

2002

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

## **Cooperatives Bill 2002**

EXPLANATORY MEMORANDUM

Circulated by authority of the  
Attorney General  
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## Cooperatives Bill 2002

### Outline

The Cooperatives Bill 2001 replaces the Cooperatives Bill 2000, tabled in the Legislative Assembly in March 2000 and repeals the *Cooperatives Societies Act 1939*. The Bill substantially incorporates a set of core consistent provisions that have been developed with all the States and the Northern Territory and have been enacted by most of these jurisdictions. The Bill is a comprehensive reform of the *Cooperative Societies Act 1939*.

Cooperatives are member-based organisations operated for the benefit of their members. The factors which distinguish cooperatives from other forms of organisations are their mutuality, their democratic structure and character (each member is entitled to one vote only, regardless of the size of their shareholding), and the fact that capital in a cooperative services the activity rather than providing individual benefit.

The adoption of a uniform national approach to legislation dealing with cooperative societies overcomes the lack of consistency between the legislation of the States and Territories, particularly in respect of cooperatives that wish to carry on business outside the jurisdiction in which they are initially registered.

The objects of the Bill are to provide for:

- (a) a clear set of principles covering the qualities of cooperatives.
- (b) the adoption of a set of core consistent provisions in relation to the regulation of cooperative societies. All States and Territories have agreed to adopt the core consistent provisions.
- (c) clarification of the differences between trading and non-trading cooperatives. The separation relates mainly to fund raising and takeovers and requires that trading cooperatives comply with higher disclosure and reporting standards than those normally applying to non-trading cooperatives.
- (d) the inclusion of provisions dealing with the issuing of prospectuses and the provision of adequate disclosure statements to members.
- (e) the interstate registration of cooperatives outside the ACT in line with provisions adopted by other jurisdictions.
- (f) an adequate supervision and enforcement regime.
- (g) the overall administration of cooperative societies by the ACT Registrar.

### Financial Implications

Nil.

## Clause Notes

### PART 1 - PRELIMINARY

Part 1 deals with preliminary matters, including a statement of objects to the Bill. These objects are:

- to enable the formation, registration and operation of cooperatives;
- to promote cooperatives philosophy, principles and practices and objectives;
- to protect the interests of cooperatives, their members and the public in the operations and activities of cooperatives;
- to ensure that the directors of cooperatives are accountable for their actions and decisions to the members of cooperatives;
- to encourage and facilitate self-management and self-regulation by cooperatives at all levels; and
- to encourage the development, integration and strengthening of cooperatives at local, regional, national and international levels by supporting and fostering state and national peak organisations and cooperative instrumentalities.

The seven cooperative principles are set out in part 1 of the Bill. In summary, these principles are: voluntary association and open membership; democratic control; member economic participation; autonomy and independence; education, training and information; cooperation among cooperatives; and concern for the community. If there is a problem interpreting the Bill in a particular situation a construction which would promote cooperative principles is to be preferred to an interpretation that would not.

The application of the commonwealth *Corporations Act 2001* (the Corporations Act) to cooperatives, whether they operate within the ACT or interstate, is also clearly defined. The Bill, either by direct reference or by inclusion, has adopted many of the provisions of the Corporations Act.

#### Division 1.1: Introductory

- Clause 1 Provides that the Act be cited as the *Cooperatives Act 2002*.
- Clause 2 Commencement: provides for the commencement of the Act fixed by the Minister.
- Clause 3 Objects: provides for the objects of the Act.

#### Division 1.2: Interpretation

- Clause 4 Provides for the dictionary as part of the Act.
- Clause 5 Provides for explanatory notes.
- Clause 6 Provides circumstances in which a person has qualified privilege for the purposes of the law of defamation.

Clause 7 Provides that the Act is to be interpreted to promote cooperative principles.

**Division 1.3: Cooperative principles**

Clause 8 Contains the cooperative principles underlying the legislation.

**Division 1.4: Application of the Corporations Act generally**

Clause 9 Provides that regulations may apply certain provisions of the Corporations Act.

Clause 10 Provision of the Corporations Act applied by this Act are to be read as part of this Act.

Clause 11 Provides that provisions of the Corporations Act adopted by this Act apply with any modifications made by the Act.

Clause 12 Provides for the implied adoption of regulations and other provisions of Corporations Act.

Clause 13 Provides that a provision of the Corporations Act adopted by the Act applies as in force from time to time.

Clause 14 Provides that a provision of the Corporations Act that is applied by a provision of this Act is in effect adopted by the application provision.

