
26       the register or any part of the register.
- 27       (5) If a person makes a request under subclause (4), the cooperative  
28       must give the copy to the person—
- 29           (a) if the cooperative requires payment of an amount not  
30           exceeding any amount prescribed under the regulations—
-

- 1                    within 21 days after payment of the amount is received by the  
2                    cooperative or, if the registrar allows a longer period, the  
3                    longer period; or
- 4                    (b) in any other case—within 21 days after the request is made or,  
5                    if the registrar allows a longer period, the longer period.
- 6                    (6) A cooperative must not, without reasonable excuse, contravene a  
7                    provision of this clause.
- 8                    Maximum penalty (subclause (6)): 10 penalty units.

9                    **42    Certificates about charges**

- 10                    (1) If particulars of a charge are entered in the charges register in  
11                    accordance with this part, the registrar must, on request by any  
12                    person, issue to that person a certificate—
- 13                    (a) setting out the particulars; and
- 14                    (b) stating the time and date when a notice in relation to the charge  
15                    containing the particulars was lodged with the registrar; and
- 16                    (c) if the word ‘provisional’ appears in the charges register next to  
17                    the reference to the time and date—stating that fact.
- 18                    (2) A certificate issued under subclause (1) is evidence of the matters  
19                    stated in the certificate.
- 20                    (3) If particulars of a charge are entered in the charges register in  
21                    accordance with this part, and the word ‘provisional’ does not  
22                    appear in the charges register next to the reference to the time and  
23                    date when a notice in relation to the charge was lodged, the registrar  
24                    must, on request by anyone, issue a certificate to the person that  
25                    states that particulars of the charge are entered in the charges  
26                    register in accordance with this part.
- 27                    (4) A certificate issued under subclause (3) is conclusive evidence that  
28                    the requirements of this part about registration (other than the  
29                    requirements relating to the period after the creation of the charge



1 within which notice in relation to the charge is required to be  
2 lodged) have been complied with.

3 **43 Power of Supreme Court to rectify charges register**

4 If the Supreme Court is satisfied—

5 (a) that—

6 (i) a particular in relation to a registrable charge on property  
7 of a cooperative has been omitted from, or is misstated  
8 in, the charges register or a memorandum mentioned in  
9 clause 37; and

10 (ii) the omission or misstatement—

11 (A) was accidental or caused by inadvertence or some  
12 other sufficient cause; and

13 (B) is not of a nature to prejudice the position of  
14 creditors or shareholders; or

15 (b) that on other grounds it is just and equitable to grant relief;

16 the court may, on the application of the cooperative or anyone  
17 interested and on any conditions that the court considers just, order  
18 that the omission or misstatement be rectified.

19 **44 Registrar may give exemptions for certain requirements**  
20 **of pt 3.2**

21 (1) The registrar may, in writing, exempt a person from any  
22 requirement of clause 13, 17 or 36 relating to—

23 (a) the particulars to be contained in a notice under the clause; or

24 (b) the documents (other than the notice) to be lodged under the  
25 clause; or

26 (c) the verification of any document required to be lodged under  
27 the clause.

**Schedule 3**      Charges  
**Part 3.2**      Registration  
**Division 3.2.7**      General

**Clause 44**

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- 1      (2) An exemption may be unconditional or subject to conditions.
- 2      (3) If a person is exempted by the registrar, subject to a condition, from
- 3          a requirement of clause 13, 17 or 36, the person must not, without
- 4          reasonable excuse, contravene the condition.
- 5          Maximum penalty: 10 penalty units.
- 6      (4) If a person contravenes a condition to which an exemption under
- 7          this clause is subject, the Supreme Court may, on the application of
- 8          the registrar, order the person to comply with the condition (whether
- 9          or not the person has been prosecuted for an offence against
- 10          subclause (3) for the contravention).

## Part 3.3 Order of priority

### Division 3.3.1 General

#### 45 Definitions for pt 3.3

In this part:

***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 charges register in relation to the charge that was entered in the register under division 3.2.3; or
- (b) if a notice has been lodged under clause 17 in relation to a charge on property that, when the notice was lodged, was already registered under part 3.2—the earlier or earliest time and date appearing in the charges register in relation to the charge that was entered in the charges register under clause 17; or
- (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 date entered in the charges register in relation to the charge under clause 24.

***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.

***registered charge*** means a charge that is registered under part 3.2.

***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 3.2, but does not include a charge that is not a registrable charge.

1   **46   Constructive notice of charge**

2       A reference in this part to a person having *notice* of a charge  
3       includes a reference to a person having constructive notice of the  
4       charge.

5   **47   Registered charge with 2 or more priority times**

6       If, because of the definition of *priority time* in clause 45, a  
7       registered charge has 2 or more priority times and each of the  
8       priority times relates to a particular liability secured by the charge,  
9       each of the liabilities is taken, for this part, to be secured by a  
10      separate registered charge with the same priority time as the first  
11      registered charge that relates to the liability.

12   **48   Priorities of charges**

13      (1) Subject to this clause, division 3.3.2 has effect in relation to the  
14      priorities, in relation to each other, of registrable charges on the  
15      property of a cooperative.

16      (2) The application, in relation to particular registrable charges, of the  
17      order of priorities of charges set out in division 3.3.2 is subject to—

18          (a) any reduction in the priority of a charge in relation to all or any  
19          of the other charges, if the holder of the charge agrees  
20          (expressly or by implication) to the reduction; and

21          (b) any agreement between the chargees that affects the priorities  
22          in relation to each other of the charges in relation to which they  
23          are the chargees.

24      (3) The holder of a registered floating charge on property of a  
25      cooperative is taken, for subclause (2), to have agreed to the charge  
26      being postponed to a subsequent registered charge that is a fixed  
27      charge created before the floating charge becomes fixed unless—

28          (a) the creation of the subsequent registered charge contravened a  
29          provision of the instrument or resolution creating or evidencing  
30          the floating charge; and

1           (b) a notice in relation to the floating charge indicating the  
2           existence of the provision mentioned in paragraph (a) was  
3           lodged with the registrar under clause 13, 17 or 36 before the  
4           creation of the subsequent registered charge.

5           (4) If a charge relates to property mentioned in clause 4 (2) and also to  
6           other property, division 3.3.2 only affects the priority of the charge  
7           so far as it relates to the property mentioned in clause 4 (2) and does  
8           not affect the priority of the charge so far as it relates to the other  
9           property.

## 10   **Division 3.3.2           Priority rules**

### 11   **49   General priority rules in relation to registered charges**

12       (1) A registered charge on property of a cooperative has priority over—

13           (a) a subsequent registered charge on the property, unless—

14               (i) the subsequent registered charge was created before the  
15               creation of the prior registered charge; and

16               (ii) the chargee in relation to the subsequent registered  
17               charge proves that the chargee in relation to the prior  
18               registered charge had notice of the subsequent registered  
19               charge when the prior registered charge was created; and

20           (b) an unregistered charge on the property created before the  
21           creation of the registered charge, unless the chargee in relation  
22           to the unregistered charge proves that the chargee in relation to  
23           the registered charge had notice of the unregistered charge  
24           when the registered charge was created; and

25           (c) an unregistered charge on the property created after the  
26           creation of the registered charge.

- 1 (2) A registered charge on property of a cooperative is postponed to—  
2 (a) a subsequent registered charge on the property, if—  
3 (i) the subsequent registered charge was created before the  
4 creation of the prior registered charge; and  
5 (ii) the chargee in relation to the subsequent registered  
6 charge proves that the chargee in relation to the prior  
7 registered charge had notice of the subsequent registered  
8 charge when the prior registered charge was created; and  
9 (b) an unregistered charge on the property created before the  
10 creation of the registered charge, if the chargee in relation to  
11 the unregistered charge proves that the chargee in relation to  
12 the registered charge had notice of the unregistered charge  
13 when the registered charge was created.

14 **50 General priority rule in relation to unregistered charges**

15 An unregistered charge on property of a cooperative (the *first*  
16 *charge*) has priority over—

- 17 (a) a registered charge on the property that—  
18 (i) was created after the first charge; and  
19 (ii) does not have priority over the first charge under clause  
20 49 (1); and  
21 (b) another unregistered charge on the property created after the  
22 first charge.

23 **51 Special priority rules**

- 24 (1) Except as provided by this clause, any priority given under this part  
25 to a charge (the *first charge*) over another charge does not extend to  
26 any liability that is not a present liability at the priority time in  
27 relation to the first charge.

- 1 (2) If a registered charge on property of a cooperative (the *first charge*)  
2 secures—
- 3 (a) a present liability and a prospective liability of an unspecified  
4 amount; or
- 5 (b) a prospective liability of an unspecified amount;
- 6 any priority given under this part to the first charge over another  
7 charge extends to the prospective liability, even if whether the  
8 prospective liability became a present liability before or after the  
9 registration of the first charge.
- 10 (3) However, subclause (2) applies only if, when the first charge was  
11 created, the chargee in relation to the charge did not have actual  
12 knowledge of the prospective liability.
- 13 (4) If—
- 14 (a) a registered charge on property of a cooperative (the *first*  
15 *charge*) secures—
- 16 (i) a present liability and a prospective liability up to a  
17 specified maximum amount; or
- 18 (ii) a prospective liability up to a specified maximum  
19 amount; and
- 20 (b) the notice lodged under clause 13 or 17 in relation to the  
21 charge sets out the nature of the prospective liability and the  
22 maximum amount specified;
- 23 any priority given under this part to the first charge over another  
24 charge extends to any prospective liability secured by the first  
25 charge to the extent of the maximum amount specified.
- 26 (5) Subclause (4) applies whether the prospective liability became a  
27 present liability before or after the registration of the first charge and  
28 despite the fact that the chargee in relation to the first charge had  
29 actual knowledge of the other charge when the prospective liability  
30 became a present liability.