**Division 1.5 Application of Corporations Act – excluded matter**

Clause 15 Provides that a cooperative is declared to be an excluded matter for the Corporations Act other than to the extent specified in this section. The effect of this provision is to exclude the operation of the Corporations Act (other than as provided for under the Act) in relation to cooperatives. This provisions is made pursuant to regulations under 23(2) of the *Australian Capital Territory (Self-Government) Act 1988*.

## PART 2 – FORMATION

Part 2 of the Bill provides for the formation of cooperatives, associations and federations of cooperatives. A cooperative may be either trading or non-trading, depending upon its rules. A trading cooperative is one that gives returns or distributions on share capital. A non-trading cooperative is one that does not give returns or distributions on surplus or share capital other than the nominal value of shares, if any, at winding up. The division of types of cooperatives is to facilitate different levels of compliance with the legislation in relation to disclosure in fundraising activities. Non-trading cooperatives are the traditional not-for-profit organisations which exist for the purposes of community benefit rather than individual profit.

A non-trading cooperative may trade, but the benefits to the members flowing from the activities of the cooperative - for example, provision of child-care facilities or community radio - are not direct financial returns. Surpluses must be retained by the cooperative and must not be distributed to members. The investment in the cooperative does not result in a financial return and therefore a modified disclosure regime has been proposed. Trading cooperatives, however, exist for the purpose of maximising the financial position of the member through the services offered. Trading cooperatives, therefore, have a higher level of disclosure.

It also provides for the transfer of incorporation of a body corporate to a cooperative. Part 3 of the Bill provides for the legal capacity and powers of cooperatives. Traditionally, cooperative legislation has been somewhat paternalistic in character. The new Bill provides wider corporate powers than cooperatives currently enjoy.

### Division 2.1: Types of Cooperatives

- Clause 16 Provides that a cooperative registered under the Act may be either trading or non-trading. (Note that trading cooperatives were formerly permitted in the ACT under Part III of the *Co-operative Societies Act 1939*.)
- Clause 17 Provides that a trading cooperative must have share capital and also prescribes a minimum numbers of members.
- Clause 18 Provides that a non-trading cooperative may have a share capital, but must not give returns or distributions on surplus or share capital other than the nominal value of shares (if any) on winding up.

### Division 2.2: Formation meeting

- Clause 19 Provides that a formation meeting must be held before a proposed cooperative can be registered, and specifies the matters which must be considered at the meeting and the persons who must attend the meeting.

### **Division 2.3: Approval of disclosure statements and rules**

- Clause 20 Provides that a draft disclosure statement (containing the matters specified) of a proposed trading cooperative must be submitted to the Registrar of Cooperatives (“the Registrar”) at least 28 days before the formation meeting is due to be held. If the Registrar does not otherwise notify the person who submitted the disclosure statement at least 5 days before the formation meeting is due to be held, the Registrar is to be considered to have approved the statement.
- Clause 21 Provides that a draft of the rules (in the specified form) proposed for the cooperative must be submitted to the Registrar at least 28 days before the formation meeting is due to be held. The Registrar may approve or refuse to approve the rules and must give notice of his/her decision to the person who submitted the rules.

### **Division 2.4: Registration of proposed cooperative**

- Clause 22 Provides for applications for registration of proposed cooperatives, and prescribes the form and content of such an application.
- Clause 23 Provides for the registration of cooperatives.
- Clause 24 Provides that the incorporation of a cooperative takes effect upon the registration of the cooperative.

### **Division 2.5: Registration of an existing body corporate**

- Clause 25 Provides that a body corporate may apply to the Registrar to be registered as a cooperative under the Act.
- Clause 26 Provides for the holding of a formation meeting by a body corporate, at which a special resolution approving of the proposed registration must be passed.
- Clause 27 Provides for the application for registration by bodies corporate and prescribes the form and content of such an application.
- Clause 28 Provides for the requirements for registration of a body corporate as a cooperative under this Division.
- Clause 29 Provides that the Registrar must issue a certificate of registration to a body corporate which has been registered as a cooperative and must prepare a written notice about the issue of the certificate.
- Clause 30 Provides that the corporate name of a corporation registered as a cooperative is the name stated in the certificate of registration issued by the registrar.
- Clause 31 Describes the effect of registration and incorporation of the body corporate as a cooperative.

## **Division 2.6: Conversion of cooperative**

Clause 32 Provides that a cooperative may convert from a cooperative with share capital to one without share capital (or vice versa) or from trading to non-trading (or vice versa).

## **Division 2.7: General**

Clause 33 Provides a stamp duty exemption for certain charitable, sporting or recreational cooperatives.

Clause 34 Provides that money accepted by a proposed cooperative must be held on trust until the cooperative is registered, and must be returned if the proposed cooperative is not registered within 3 months of acceptance of the money.