- 1 (6) Subclause (7) applies to a registered charge on property of a  
2 cooperative—  
3 (a) if—  
4 (i) the charge secures—  
5 (A) a present liability and a prospective liability up to a  
6 specified maximum amount; or  
7 (B) a prospective liability up to a specified maximum  
8 amount; and  
9 (ii) the notice lodged under clause 13 or 17 in relation to the  
10 charge does not set out the nature of the prospective  
11 liability or the maximum amount so specified; or  
12 (b) if the charge secures a prospective liability of an unspecified  
13 amount.  
14 (7) Any priority given under this part to a registered charge to which  
15 this subclause applies because of subclause (6) (the *priority charge*)  
16 over another charge of which the chargee in relation to the priority  
17 charge has actual knowledge extends to any prospective liability  
18 secured by the priority charge that—  
19 (a) had become a present liability when the chargee in relation to  
20 the priority charge first obtained actual knowledge of the other  
21 charge; or  
22 (b) became a present liability, because of the making of an  
23 advance, after the time when the chargee in relation to the  
24 priority charge first obtained actual knowledge of the other  
25 charge if, at that time, the terms of the priority charge required  
26 the chargee in relation to that charge to make the advance after  
27 that time.



- 1       (8) Subclause (7) (b) extends to the prospective liability whether the  
2       advance was made before or after the registration of the priority  
3       charge and despite the fact that the chargee in relation to the priority  
4       charge had actual knowledge of the other charge when the advance  
5       was made.

**Schedule 4      Receivers,      and      other  
controllers, of property of  
cooperatives**

(see s 271 and s 345)

**1      Definitions for sch 4**

In this schedule:

*administrator*, of a deed of arrangement, means the administrator of the deed appointed under the Corporations Act, part 5.3A (Administration of a company's affairs with a view to executing a deed of company arrangement) as applied by this Act.

*control day*, in relation to a controller of property of a cooperative, means—

(a) unless paragraph (b) applies—

(i) for a receiver, or receiver and manager, of the property—the day the receiver, or receiver and manager, was appointed; or

(ii) for anyone else who is in possession, or has control, of the property for the purpose of enforcing a charge—the day the person entered into possession, or took control, of any property of the cooperative for that purpose; or

(b) if the controller became a controller of property of the cooperative—

(i) to act with an existing controller of the property; or

(ii) in place of a controller of the property who died or ceased to be a controller of the property;

1 the day that is, because of any other application of this  
2 definition, the control day in relation to the controller  
3 mentioned in subparagraph (i) or (ii).

4 ***controller***, of property of a cooperative, means—

- 5 (a) a receiver, or receiver and manager, of the property; or  
6 (b) anyone else who (whether or not as agent for the cooperative)  
7 is in possession, or has control, of the property for the purpose  
8 of enforcing a charge.

9 ***cooperative*** includes a foreign cooperative registered under part 14.

10 ***daily newspaper*** means a newspaper ordinarily published on each  
11 day that is a business day where it is published, whether or not the  
12 newspaper is ordinarily published on other days.

13 ***managing controller***, of property of a cooperative, means—

- 14 (a) a receiver and manager of the property; or  
15 (b) any other controller of the property who has functions in  
16 relation to managing the cooperative.

17 ***national newspaper*** means a daily newspaper that circulates  
18 generally in the ACT and each State.

19 ***officer***, of a foreign cooperative, includes a local agent of the  
20 foreign cooperative.

21 ***property***, of a cooperative, means property—

- 22 (a) for a cooperative that is not a foreign cooperative—in or  
23 outside Australia; or  
24 (b) for a cooperative that is a foreign cooperative—in Australia or  
25 an external Territory.

26 ***receiver***, of property of a cooperative, includes a receiver and  
27 manager.

**Schedule 4**      Receivers, and other controllers, of property of cooperatives

Clause 2

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1    **2      Application of sch 4**

2      (1) This schedule applies in relation to a receiver of property of a  
3          cooperative who is appointed after the commencement of this  
4          schedule, even if the appointment arose out of a transaction entered  
5          into, or anything done, before that commencement.

6      (2) This clause expires 2 years after it commences.

7    **3      People not to act as receivers**

8      (1) A person is not qualified to be appointed, and must not act, as  
9          receiver of property of a cooperative if the person—

10          (a) is a mortgagee of property of the cooperative; or

11          (b) is an auditor or an officer of the cooperative; or

12          (c) is an officer of a corporation that is a mortgagee of property of  
13          the cooperative; or

14          (d) is not a registered liquidator under the Corporations Act; or

15          (e) is an officer of a corporation related to the cooperative; or

16          (f) unless the registrar directs in writing that this paragraph does  
17          not apply in relation to the person in relation to the  
18          cooperative, has at any time within the last 12 months been an  
19          officer or promoter of the cooperative or of a related  
20          corporation.

21      (2) In subclause (1):

22          *officer*, of a corporation, does not include a receiver, appointed  
23          under an instrument, of property of the corporation.

24      (3) Subclause (1)(d) does not apply in relation to a corporation  
25          authorised under a Commonwealth, State or Territory law to act as  
26          receiver of property of the cooperative concerned.

27      (4) This clause does not prevent a person from acting as receiver of  
28          property of a cooperative under an appointment validly made before  
29          the commencement of this clause.

- 1 (5) Subclause (4) and this subclause expire 2 years after this clause  
2 commences.

3 **4 Supreme Court may declare whether controller validly**  
4 **acting**

- 5 (1) If there is doubt, on a specific ground, about—  
6 (a) whether a purported appointment of a person as receiver of  
7 property of a cooperative is valid; or  
8 (b) whether a person who has entered into possession, or assumed  
9 control, of any property of a cooperative did so validly under  
10 the terms of a charge on the property;  
11 the person, the cooperative or any of the cooperative's creditors may  
12 apply to the Supreme Court for an order under subclause (2).  
13 (2) On an application, the Supreme Court may make an order declaring  
14 whether or not—  
15 (a) the purported appointment was valid; or  
16 (b) the person entered into possession, or assumed control, validly  
17 under the terms of the charge;  
18 on the ground stated in the application or on some other ground.

19 **5 Liability of controller**

- 20 (1) Subclause (2) applies to a receiver or another authorised person who  
21 (whether as agent for the cooperative concerned or not) enters into  
22 possession, or assumes control, of any property of a cooperative for  
23 the purpose of enforcing any charge.  
24 (2) The receiver or other authorised person is liable for debts incurred  
25 by the person in the course of the receivership, possession or control  
26 for services rendered, goods purchased or property hired, leased,  
27 used or occupied.  
28 (3) For subclause (2), the following provisions apply:  
29 (a) the subclause applies despite any agreement to the contrary;

**Schedule 4**      Receivers, and other controllers, of property of cooperatives

**Clause 6**

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- 1            (b) the subclause does not prejudice the rights of the receiver or  
2            other authorised person against the cooperative or anyone else;
- 3            (c) the receiver or other authorised person is not, under the  
4            subclause, constituted a mortgagee in possession.
- 5            (4) Subclause (5) applies if—
- 6            (a) a person (the *relevant person*) enters into possession, or  
7            assumes control, of any property of a cooperative; and
- 8            (b) the relevant person purports to have been properly appointed as  
9            a receiver in relation to the property under a power contained  
10           in an instrument, but has not been properly so appointed; and
- 11           (c) a civil proceeding in a federal court or a court of a State or  
12           Territory arise out of an act claimed to have been done by the  
13           relevant person.
- 14           (5) If this subclause applies, the court may, if it is satisfied that the  
15           relevant person believed on reasonable grounds that the relevant  
16           person had been properly appointed, order that—
- 17           (a) the relevant person be relieved completely or in part of a  
18           liability that the person has incurred but would not have  
19           incurred if the person had been properly appointed; and
- 20           (b) a person who purported to appoint the relevant person as  
21           receiver be liable in relation to anything so far as the relevant  
22           person has been relieved under paragraph (a) of liability in  
23           relation to the thing.
- 24           **6      Liability of controller under pre-existing agreement about**  
25           **property used by cooperative**
- 26           (1) This clause applies if—
- 27           (a) under an agreement made before the control day in relation to a  
28           controller of property of a cooperative, the cooperative  
29           continues after that day to use or occupy, or to be in possession

- 
- 1                    of, property (the *third-party property*) of which someone else  
2                    is the owner or lessor; and
- 3                    (b) the controller is controller of the third-party property.
- 4                    (2) Subject to subclauses (4) and (7), the controller is liable for so much  
5                    of the rent or other amounts payable by the cooperative under the  
6                    agreement as is attributable to a period—
- 7                    (a) that begins more than 7 days after the control day; and
- 8                    (b) throughout which—
- 9                            (i) the cooperative continues to use or occupy, or to be in  
10                           possession of, the third-party property; and
- 11                           (ii) the controller is controller of the third-party property.
- 12                    (3) Within 7 days after the control day, the controller may give to the  
13                    owner or lessor a notice that specifies the third-party property and  
14                    states that the controller does not propose to exercise rights in  
15                    relation to the property as controller of the property, whether on  
16                    behalf of the cooperative or anyone else.
- 17                    (4) Despite subclause (2), the controller is not liable for so much of the  
18                    rent or other amounts payable by the cooperative under the  
19                    agreement as is attributable to a period during which a notice under  
20                    subclause (3) is in force, but such a notice does not affect a liability  
21                    of the cooperative.
- 22                    (5) A notice under subclause (3) ceases to have effect if—
- 23                            (a) the controller revokes it by writing given to the owner or  
24                            lessor; or
- 25                            (b) the controller exercises, or purports to exercise, a right in  
26                            relation to the third-party property as controller of the property,  
27                            whether on behalf of the cooperative or anyone else.
- 28                    (6) For subclause (5), the controller does not exercise, or purport to  
29                    exercise, a right mentioned in subclause (5) (b) only because the

**Schedule 4**      Receivers, and other controllers, of property of cooperatives

**Clause 7**

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- 1            controller continues to be in possession, or to have control, of the  
2            third party property, unless the controller—  
3            (a) also uses the property; or  
4            (b) asserts a right, as against the owner or lessor, so to continue.  
5        (7) Subclause (2) does not apply so far as the Supreme Court, by order,  
6            excuses the controller from liability, but an order does not affect a  
7            liability of the cooperative.  
8        (8) The controller is not taken because of subclause (2)—  
9            (a) to have applied the agreement mentioned in the subclause; or  
10            (b) to be liable under the agreement otherwise than as mentioned  
11            in the subclause.

12        **7      Powers of receiver**

- 13        (1) A receiver of property of a cooperative has power to do, anywhere  
14            in Australia or elsewhere, all things necessary or convenient to be  
15            done for or in relation to, or as incidental to, the attainment of the  
16            objectives for which the receiver was appointed.  
17        (2) Without limiting subclause (1), a receiver of property of a  
18            cooperative has power, for the purpose of attaining the objectives  
19            for which the receiver was appointed—  
20            (a) to enter into possession and take control of property of the  
21                cooperative in accordance with the terms of the order or  
22                instrument of the receiver's appointment; and  
23            (b) to lease, let on hire or dispose of property of the cooperative;  
24                and  
25            (c) to grant options over property of the cooperative on the  
26                conditions the receiver considers appropriate; and  
27            (d) to borrow money on the security of property of the  
28                cooperative; and  
29            (e) to insure property of the cooperative; and



- 
- 1 (f) to repair, renew or enlarge property of the cooperative; and  
2 (g) to convert property of the cooperative into money; and  
3 (h) to carry on any business of the cooperative; and  
4 (i) to take on lease or on hire, or to acquire, any property  
5 necessary or convenient in relation to the carrying on of a  
6 business of the cooperative; and  
7 (j) to execute any document, bring or defend any proceeding or do  
8 anything else in the name of and on behalf of the cooperative;  
9 and  
10 (k) to draw, accept, make and endorse a bill of exchange or  
11 promissory note; and  
12 (l) to use the seal of the cooperative; and  
13 (m) to engage or discharge employees on behalf of the cooperative;  
14 and  
15 (n) to appoint a solicitor, accountant or other professionally  
16 qualified person to assist the receiver; and  
17 (o) to appoint an agent to do any business that the receiver cannot  
18 do personally, or that it would be unreasonable to expect the  
19 receiver to do personally; and  
20 (p) if a debt or liability is owed to the cooperative—to prove the  
21 debt or liability in a bankruptcy, insolvency or winding-up and,  
22 in that connection, to receive dividends and to assent to a  
23 proposal for a composition or a scheme of arrangement; and  
24 (q) if the receiver was appointed under an instrument that created a  
25 charge on uncalled capital or uncalled premiums of the  
26 cooperative—  
27 (i) to make a call, in the name of the cooperative, in relation  
28 to money unpaid on shares in the cooperative (whether on  
29 account of the nominal value of the shares or by way of  
30 premium); or
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**Clause 8**

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- 1                    (ii) on the giving of a proper indemnity to a liquidator of the  
2                    cooperative in the name of the liquidator, to make a call  
3                    in relation to money unpaid on account of the nominal  
4                    value of shares in the cooperative; and
- 5                    (r) to enforce payment of any call that is payable, whether the  
6                    calls were made by the receiver or otherwise; and
- 7                    (s) to make or defend an application for the winding-up of the  
8                    cooperative; and
- 9                    (t) to refer to arbitration any question affecting the cooperative.
- 10                  (3) The powers given by subclause (2) are additional to any powers  
11                  given by the court order by which, or the instrument under which,  
12                  the receiver was appointed, or by any other law, but the subclause  
13                  applies subject to any provision of the relevant court order or  
14                  instrument that limits the receiver's powers in any way.
- 15                  (4) The giving by this clause to a receiver of powers in relation to  
16                  property of a cooperative does not affect the rights of anyone else  
17                  (other than the cooperative) in relation to the property.
- 18                  (5) In this clause, a reference, in relation to a receiver, to *property* of a  
19                  cooperative is a reference to the property of the cooperative in  
20                  relation to which the receiver was appointed.

21      **8      Controller's duty of care in exercising power of sale**

- 22                  (1) In exercising a power of sale in relation to property of a cooperative,  
23                  a controller must take all reasonable care to sell the property for—
- 24                          (a) if, when it is sold, it has a market value—not less than that  
25                          market value; or
- 26                          (b) in any other case—the best price reasonably obtainable, having  
27                          regard to the circumstances existing when the property is sold.
- 28                  (2) This clause does not limit division 9.3 (Duties and liabilities of  
29                  directors, officers and employees).

**9 Supreme Court may authorise managing controller to dispose of property despite prior charge**

- (1) On the application of a managing controller of property of a cooperative, the Supreme Court may, by order, authorise the controller to sell, or to dispose of in another way, particular property of the cooperative, even though it is subject to a charge (the *prior charge*) that has priority over a charge (the *controller's charge*) on that property that the controller is enforcing.
- (2) The Supreme Court may make an order if satisfied that—
- (a) apart from the existence of the prior charge, the controller would have power to sell, or to so dispose of, the property; and
  - (b) the controller has taken all reasonable steps to obtain the consent of the holder of the prior charge to the sale or disposal, but has not obtained that consent; and
  - (c) sale or disposal of the property under the order is in the best interests of the cooperative's creditors and of the cooperative; and
  - (d) sale or disposal of the property under the order will not unreasonably prejudice the rights or interests of the holder of the prior charge.
- (3) The Supreme Court may have regard to the need to protect adequately the rights and interests of the holder of the prior charge.
- (4) If the property (the *relevant property*) would be sold or disposed of together with other property subject to the controller's charge, the Supreme Court may have regard to—
- (a) the amount (if any) by which it is reasonable to expect that the net proceeds of selling or disposing of the other property otherwise than together with the relevant property would be less than so much of the net proceeds of selling or disposing of all the property together as would be attributable to the other property; and

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Clause 10

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- 1            (b) the amount (if any) by which it is reasonable to expect that the  
2            net proceeds of selling or disposing of the relevant property  
3            otherwise than together with the other property would be  
4            greater than so much of the net proceeds of selling or disposing  
5            of all the property together as would be attributable to the  
6            relevant property.
- 7            (5) Subclauses (3) and (4) do not limit the matters to which the  
8            Supreme Court may have regard for subclause (2).
- 9            (6) An order may be made subject to conditions, including, for  
10           example—
- 11           (a) a condition that—
- 12                  (i) the net proceeds of the sale or disposal; and
- 13                  (ii) the net proceeds of the sale or disposal of other property  
14                  (if any) that is stated in the condition and is subject to the  
15                  controller's charge;
- 16           or a stated part of the net proceeds, be applied in payment of  
17           stated amounts secured by the prior charge; or
- 18           (b) a condition that the controller apply a stated amount in  
19           payment of stated amounts secured by the prior charge.
- 20        **10 Receiver's power to carry on cooperative's business**  
21        **during winding-up**
- 22           (1) A receiver of property of a cooperative that is being wound up  
23           may—
- 24           (a) with the written approval of the cooperative's liquidator or  
25           with the approval of the Supreme Court, carry on the  
26           cooperative's business either generally or as otherwise stated in  
27           the approval; and
- 28           (b) do whatever is necessarily incidental to carrying on that  
29           business under paragraph (a).

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- 1       (2) Subclause (1) does not—
- 2           (a) affect a power that the receiver has otherwise than under that
- 3               subclause; or
- 4           (b) authorise the receiver to do anything that the receiver would
- 5               not have power to do if the cooperative were not being wound
- 6               up.
- 7       (3) A receiver of property of a cooperative who carries on the
- 8       cooperative's business under subclause (1) does so—
- 9           (a) as agent for the cooperative; and
- 10          (b) in his or her capacity as receiver of property of the cooperative.
- 11       (4) The consequences of subclause (3) include, for example, the
- 12       following:
- 13           (a) for clause 5 (Liability of controller), a debt that the receiver
- 14               incurs in carrying on the business as mentioned in
- 15               subclause (3) of this clause is incurred in the course of the
- 16               receivership;
- 17           (b) a debt or liability that the receiver incurs in so carrying on the
- 18               business is not a cost, charge or expense of the winding-up.
- 19       **11   Controller's duties in relation to bank accounts and**
- 20       **financial records**
- 21       (1) A controller of property of a cooperative must—
- 22           (a) open and maintain at least 1 account, with an Australian bank,
- 23               bearing—
- 24               (i) the controller's own name; and
- 25               (ii) for a receiver of the property—the title 'receiver'; and
- 26               (iii) for any other controller—the title 'controller'; and
- 27               (iv) the cooperative's name; and

**Clause 12**

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- 1            (b) within 3 business days after an amount of the cooperative  
2            comes under the control of the controller, pay the amount into  
3            such an account that the controller maintains; and
- 4            (c) ensure that no such account that the controller maintains  
5            contains an amount other than an amount of the cooperative  
6            that comes under the control of the controller; and
- 7            (d) keep the financial records necessary to correctly record and  
8            explain all transactions that the controller enters into as  
9            controller.
- 10          (2) Any director, creditor or member of a cooperative may at any  
11          reasonable time, unless the Supreme Court otherwise orders,  
12          personally or by an agent, inspect financial records kept by a  
13          controller of property of the cooperative for subclause (1) (d).
- 14          **12      Managing controller to report within 2 months about**  
15          **cooperative's affairs**
- 16          (1) A managing controller of property of a cooperative must prepare a  
17          report about the cooperative's affairs that is made up to a day not  
18          later than 28 days before the day it is prepared.
- 19          *Note*      If a form is approved under s 468 (Approved forms) for a report, the  
20          form must be used.
- 21          (2) The managing controller must prepare the report and lodge it with  
22          the registrar within 2 months after the control day.
- 23          (3) As soon as practicable, and in any event within 14 days, after  
24          lodging the report with the registrar, the managing controller must  
25          publish in a national newspaper, or in the ACT and each State in a  
26          daily newspaper that circulates generally in the ACT or State, a  
27          notice stating—
- 28                  (a) that the report has been prepared; and
- 29                  (b) that a person can inspect the report at the office of the registrar.