Clause 35 Provides for the issuing by the Registrar of a duplicate certificate of registration under certain circumstances.

## **PART 3 – LEGAL CAPACITY AND POWERS**

Part 3 of the Bill provides for the legal capacity and powers of cooperatives. The new Bill provides wider corporate powers than cooperatives currently enjoy.

Part 3 also sets out the general powers that a cooperative has as a body corporate. The Bill provides that a cooperative has the legal capacity of a natural person. A similar regime to that which exists in the Corporations Act for persons having dealings with the cooperative is also provided. A cooperative may also still apply for a government guarantee in respect of any loan.

### **Division 3.1: General Powers**

- Clause 36 Describes the effect of incorporation on a cooperative.
- Clause 37 Provides that, in addition to other powers, a cooperative has power to form companies and enter into joint ventures.

### **Division 3.2: Non-application of doctrine of ultra vires**

- Clause 38 Provides guidance in the interpretation of this Division.
- Clause 39 Provides that the objects of this Division are to provide that the doctrine of ultra vires does not apply to cooperatives and to ensure that a cooperative's officers and members give effect to the provisions of the cooperative's rules relating to the primary activities or powers of the cooperative.
- Clause 40 Provides that a cooperative has the legal capacity of a natural person and specifies certain particular powers of cooperatives.
- Clause 41 Provides that a cooperative's rules may contain restrictions or prohibitions on the exercise by the cooperative of a power, and also provides that the section is contravened if a cooperative exercises a power contrary to an express restriction or prohibition in its rules.
- Clause 42 Provides that the exercise of a power or the doing of an act in contravention of section 41 is not invalid merely because of the contravention.

### **Division 3.3: Dealings with cooperatives**

- Clause 43 Provides that a person is entitled to make the assumption in section 44 in relation to dealings with a cooperative and persons who have or purport to have acquired title to property from a cooperative.
- Clause 44 Specifies the assumptions which a person is entitled to make when dealing with a cooperative.
- Clause 45 Provides that a person who knows or ought to know that an assumption is incorrect is not entitled to make that assumption.

Clause 46 Provides that a person is not to be considered to have constructive knowledge of documents (other than those relating to registrable charges) lodged with the Registrar.

Clause 47 Provides that a person's entitlement to make assumptions under this Division is not affected by fraudulent conduct of, or forgery by, a person attempting to rely on the assumption has actual knowledge of the fraudulent conduct or forgery.

**Division 3.4: Authentication and execution of documents and confirmation of contracts**

Clause 48 Provides that a document or proceeding requiring authentication by a cooperative may be authenticated under the common seal of the cooperative.

Clause 49 Provides that a cooperative may have, for use outside the ACT, one or more official seals, each of which must be a facsimile of the cooperative's common seal, to be used in place of its common seal with the addition on its face of the name of every place where it is to be used.

Clause 50 Provides that a document or proceeding may be authenticated by the signature of a director and a director or officer of a cooperative, and need not be under seal.

Clause 51 Provides that a cooperative may authorise a person as its agent or attorney to execute deeds on its behalf.

Clause 52 Provides for the validity of documents executed under seal where a person attesting the affixing of the seal was in any way interested in the matter contained in the document.

Clause 53 Provides that a person acting under the authority of a cooperative may make, vary or discharge a contract on behalf of the cooperative.

Clause 54 Provides that this Division does not affect other legal requirements as to consent or sanction in relation to contractual procedures.

Clause 55 Provides for the transitional operation of this Division.

**Division 3.5: Pre-registration contracts**

Clause 56 Provides for the entering into on behalf of a proposed cooperative, and the later ratification by a cooperative of pre-registration contracts.

Clause 57 Provides that the person who entered into the pre-registration contract may be released from liability but is not entitled to an indemnity.

Clause 58 Provides that this Division replaces any rights or liabilities anyone would otherwise have in relation to a pre-registration contract.

## **PART 4 – MEMBERSHIP**

Part 4 deals with membership of the cooperative. The rules of a cooperative must provide for a grievance procedure in relation to disputes under the rules of the cooperative, and application may also be made to the Supreme Court to settle disputes. Remedies in relation to oppressive conduct of affairs and statutory derivative actions are also provided for.