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- 1 (4) If, in the managing controller's opinion, it would seriously  
2 prejudice—
- 3 (a) the cooperative's interests; or
- 4 (b) the achievement of the objectives for which the controller was  
5 appointed, or entered into possession, or assumed control, of  
6 any property of the cooperative;
- 7 if particular information that the controller would otherwise include  
8 in the report were made available to the public, the controller need  
9 not include the information in the report.
- 10 (5) If the managing controller omits information from the report as  
11 allowed by subclause (4), the controller must include instead a  
12 notice—
- 13 (a) stating that certain information has been omitted from the  
14 report; and
- 15 (b) summarising what the information is about, but without  
16 disclosing the information itself.
- 17 **13 Reports by receiver**
- 18 (1) Subclause (2) applies if it appears to the receiver of property of a  
19 cooperative that—
- 20 (a) a past or present officer, or a member, of the cooperative may  
21 have been guilty of an offence against a Commonwealth, State  
22 or Territory law in relation to the cooperative; or
- 23 (b) a person who has taken part in the formation, promotion,  
24 administration, management or winding-up of the  
25 cooperative—
- 26 (i) may have misapplied or kept, or may have become liable  
27 or accountable for, any money or property of the  
28 cooperative (whether the money or property is in or  
29 outside Australia); or

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**Clause 13**

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- 1                    (ii) may have been guilty of negligence, default, breach of  
2                    duty or breach of trust in relation to the cooperative.
- 3        (2) If this subclause applies, the receiver must—
- 4                    (a) lodge with the registrar as soon as practicable a report about  
5                    the matter; and
- 6                    (b) give to the registrar the information, and access to and facilities  
7                    for inspecting and taking copies of any documents, that the  
8                    registrar requires.
- 9        (3) The receiver may also lodge further reports specifying any other  
10                   matter that, in the receiver's opinion, it is desirable to bring to the  
11                   notice of the registrar.
- 12        (4) If it appears to the Supreme Court—
- 13                    (a) that—
- 14                                (i) a past or present officer, or a member, of a cooperative in  
15                                relation to property of which a receiver has been  
16                                appointed has been guilty of an offence against a law  
17                                mentioned in subclause (1) (a) in relation to the  
18                                cooperative; or
- 19                                (ii) a person who has taken part in the formation, promotion,  
20                                administration, management or winding-up of a  
21                                cooperative in relation to property of which a receiver has  
22                                been appointed has engaged in conduct mentioned in  
23                                subclause (1) (b) in relation to the cooperative; and
- 24                    (b) that the receiver has not lodged a report with the registrar about  
25                    the matter;
- 26        the court may, on the application of a person interested in the  
27        appointment of the receiver or on its own initiative, direct the  
28        receiver to lodge a report about the matter.



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**14 Supervision of controller****(1) If—**

(a) it appears to the Supreme Court or to the registrar that a controller of property of a cooperative has not faithfully exercised, or is not faithfully exercising, the controller's functions or has not observed, or is not observing, a requirement of—

(i) for a receiver—the order by which, or the instrument under which, the receiver was appointed; or

(ii) in any other case—an instrument under which the controller entered into possession, or took control, of the property; or

(iii) in any case—the Supreme Court or this Act; or

(b) a person complains to the Supreme Court or to the registrar about an act or omission of a controller of property of a cooperative in relation to the exercise of any of the controller's functions;

the court or the registrar may inquire into the matter and, after inquiry, may take the action the court or registrar considers appropriate.

(2) The registrar may report to the Supreme Court anything that in the registrar's opinion is a misfeasance, neglect or omission by a controller of property of a cooperative, and the court may—

(a) order the controller to make good any loss that the estate of the cooperative has sustained by it; and

(b) make any other orders it considers appropriate.

(3) The Supreme Court may at any time—

(a) require a controller of property of a cooperative to answer questions about the exercise of any of the controller's functions as controller; or

- 1            (b) examine a person about the exercise by the controller of any of  
2            the controller's functions as controller; or  
3            (c) direct an investigation to be made of the controller's books.

4      **15      Controller may apply to Supreme Court**

- 5      (1) A controller of property of a cooperative may apply to the Supreme  
6      Court for directions in relation to anything arising in relation to the  
7      exercise of any of the controller's functions as controller.  
8      (2) For a receiver of property of a cooperative, subclause (1) applies  
9      only if the receiver was appointed under a power contained in an  
10     instrument.

11     **16      Supreme Court may fix receiver's remuneration**

- 12     (1) The Supreme Court may, by order, fix the amount to be paid by way  
13     of remuneration to anyone who, under a power contained in an  
14     instrument, has been appointed as receiver of property of a  
15     cooperative.  
16     (2) The power of the Supreme Court to make an order under this  
17     clause—  
18        (a) extends to fixing the remuneration for any period before the  
19        making of the order or the application for the order; and  
20        (b) is exercisable even if the receiver has died, or ceased to act,  
21        before the making of the order or the application for the order;  
22        and  
23        (c) if the receiver has been paid or has kept for the receiver's  
24        remuneration for any period any amount in excess of the  
25        amount fixed for the period—extends to requiring the receiver  
26        or the receiver's personal representatives to account for the  
27        excess or part of it.

- 
- 1 (3) The power given by subclause (2) (c) may be exercised in relation to  
2 a period before the making of the application for the order only if, in  
3 the opinion of the Supreme Court, there are special circumstances  
4 making it proper to exercise the power.
- 5 (4) The Supreme Court may from time to time amend an order under  
6 this clause.
- 7 (5) An order under this clause may be made or amended on the  
8 application of—
- 9 (a) a liquidator of the cooperative; or  
10 (b) an administrator of the cooperative; or  
11 (c) an administrator of a deed of arrangement executed by the  
12 cooperative; or  
13 (d) the registrar.
- 14 (6) An order under this clause may also be amended on the application  
15 of the receiver.
- 16 (7) An order under this clause may be made or amended only on  
17 application as provided under subclauses (5) and (6).

18 **17 Controller has qualified privilege in certain cases**

19 A controller of property of a cooperative has qualified privilege in  
20 relation to—

- 21 (a) a matter contained in a report that the controller lodges under  
22 clause 12 or 13; or  
23 (b) a comment that the controller makes under clause 20 (4) (a).

24 **18 Notification of appointment of controller etc**

25 (1) This clause applies if any of the following (the *relevant action*)  
26 happens:

- 27 (a) a person obtains an order for the appointment of a receiver of  
28 property of a cooperative;

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- 1            (b) a person appoints a receiver of property of a cooperative under  
2            a power in an instrument;
- 3            (c) a person appoints someone else to enter into possession, or  
4            take control, of any property of a cooperative (whether or not  
5            as agent for the cooperative) to enforce a charge otherwise than  
6            as receiver of the property;
- 7            (d) a person enters into possession, or takes control, of any  
8            property of a cooperative (whether or not as agent of the  
9            cooperative) under an appointment made by someone else to  
10           enforce a charge otherwise than as receiver of the property;
- 11           (e) a person ceases to be a controller of property of a cooperative.
- 12           (2) If this clause applies, the person must prepare a notice of the  
13           relevant action.
- 14           *Note*      If a form is approved under s 468 (Approved forms) for a notice under  
15           this clause the form must be used.
- 16           (3) However, subclause (2) does not apply if the person is a person  
17           mentioned in subclause (1) (d) and the person that appointed the  
18           person complies with this section.
- 19           (4) The notice is a notifiable instrument.
- 20           *Note*      A notifiable instrument must be notified under the *Legislation Act 2001*.
- 21           (5) The notice must be notified under the *Legislation Act 2001* within  
22           21 days after the day the relevant action happens.
- 23           (6) The person must also lodge a copy of the notice with the registrar  
24           within 7 days after the day the relevant action happens.
- 25           (7) Also, within 14 days after the day a person becomes a controller of  
26           property of a cooperative, the person must lodge with the registrar  
27           notice of the address of the person's office.
- 28           (8) If the address of the person's office changes, the person must lodge  
29           with the registrar notice of the new address within 14 days after the  
30           day the change happens.

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**19 Statement that receiver appointed or other controller acting**

- (1) If a receiver of property (whether in or outside the ACT or Australia) of a cooperative has been appointed, the cooperative must set out, in every public document, and in every eligible negotiable instrument, of the cooperative, after the name of the cooperative where it first appears, a statement that a receiver, or a receiver and manager, (as the case requires) has been appointed.
- (2) If there is a controller (other than a receiver) of property (whether in or outside Australia) of a cooperative, the cooperative must set out, in every public document, and in every eligible negotiable instrument, of the cooperative, after the cooperative's name where it first appears, a statement that a controller is acting.

**20 Officers to report to controller about cooperative's affairs**

- (1) In this clause:

*reporting officer*, of a cooperative means a person who was, on the control day—

- (a) for a cooperative other than a foreign cooperative—a director or secretary of the cooperative; or
- (b) for a foreign cooperative—a local agent of the foreign cooperative.

- (2) As soon as practicable after a person becomes the controller of property of a cooperative, the person must give the cooperative notice that the person has become the controller of the property.
- (3) Within 14 days after the day the cooperative receives the notice (or, if the period is extended under subclause (7) or (8), the extended period), the reporting officers of the cooperative must give the controller a report about the affairs of the cooperative as at the control day.

*Note* If a form is approved under s 468 (Approved forms) for a report, the form must be used.

- 1      (4) Within 28 days after the day the controller receives the report, the  
2      controller must—
- 3          (a) lodge with the registrar a copy of the report and a notice setting  
4          out any comments the controller considers appropriate to make  
5          on the report or, if the controller does not wish to comment on  
6          the report, a notice stating that the controller does not wish to  
7          comment on the report; and
- 8          (b) send to the cooperative a copy of the notice lodged in  
9          accordance with paragraph (a); and
- 10          (c) if there are trustees for the holders of debentures of the  
11          cooperative—send to the trustees a copy of the report and  
12          notice.
- 13      (5) For subclause (4) (c), there are trustees for debenture holders if—
- 14          (a) the controller became controller of the property—
- 15                  (i) because of an appointment of receiver of the property that  
16                  was made by or on behalf of the holders of debentures of  
17                  the cooperative; or
- 18                  (ii) by entering into possession, or taking control, of the  
19                  property for the purpose of enforcing a charge secured by  
20                  debentures of the cooperative; and
- 21          (b) there are trustees for the holders of the debentures.
- 22      (6) If notice has been given to a cooperative under subclause (2), the  
23      reporting officers, or any of them, may apply to the controller or to  
24      the Supreme Court to extend the period within which the report is to  
25      be given to the controller.
- 26      (7) If application is made to the controller under subclause (6), the  
27      controller may, by notice given to the reporting officers, extend the  
28      period until a stated day if the controller believes there are special  
29      reasons for extending the period.

- 1 (8) If application is made to the Supreme Court under subclause (6), the  
2 court may, by order, extend the period until a stated day if the court  
3 believes that there are special reasons for extending the period.
- 4 (9) As soon as practicable after granting an extension under  
5 subclause (7), the controller must lodge a copy of the notice of  
6 extension with the registrar.
- 7 (10) As soon as practicable after the Supreme Court gives an extension  
8 under subclause (8), the reporting officers must lodge a copy of the  
9 order with the registrar.
- 10 (11) This clause does not apply if a person becomes a controller of  
11 property of a cooperative—
- 12 (a) to act with an existing controller of property of the cooperative;  
13 or
- 14 (b) in place of a controller of the property who has died or ceased  
15 to be a controller of the property.
- 16 (12) However, the clause does apply if a controller of property of a  
17 cooperative dies, or ceases to be a controller of property of the  
18 cooperative, before this clause has been fully complied with.
- 19 (13) If this clause applies because of subclause (12), a reference in this  
20 clause to the *controller* includes a reference to the controller's  
21 successor and to any continuing controller.
- 22 (14) If a cooperative is being wound up, this clause (including, if  
23 relevant, subclauses (12) and (13)) and clause 21 apply even if the  
24 controller and the liquidator are the same person, but apply with any  
25 necessary changes.

26 **21 Controller may require reports**

- 27 (1) A controller of property of a cooperative may, by notice, require a  
28 relevant person to give the controller, within the period stated in the  
29 notice, a written statement (verified as required by the notice and  
30 signed by the person giving the statement) about—

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1            (a) the affairs generally of the cooperative at a stated date or  
2            during a stated period; or

3            (b) stated affairs of the cooperative at a stated date or during a  
4            stated period.

5            *Note*      If a form is approved under s 468 (Approved forms) for a statement, the  
6            form must be used.

7            (2) Without limiting subclause (1), a notice under the subclause may  
8            state the information that the controller requires about the affairs of  
9            the cooperative by reference to information that this Act requires to  
10           be included in another report, statement or notice under this Act.

11           (3) A person making a report and verifying it as required by  
12           subclause (1) must, subject to the regulations, be allowed, and must  
13           be paid by the receiver (or the controller's successor) out of the  
14           controller's receipts, any costs and expenses incurred in relation to  
15           the preparation and making of the report and the verification of the  
16           report that the controller (or the controller's successor) considers  
17           reasonable.

18           (4) A person must not, without reasonable excuse, fail to comply with a  
19           notice under subclause (1).

20           Maximum penalty: 10 penalty units.

21           (5) In this clause:

22           ***relevant person***, in relation to a cooperative, means—

23           (a) a person who is, or has at an time been, an officer of the  
24           cooperative; or

25           (b) a person who is, or was at any time not earlier than 1 year  
26           before the control day, an employee of the cooperative if the  
27           controller is of the opinion that the person can give the  
28           information required; or

29           (c) if the cooperative was incorporated within 1 year before the  
30           control day—a person who took part in the formation of the  
31           cooperative.



1           *successor*, of a controller, includes a continuing controller.

2       (6) For the definition of *relevant person* in subclause (5)—

3           (a) if the cooperative was an existing corporation that has become  
4           registered as the cooperative—the reference in paragraph (a) of  
5           the definition to *the cooperative* includes a reference to the  
6           existing corporation; and

7           (b) if the cooperative was an existing corporation that has, not  
8           earlier than 1 year before the control day, become registered as  
9           the cooperative—the reference in paragraph (b) of the  
10          definition to *the cooperative* includes a reference to the  
11          existing corporation.

## 12   **22   Controller may inspect books**

13       (1) A controller of property of a cooperative is entitled to inspect at any  
14       reasonable time any books of the cooperative that relate to the  
15       property.

16       (2) A person must not fail to allow the controller to inspect the books at  
17       any reasonable time.

18       Maximum penalty: 10 penalty units.

## 19   **23   Lodging controller's financial statements**

20       (1) A controller of property of a cooperative must lodge with the  
21       registrar a financial statement—

22           (a) within 28 days after the end of—

23               (i) 6 months, or any shorter period the controller decides,  
24               after the day the controller became a controller of  
25               property of the cooperative; and

26               (ii) each subsequent period of 6 months throughout which the  
27               controller is a controller of property of the cooperative;  
28               and

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- 1            (b) within 28 days after the day the controller ceases to be a  
2            controller of property of the cooperative.
- 3        (2) A financial statement must show—
- 4            (a) the controller's receipts and payments during—
- 5                    (i) for a financial statement under subclause (1) (a)—the 6  
6                    months or shorter period, as the case requires; or
- 7                    (ii) for a financial statement under subclause (1) (b)—the  
8                    period beginning at the end of the period to which the last  
9                    financial statement related, or on the control day, (as the  
10                   case requires) and ending on the day the controller ceased  
11                   to be a controller; and
- 12            (b) except for a financial statement lodged under  
13            subclause (1) (a) (i)—the respective totals of the controller's  
14            receipts and payments since the control day.
- 15        *Note*      If a form is approved under s 468 (Approved forms) for an account, the  
16                   form must be used.
- 17        (3) Subclause (4) applies to the controller if the controller is—
- 18            (a) a receiver appointed under a power contained in an instrument;  
19            or
- 20            (b) anyone else who is in possession, or has control, of any  
21            property of the cooperative for the purpose of enforcing a  
22            charge.
- 23        (4) If the controller is a controller to whom this subclause applies, the  
24            financial statements must also show—
- 25            (a) the amount (if any) owing under the instrument or charge—
- 26                    (i) for a financial statement lodged under  
27                    subclause (1) (a) (i)—at the end of the control day and at  
28                    the end of the period to which the financial statement  
29                    relates; or

- 
- 1                   (ii) in any other case—at the end of the period to which the  
2                   financial statement relates; and
- 3           (b) the controller's estimate of the total value, at the end of the  
4           period to which the account relates, of the property of the  
5           cooperative subject to the instrument or charge.
- 6   (5) The registrar may, on the registrar's own initiative or on the  
7       application of the cooperative or a creditor of the cooperative,  
8       arrange for the financial statements lodged under subclause (1) to be  
9       audited by a registered company auditor appointed by the registrar.
- 10   (6) For the audit, the controller must provide the auditor with any books  
11       and information that the auditor requires.
- 12   (7) If the registrar arranges for the financial statements to be audited on  
13       the application of the cooperative or a creditor, the registrar may  
14       require the cooperative or creditor to give security for the payment  
15       of the cost of the audit.
- 16   (8) The costs of an audit mentioned in subclause (5) are to be decided  
17       by the registrar.
- 18   (9) The registrar may direct that the costs of the audit are taken, for  
19       clause 5, to be a debt incurred in the course of the receivership by  
20       the controller.
- 21   (10) A person must not fail, without reasonable excuse, to comply with a  
22       requirement made under this clause.
- 23       Maximum penalty (subsection (10)): 10 penalty units.
- 24   **24   Payment of certain debts, out of property subject to**  
25       **floating charge, in priority to claims under charge**
- 26    (1) This clause applies if—
- 27       (a) a receiver is appointed on behalf of the holders of any  
28           debentures of a cooperative that are secured by a floating  
29           charge, or possession is taken or control is assumed, by or on

Clause 24

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- 1                   behalf of the holders of any debentures of a cooperative, of any  
2                   property comprised in or subject to a floating charge; and
- 3           (b) at the date of the appointment or of the taking of possession or  
4           assumption of control (the *relevant date*)—
- 5                   (i) the cooperative has not begun to be wound up  
6                   voluntarily; and
- 7                   (ii) the cooperative has not been ordered to be wound up by  
8                   the Supreme Court.
- 9    (2) The receiver or other person taking possession or assuming control  
10   of property of the cooperative must pay, out of the property coming  
11   the hands of the receiver or other person, the following debts or  
12   amounts in priority to any claim for principal or interest in relation  
13   to the debentures:
- 14           (a) first, an amount that in a winding-up is payable in priority to  
15           unsecured debts and claims under the Corporations Act,  
16           section 556 (Priority payments) as applied by this Act;
- 17           (b) next, if an auditor of the cooperative had applied to the  
18           registrar for consent to the auditor's resignation and the  
19           registrar had refused the consent before the relevant date, the  
20           reasonable fees and expenses of the auditor incurred during the  
21           period beginning on the day of the refusal and ending on the  
22           relevant date;
- 23           (c) subject to subclauses (4) and (5), next, any debt or amount that  
24           in a winding-up is payable in priority to other unsecured debts  
25           and claims under the Corporations Act, section 556 (1) (e), (g)  
26           or (h) or section 560 (Advances for company to make priority  
27           payments in relation to employees) as applied by this Act.
- 28    (3) The receiver or other person taking possession or assuming control  
29   of property must pay debts and amounts payable under subclause (2)  
30   (c) in the same order of priority as is provided by the Corporations  
31   Act, part 5.6 (Winding up generally), division 6 (Proof and ranking  
32   of claims) as applied by this Act.

- 1       (4) If—
- 2           (a) an auditor of the cooperative applied to the registrar for
- 3               consent to resign; and
- 4           (b) the registrar had refused the consent before the relevant day;
- 5       the receiver must, when property comes to the receiver's hands
- 6       make provision out of the property for the reasonable fees and
- 7       expenses of the auditor incurred after the relevant date but before
- 8       the day the property comes into the receiver's hands, if provision
- 9       has not already been made for the fees and expenses under this
- 10       subclause.
- 11       (5) If—
- 12           (a) an auditor of the cooperative applies to the registrar for consent
- 13               to resign; and
- 14           (b) the registrar refuses the consent after the relevant date;
- 15       the receiver must, in relation to property that comes into the
- 16       receiver's hands after the refusal, make provision out of the property
- 17       for the reasonable fees and expenses of the auditor incurred after the
- 18       refusal but before the day the property comes into the receiver's
- 19       hands, if provision has not already been made for the fees and
- 20       expenses under this subclause.
- 21       (6) The receiver must comply with subclause (4) or (5) before paying
- 22       any debt or amount mentioned in subclause (2) (c).
- 23       (7) The receiver must make provision in relation to reasonable fees and
- 24       expenses of an auditor in relation to a period as required by
- 25       subclause (4) or (5) whether or not the auditor has made a claim for
- 26       fees and expenses for the period, but, if the auditor has not made a
- 27       claim, the receiver may estimate the reasonable fees and expenses of
- 28       the auditor for the period and make provision in accordance with the
- 29       estimate.
- 30       (8) For this clause, the Corporations Act, part 5.6, division 6 applies
- 31       subject to the modification mentioned in subclause (9).

Clause 25

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- 1      (9) A reference in the division to the *relevant date* is a reference to the  
2      date of the appointment of the receiver, or of possession being taken  
3      or control being assumed, as the case may be.

4      **25      Enforcement of controller's duty to make returns**

- 5      (1) This clause applies if a receiver of property of a cooperative—  
6      (a) who has made default in making or lodging any return,  
7      financial statement or other document or in giving any notice  
8      required by law fails to make good the default within 14 days  
9      after the service on the controller, by any member or creditor  
10     of the cooperative or trustee for debenture holders, of a notice  
11     requiring the controller to do so; or  
12     (b) who has become a controller of property of the cooperative  
13     otherwise than by being appointed a receiver of the property by  
14     a court and who has, after being required at any time by the  
15     liquidator of the cooperative so to do, failed to render proper  
16     financial statements of, and to vouch, the controller's receipts  
17     and payments and to pay over to the liquidator the amount  
18     properly payable to the liquidator.  
19     (2) If this clause applies, Supreme Court may make an order directing  
20     the controller to make good the default within a stated time.  
21     (3) An application under subclause (1) may be made by—  
22     (a) if subclause (1)(a) applies—a member or creditor of the  
23     cooperative or by a trustee for debenture holders; and  
24     (b) if subclause (1)(b) applies—the liquidator of the cooperative.

25     **26      Supreme Court may remove controller for misconduct**

- 26     If, on the application of a cooperative, the Supreme Court is  
27     satisfied that a controller of property of the cooperative has been  
28     guilty of misconduct in relation to the exercise of any of the  
29     controller's functions, the court may order that, on and after a stated  
30     day, the controller cease to act as receiver or give up possession or  
31     control of property of the cooperative.

1   **27   Supreme Court may remove redundant controller**

- 2       (1) The Supreme Court may order that, on and after a stated day, a  
3       controller of property of a cooperative—
- 4           (a) cease to act as receiver, or give up possession or control of  
5           property, of the cooperative; or
- 6           (b) act as receiver, or continue in possession or control only of  
7           stated property, of the cooperative.
- 8       (2) The Supreme Court may make an order under subclause (1) if it is  
9       satisfied that the objectives for which the controller was appointed,  
10      or entered into possession or took control of property of the  
11      cooperative (as the case requires) have been achieved, so far as is  
12      reasonably practicable, except in relation to any property stated in  
13      the order under subclause (1) (b).
- 14      (3) For subclause (2), the Supreme Court may have regard to—
- 15           (a) the cooperative's interests; and
- 16           (b) the interests of the holder of the charge that the controller is  
17           enforcing; and
- 18           (c) the interests of the cooperative's other creditors; and
- 19           (d) any other relevant matter.
- 20      (4) The Supreme Court may make an order under subclause (1) on the  
21      application of a liquidator appointed for winding up the cooperative  
22      in insolvency.
- 23      (5) An order under subclause (1) may also prohibit the holder of the  
24      charge from doing, except with the leave of the Supreme Court, any  
25      or all of the following:
- 26           (a) appointing a person as receiver of property of the cooperative  
27           under a power contained in an instrument relating to the  
28           charge;
- 29           (b) entering into possession, or taking control, of the property for  
30           the purpose of enforcing the charge;

**Schedule 4**      Receivers, and other controllers, of property of cooperatives

**Clause 28**

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- 1            (c) appointing a person so to enter into possession or take control  
2            (whether as agent for the chargee or for the cooperative).

3    **28    Effect of cl 26 and cl 27**

- 4    (1) Except as expressly provided in clause 26 or 27, an order under the  
5    clause does not affect a charge on property of a cooperative.  
6    (2) Clauses 26 and 27 do not limit any other power of the Supreme  
7    Court to remove, or otherwise deal with, a controller of property of  
8    a cooperative (for example, the Supreme Court's powers under  
9    clause 14).



## Schedule 5 Transitional

(see s 472)

### 1 Meaning of *transferred cooperative* in sch 5

In this schedule:

*transferred cooperative* means a corporation taken under clause 3, 4 or 5 to be a cooperative, association, federation or foreign cooperative registered under this Act.

### 2 General savings

All people things and circumstances appointed or created by the former Act, or existing or continuing under the former Act, immediately before the commencement of this clause continue, under and subject to this Act, to have the same status, operation and effect as they respectively would have had if this Act had not been enacted.

### 3 Saving of existing cooperatives

(1) On the commencement of this clause, any existing corporation that was a society within the meaning of the former Act immediately before that commencement—

(a) ceases to be registered under the former Act; and

(b) is taken to be a cooperative registered under this Act.

(2) Each transferred cooperative under this clause is taken to be the same legal entity as it was before the commencement of this clause with the same name, rules, directors and membership as it had immediately before that commencement.

Clause 4

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1   **4   Society or cooperative started to be formed before**  
2   **commencement of clause**

3       (1) If, before the commencement of this clause, a meeting to form a  
4       corporation as a society had been held under the former Act,  
5       section 16 but the corporation had not been registered as a society  
6       under the former Act—

7           (a) the former Act, sections 6, 15, 16, 17, 20 (2), 21 (1) and (3)  
8           and 32 continue to apply to the formation of the corporation as  
9           a society; and

10          (b) on the registration of the corporation as a society under the  
11          former Act, section 16 the society is taken to be a cooperative  
12          registered under this Act.

13       (2) Each transferred cooperative under this clause is taken to be the  
14       same legal entity as it was before its registration under this Act with  
15       the same name, rules, directors and membership as it had  
16       immediately before that registration.

17       (3) A certificate issued by the registrar of co-operative societies under  
18       the former Act, section 16 (7) as continuing in force for this clause  
19       is taken to be a certificate issued under section 24 of this Act.

20   **5   Mergers**

21       (1) The former Act, sections 18, 19 and 21 (2) continue to apply to an  
22       application made by 2 or more societies and to a direction to merge  
23       made before the commencement of this clause.

24       (2) On the registration of the merged society under former Act, the  
25       society is taken to be a cooperative registered under this Act.

26       (3) Each transferred cooperative under this clause is taken to be the  
27       same legal entity as it was before its registration under this Act with  
28       the same name, rules, directors and membership as it had  
29       immediately before that registration.

- 1       (4) A certificate issued by the registrar of co-operative societies under  
2       the former Act, section 18 (3) as continuing in force for this clause  
3       is taken to be a certificate issued under section 303 of this Act.

4       **6       Rules to comply with Act**

- 5       (1) A transferred cooperative must bring its rules into agreement with  
6       this Act—  
7       (a) within 2 years after the commencement of this clause; or  
8       (b) within any further period approved in writing by the registrar  
9       in relation to the cooperative.  
10      (2) The rules of the transferred cooperative are taken to be valid until—  
11      (a) the cooperative complies with subclause (1); or  
12      (b) the expiry of the relevant period under subclause (1).  
13      (3) If there is any inconsistency between a provision of this Act and the  
14      rules of the cooperative about the procedure for alteration of the  
15      rules of the cooperative, the provision of this Act prevails.  
16      (4) This clause does not affect the operation of division 3.2 in relation  
17      to the rules of a transferred cooperative.

18      **7       Modification of certain rules**

- 19      (1) This clause applies if in the opinion of the registrar the rules of a  
20      transferred cooperative should be altered to comply with any  
21      requirement of this Act.  
22      (2) The registrar may, by notice served on the transferred cooperative,  
23      require it, within the period stated in the notice, to alter its rules—  
24      (a) in a way stated in the notice; or  
25      (b) in a way approved in writing by the registrar.

Clause 8

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- 1      (3) If within the period stated in the notice the cooperative fails to alter  
2          its rules as required by the notice, the registrar may, by notation on  
3          the registered copy of the rules, alter the rules.
- 4      (4) The registrar must give notice to a cooperative of any alteration of  
5          its rules made by the registrar under this clause.
- 6      (5) Any alteration made by the registrar to the rules under this clause  
7          takes effect as an alteration made and registered under part 5.

8      **8      Rules to contain active membership provisions**

9          The board of directors of a transferred cooperative must comply  
10          with division 6.2—

- 11          (a) within 2 years after the commencement of this clause; or
- 12          (b) within any further period approved in writing by the registrar  
13          in relation to the cooperative.

14      **9      Special resolutions and majority resolutions**

15          A special resolution passed by a transferred cooperative under the  
16          former Act, and not registered under that Act before the  
17          commencement of this clause, may be registered by the registrar  
18          under this Act.

19      **10     Documents**

20          A certificate or other document, relating to a transferred  
21          cooperative, issued or registered by, filed or lodged with or given to  
22          the registrar of co-operative societies under the former Act has  
23          effect as if it were a certificate or other document issued or  
24          registered by, filed or lodged with or given to the registrar under this  
25          Act.

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1 **11 Existing accounts provisions to apply to transferred**  
2 **cooperatives**

- 3 (1) This clause applies to a cooperative (a *continuing cooperative*) that,  
4 under clause 3, is taken to be a transferred cooperative.
- 5 (2) The former Act, sections 42 to 44, 56 and 57 apply to the continuing  
6 cooperative until the end of the financial year (the *current financial*  
7 *year*) that is the current financial year for the cooperative when this  
8 clause commences.
- 9 (3) Division 9.7 (Financial statements, reports and audit) does not apply  
10 to the continuing cooperative in relation to the current financial  
11 year.
- 12 (4) Division 9.6 (Declaration of interests) and division 9.8 (Registers,  
13 records and returns) do not apply to the continuing cooperative in  
14 relation to the current financial year.

15 **12 Winding-up**

- 16 (1) If, before the commencement of this clause, a transferred  
17 cooperative had begun to be wound up under part 6 of the former  
18 Act, that part continues to apply to that winding-up.
- 19 (2) A cooperative mentioned in subclause (1) whose registration has  
20 been cancelled is taken to be a deregistered cooperative.

21 **13 Special meeting and inquiry**

22 If, before the commencement of this clause, a special meeting had  
23 been called or an inquiry into the affairs had begun in relation to a  
24 transferred cooperative under the former Act, section 7, that section  
25 continues to apply in relation to the special meeting or inquiry.

- 1 **14 Registrar**
- 2 (1) The person holding the office of registrar of co-operative societies
- 3 under the former Act immediately before the commencement of this
- 4 clause is taken on that commencement to be appointed as registrar
- 5 under this Act.
- 6 (2) Everything of a continuing nature done or begun before the
- 7 commencement of this clause by or on behalf of or in relation to the
- 8 registrar of co-operative societies under the former Act are not
- 9 affected and are, under and subject to this Act, to continue to have
- 10 the same status, operation and effect as they would have had if the
- 11 former Act had not been repealed.
- 12 (3) If any provision of the former Act is continued in operation by this
- 13 schedule, any reference in the provision to the registrar is taken for
- 14 the continued operation to be a reference to the registrar under this
- 15 Act.

## Dictionary

(see s 4)

**active member**, of a cooperative—see section 115.

**active membership provisions**—see section 116 (1).

**active membership resolution**—see section 116 (2).

**administrator**, for schedule 4 (Receivers, and other controllers, of property of cooperatives)—see schedule 4, clause 1 (Definitions for sch 4).

**affairs**, for division 15.2 (Inquiries)—see section 404 (Definitions for div 15.2).

**agreement** means an agreement, arrangement or understanding—

(a) whether formal or informal or partly formal and partly informal; and

(b) whether written or oral or partly written and partly oral; and

(c) whether or not having legal or equitable force and whether or not based on legal or equitable rights.

**alter**, in relation to the rules of a cooperative, includes add to, substitute and rescind.

**alteration**, for part 18 (Review of registrar's decisions)—see section 458 (Definitions for pt 18).

**appropriate registrar**, for division 14.3 (Mergers and transfers of engagements)—see section 380 (Definitions for div 14.3).

**associate**—see schedule 1 (Associates and relevant interests), part 1.1 (Associates).

**association** means an association registered under this Act.

**board** means the board of directors of a cooperative, and includes a committee of management of a cooperative.

- 1        **chargee**, for schedule 3 (Charges), division 3.2.5 (Certain charges  
2        void)—see schedule 3, clause 32 (Definitions for div 3.2.5)
- 3        **charges register**, for schedule 3 (Charges)—see schedule 3,  
4        clause 1 (Definitions for sch 3).
- 5        **company**—see the Corporations Act, section 9.
- 6        **component cooperative** means a member of an association.
- 7        **compulsory acquisition notice**, for division 13.3 (Acquisition of  
8        shares of dissenting shareholders)—see section 356 (1).
- 9        **control**—
- 10        (a) for division 9.7 (Financial statements, reports and audit)—see  
11        section 239; and
- 12        (b) for schedule 1 (Associates and relevant interests), part 1.2  
13        (Relevant interests)—see schedule 1, clause 6 (Interpretation of  
14        pt 1.2).
- 15        **control day**, for schedule 4 (Receivers, and other controllers, of  
16        property of cooperatives)—see schedule 4, clause 1 (Definitions for  
17        sch 4).
- 18        **controller**, for schedule 4 (Receivers, and other controllers, of  
19        property of cooperatives)—see schedule 4, clause 1 (Definitions for  
20        sch 4).
- 21        **controlling interest**, for schedule 1 (Associates and relevant  
22        interests), part 1.2 (Relevant interests)—see schedule 1, clause 6  
23        (Interpretation of pt 1.2).
- 24        **cooperative**—
- 25        (a) means an entity registered under this Act as a cooperative, and  
26        includes an association or federation; and
- 27        (b) for schedule 3 (Charges)—see schedule 3, clause 1  
28        (Definitions for sch 3); and



- 1 (c) for schedule 4 (Receivers, and other controllers, of property of  
2 cooperatives)—see schedule 4, clause 1 (Definitions for sch 4).
- 3 ***cooperative principles*** means the principles set out in section 8.
- 4 ***cooperatives law***, for part 14 (Foreign cooperatives)—see section  
5 366 (Definitions for pt 14).
- 6 ***cooperatives register*** means the register of cooperatives kept by the  
7 registrar under section 433.
- 8 ***cooperative venture***, for division 15.1 (Supervision and  
9 inspection)—see section 389 (Definitions for div 15.1).
- 10 ***costs***, for division 15.2 (Inquiries)—see section 404 (Definitions for  
11 div 15.2).
- 12 ***critical day***, for schedule 3 (Charges), division 3.2.4 (Certain  
13 charges void against liquidator or administrator)—see schedule 3,  
14 clause 26 (Definitions for div 3.2.4).
- 15 ***daily newspaper***, for schedule 4 (Receivers, and other controllers, of  
16 property of cooperatives)—see schedule 4, clause 1 (Definitions for  
17 sch 4).
- 18 ***debenture*** means a document issued by a cooperative that evidences  
19 or acknowledges indebtedness of the cooperative in relation to  
20 money that is or may be deposited with or lent to the cooperative,  
21 whether constituting a charge on property of the cooperative or not,  
22 and includes a unit of a debenture, but does not include—
- 23 (a) a cheque, order for the payment of money or bill of exchange;  
24 or
- 25 (b) a promissory note having a face value of not less than \$50 000;  
26 or
- 27 (c) any other document prescribed under the regulations as exempt  
28 from this definition.

- 1        ***deed of arrangement*** means a deed of arrangement executed under  
2        the Corporations Act, part 5.3A (Administration of a company's  
3        affairs with a view to executing a deed of company arrangement) as  
4        applied by this Act or such a deed as varied and in force from time  
5        to time.
- 6        ***deposit-taking cooperative*** means a cooperative that is permitted  
7        under section 260 (2) to accept money on deposit.
- 8        ***deregistration*** means deregistration under this Act.
- 9        ***director***, of a cooperative, includes—
- 10       (a) a person who occupies or acts in the position of a director or  
11       member of the board of a cooperative, whether or not the  
12       person is called a director and whether or not the person is  
13       validly appointed or properly authorised to act in the position;  
14       and
- 15       (b) a person in accordance with whose directions or instructions  
16       the directors or members of the board of directors of the  
17       cooperative are accustomed to act.
- 18       ***dissenting shareholder***, for division 13.3 (Acquisition of shares of  
19       dissenting shareholders)—see section 354 (Definitions for div 13.3).
- 20       ***document of title***, for schedule 3 (Charges)—see schedule 3,  
21       clause 1 (Definitions for sch 3).
- 22       ***doing***, of an act and for division 3.2 (Non-application of doctrine of  
23       ultra vires)—see section 38.
- 24       ***entity***, for division 9.7 (Financial statements, reports and audit)—see  
25       section 239.
- 26       ***excluded shares***, for division 13.3 (Acquisition of shares of  
27       dissenting shareholders)—see section 354 (Definitions for div 13.3).
- 28       ***failure***, of the registrar to do an act, means failure to do the act  
29       within a reasonable time.
- 30       ***federation*** means a federation registered under this Act.

- 1        *former Act* means the *Co-operative Societies Act 1939*.
- 2        *financial records*—see the Corporations Act, section 9.
- 3        *financial report*—see the Corporations Act, section 9.
- 4        *financial statement*—see the Corporations Act, section 9.
- 5        *foreign cooperative* means a corporation registered, incorporated or  
6        formed under, or subject to, a law in force outside the ACT  
7        (including outside Australia) that regulates cooperatives or  
8        organisations having attributes the same as or similar to  
9        cooperatives, but does not include—
- 10       (a) an entity registered under the Corporations Act; or
- 11       (b) an authorised deposit-taking institution or a foreign ADI within  
12       the meaning of the *Banking Act 1959* (Cwlth).
- 13       *inspector* means a person appointed as an inspector under  
14       section 391.
- 15       *interest*, for division 4.3 (Death of member)—see section 78  
16       (Meaning of *interest* in div 4.3).
- 17       *investigator* means a person appointed as an investigator under  
18       section 405.
- 19       *involved person*, for division 15.2 (Inquiries)—see section 404  
20       (Definitions for div 15.2).
- 21       *legal capacity*, for division 3.2 (Non-application of doctrine of ultra  
22       vires)—see section 38.
- 23       *listed corporation*—see the Corporations Act, section 9.
- 24       *managing controller*, for schedule 4 (Receivers, and other  
25       controllers, of property of cooperatives)—see schedule 4, clause 1  
26       (Definitions for sch 4).
- 27       *marketable securities*—see Corporations Act, section 9.
- 28       *member*, for division 4.5 (Oppressive conduct of affairs)—see  
29       section 85.

- 1        **model rules** means the model rules approved by the registrar under  
2        section 106.
- 3        **mortgage** includes a lien, charge or other security over property.
- 4        **national newspaper**, for schedule 4 (Receivers, and other  
5        controllers, of property of cooperatives)—see schedule 4, clause 1  
6        (Definitions for sch 4).
- 7        **new body**—
- 8        (a) for division 12.2 (Transfer of registration or incorporation)—  
9        see section 306 ; and
- 10       (b) for division 12.6 (Effect of merger, transfer of engagements  
11       and transfer of incorporation)—see section 333 (2) (How  
12       div 12.6 applies to merger), section 334 (2) (How div 12.6  
13       applies to transfer of engagements) and section 335 (2) (How  
14       div 12.6 applies to transfer of incorporation).
- 15       **nonparticipating cooperative**, for part 14 (Foreign cooperatives)—  
16       see section 366 (Definitions for pt 14).
- 17       **non-trading cooperative** means a cooperative that complies with  
18       section 18.
- 19       **notice**—
- 20       (a) means written notice; and
- 21       (b) for schedule 3 (Charges), part 3.3 (Order of priority)—see  
22       schedule 3, clause 46 (Constructive notice of charge).
- 23       **obtaining** financial accommodation, for division 10.1 (Power to  
24       raise money)—see section 258.
- 25       **officer**—
- 26       (a) of a cooperative, means—
- 27       (i) a director, secretary or employee of the cooperative; or

- 1 (ii) a person who is concerned, or takes part, in the  
2 management of the cooperative, whether or not as a  
3 director; or
- 4 (iii) a receiver and manager of property of the cooperative  
5 who is appointed under a power in an instrument; or
- 6 (iv) an administrator of a deed of arrangement executed by  
7 the cooperative; or
- 8 (v) a liquidator or provisional liquidator appointed in a  
9 voluntary winding-up of the cooperative; or
- 10 (vi) an administrator of the cooperative appointed under—  
11 (A) the Corporations Act, part 5.3A (Administration of  
12 a company's affairs with a view to executing a deed  
13 of company arrangement) as applied by this Act; or  
14 (B) division 12.5 (Appointment of administrator) of this  
15 Act; or
- 16 (vii) a trustee or other person administering a compromise or  
17 arrangement made between the cooperative and someone  
18 else; and
- 19 (b) of a foreign cooperative for schedule 3 (Charges), division  
20 3.2.5 (Certain charges void)—see schedule 3, clause 32  
21 (Definitions for div 3.2.5); and
- 22 (c) of a foreign cooperative for schedule 4 (Receivers, and other  
23 controllers, of property of cooperatives)—see schedule 4,  
24 clause 1 (Definitions for sch 4).
- 25 **order**, of the registrar, means a written order of the registrar.
- 26 **original body**, for division 12.6 (Effect of merger, transfer of  
27 engagements and transfer of incorporation)—see section 333 (2)  
28 (How div 12.6 applies to merger), section 334 (2) (How div 12.6  
29 applies to transfer of engagements) and section 335 (2) (How div  
30 12.6 applies to transfer of incorporation).

- 1        ***participating cooperative***, for part 14 (Foreign cooperatives)—see  
2        section 366 (Definitions for pt 14).
- 3        ***participating State***, for part 14 (Foreign cooperatives)—see section  
4        366 (Definitions for pt 14).
- 5        ***power***, for schedule 1 (Associates and relevant interests), part 1.2  
6        (Relevant interests)—see schedule 1, clause 6 (Interpretation of  
7        pt 1.2).
- 8        ***premises***, for division 15.1 (Supervision and inspection)—see  
9        section 389 (Definitions for div 15.1).
- 10       ***pre-registration contract***—see section 56 (Contracts before  
11       registration).
- 12       ***present liability***, for schedule 3 (Charges)—see schedule 3, clause 1  
13       (Definitions for sch 3).
- 14       ***primary activity***—see section 114.
- 15       ***principal executive officer***, of a cooperative or a subsidiary of a  
16       cooperative, means the principal executive officer of the cooperative  
17       or subsidiary, by whatever name called, and whether or not the  
18       officer is a director or the secretary.
- 19       ***priority time***, for schedule 3 (Charges), part 3.3 (Order of  
20       priority)—see schedule 3, clause 45 (Definitions for pt 3.3).
- 21       ***prior registered charge***, for schedule 3 (Charges)—see schedule 3,  
22       clause 45 (Definitions for pt 3.3).
- 23       ***property***—
- 24       (a) of a cooperative for schedule 3 (Charges)—see schedule 3,  
25       clause 1 (Definitions for sch 3); and
- 26       (b) of a cooperative for schedule 4 (Receivers, and other  
27       controllers, of property of cooperatives)—see schedule 4,  
28       clause 1 (Definitions for sch 4).
- 29       ***prospective liability***, for schedule 3 (Charges)—see schedule 3,  
30       clause 1 (Definitions for sch 3).

- 1       **receiver**—
- 2       (a) for schedule 3 (Charges), division 3.2.5 (Certain charges
- 3       void)—see schedule 3, clause 32 (Definitions for div 3.2.5);
- 4       and
- 5       (b) for schedule 4 (Receivers, and other controllers, of property of
- 6       cooperatives)—see schedule 4, clause 1 (Definitions for sch 4).
- 7       **records** includes books, financial records, financial statements,
- 8       minutes, registers, deeds, writings, documents and other sources of
- 9       information compiled, recorded or stored in written form or on
- 10      microfilm, or by electronic process, or in any other way or by any
- 11      other means.
- 12      **registered charge**, for schedule 3 (Charges), part 3.3 (Order of
- 13      priority)—see schedule 3, clause 45 (Definitions for pt 3.3).
- 14      **registered office**, of a cooperative, means the office of the
- 15      cooperative at the address notified to the registrar from time to time
- 16      under section 257.
- 17      **registrable charge**, for schedule 3 (Charges)—see schedule 3,
- 18      clause 1 (Definitions for sch 3).
- 19      **registrar** means the Registrar of Cooperatives.
- 20      **related**—a corporation is **related** to another corporation if—
- 21      (a) one of the corporations is a subsidiary of the other corporation;
- 22      or
- 23      (b) both corporations are subsidiaries of a third corporation.
- 24      **relevant day**—
- 25      (a) for division 12.6 (Effect of merger, transfer of engagements
- 26      and transfer of incorporation)—see section 333 (2) (How
- 27      div 12.6 applies to merger), section 334 (2) (How div 12.6
- 28      applies to transfer of engagements) and section 335 (2) (How
- 29      div 12.6 applies to transfer of incorporation); and

- 1 (b) for schedule 3 (Charges), division 3.2.4 (Certain charges void  
2 against liquidator or administrator)—see schedule 3, clause 26  
3 (Definitions for div 3.2.4).
- 4 **relevant documents**, for division 15.1 (Supervision and  
5 inspection)—see section 389 (Definitions for div 15.1).
- 6 **relevant interest**—see schedule 1 (Associates and relevant  
7 interests), part 1.2 (Relevant interests).
- 8 **relevant person**, for schedule 3 (Charges), division 3.2.5 (Certain  
9 charges void)—see schedule 3, clause 32 (Definitions for div 3.2.5).
- 10 **reviewable decision**, for part 18 (Review of registrar’s decisions)—  
11 see section 458 (Definitions for pt 18).
- 12 **rules**, of a cooperative, means the registered rules of the cooperative  
13 as in force from time to time.
- 14 **seal**, of a cooperative, means the common seal or an official seal of  
15 the cooperative.
- 16 **secretary**, of a cooperative, means the person appointed under  
17 section 220 to be, or to act as, the secretary of the cooperative.
- 18 **share** means a share in the share capital of a cooperative.
- 19 **spouse** includes de facto spouse.
- 20 **stamp duty** includes a duty charged, or would apart from this Act be  
21 charged, under the *Duties Act 1999*.
- 22 **State**, for part 14 (Foreign cooperatives)—see section 366  
23 (Definitions for pt 14).
- 24 **subordinated debt**—see section 263 (2).
- 25 **subsequent registered charge**, for schedule 3 (Charges), part 3.3  
26 (Order of priority)—see schedule 3, clause 45 (Definitions for  
27 pt 3.3).
- 28 **subsidiary**—see the Corporations Act, section 9.



- 1        **surplus**, in relation to a cooperative, means the excess of income  
2        over expenditure after making proper allowance for taxation  
3        expense, depreciation in value of the property of the cooperative and  
4        future contingencies.
- 5        **Territory cooperative**, for division 14.3 (Mergers and transfers of  
6        engagements)—see section 380 (Definitions for div 14.3).
- 7        **Territory registrar**, for division 14.3 (Mergers and transfers of  
8        engagements)—see section 380 (Definitions for div 14.3).
- 9        **trading cooperative** means a cooperative that complies with  
10       section 17.
- 11       **transfer**, for division 12.2 (Transfer of registration or  
12       incorporation)—see section 306.
- 13       **unregistered charge**, for schedule 3 (Charges), part 3.3 (Order of  
14       priority)—see schedule 3, clause 45 (Definitions for pt 3.3).
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## Endnote

### Penalty units

The *Legislation Act 2001*, s 133 deals with the meaning of offence penalties that are expressed in penalty units.