### **Division 4.1: General**

- Clause 59 Provides for the admission of persons as members of a cooperative.
- Clause 60 Provides for the admission of cooperative and other bodies corporate as members of an association.
- Clause 61 Provides for membership of a federation.
- Clause 62 Prescribes qualifications for membership of a cooperative.
- Clause 63 Provides that membership of a cooperative may be joint.
- Clause 64 Provides for the membership of a cooperative by natural persons under 18 years of age but persons under 18 years old are not competent to hold office in a cooperative and is not entitled to vote.
- Clause 65 Provides that a body corporate which is a member of a cooperative may appoint a person to represent it in respect of its membership.
- Clause 66 Requires a body corporate which is a member of a cooperative to notify the board of directors of the cooperative (if requested) of the body corporate's shareholders and shareholdings.
- Clause 67 Prescribes the circumstances in which membership of a cooperative ceases.
- Clause 68 Provides additional circumstances in which membership of a cooperative with share capital ceases.
- Clause 69 Provides for the effect of carrying on business with too few members and provides that the directors of a cooperative which carries on business for more than 28 days after the number of members falls below the minimum are guilty of an offence.

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

- Clause 70 Provides that rights of membership are not exercisable until the member's name appears on the cooperative register of members and payment is made and shares acquired by the member.
- Clause 71 Requires that the board of a cooperative must ensure that the name of a person admitted to membership is recorded in the register within 28 days after the person is admitted to membership.
- Clause 72 Describes the liability of members of a cooperative.
- Clause 73 Requires the board of a cooperative to provide certain information to each person intending to become a member of the cooperative.
- Clause 74 Provides that the rules of a cooperative may require the payment by members of entry fees and regular subscriptions.
- Clause 75 Provides for the imposition of a fine by a cooperative on a member for any infringement of the rules of the cooperative, if the rules of the cooperative so provide.
- Clause 76 Provides for charges on certain property of members and ex-members where a debt is owed to the cooperative, and the set off of any amount paid towards satisfaction of that debt.
- Clause 77 Provides for the repayment of the amount paid up on a member's shares when the member is expelled from the cooperative.

#### **Division 4.3: Death of member**

- Clause 78 Defines a deceased member's "interest" for the purposes of this Division.
- Clause 79 Provides for the transfer of a member's shares or interest in a cooperative by the board on the death of the member.
- Clause 80 Provides for the transfer of a member's shares or interest in a cooperative on the death of the member, where the total value of the shares or interest is less than \$10,000 (or such other amount as prescribed).
- Clause 81 Provides that the value of the shares or interest of a deceased member is to be determined for the purposes of this Division in accordance with the rules of the cooperative.
- Clause 82 Provides that any transfer of property made by the board of a cooperative in accordance with this Division is valid and effectual against any demand made on the cooperative by any other person.

#### **Division 4.4: Disputes involving members**

- Clause 83 Provides that the rules of a cooperative must provide for a grievance procedure, which must allow for the application of natural justice, for dealing with disputes under the rules between members and the cooperative and between members of the cooperative.
- Clause 84 Provides that a member of a cooperative may make application to the Supreme Court for an order declaring and enforcing the rights or obligations of members or the cooperative.

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

- Clause 85 Provides for an extended definition of “member” for the purposes of this Division.
- Clause 86 Provides that this Division does not apply in respect of anything done under or for the purposes of Part 6 (Active membership).
- Clause 87 Specifies who may apply to the Supreme Court for an order under this Division.
- Clause 88 Provides that the Supreme Court may make any order it considers appropriate in respect of an application under this Division, including but not limited to the orders specifies.
- Clause 89 Describes the basis on which the Supreme Court may make orders under this Division.
- Clause 90 Provides that the Court need not make an order for the winding up of a cooperative if the winding up would unfairly prejudice an oppressed member.
- Clause 91 Provides for the application of the winding up provisions of the Act where an order for winding up is made by the Court under this Division.
- Clause 92 Provides for the effect of an alteration of a cooperative’s rules resulting from an order of the Court under this Division.
- Clause 93 Requires an applicant for an order under this Division to lodge a copy of the order with the Registrar within 14 days after it is made.

#### **Division 4.6: Proceedings on behalf of a cooperative by members and others**

- Clause 94 Specifies who may bring or intervene in proceedings on behalf of a cooperative.
- Clause 95 Provides that a person referred to in section 94 may apply to the Supreme Court for leave to bring or intervene in proceedings, and specifies the circumstances in which the Court must grant the application.

- Clause 96 Specifies the persons who may apply to the Court for an order that they may be substituted for a person to whom leave has been granted under section 95.
- Clause 97 Provides for the effect of a ratification or approval of conduct by members of a cooperative on an application under section 95.
- Clause 98 Provides that proceedings brought or intervened in with leave must not be discontinued, compromised or settled without the leave of the Court.
- Clause 99 Empowers the Court to make orders and give directions in relation to proceedings brought or intervened in under this Division.
- Clause 100 Empowers the Court to make a costs order in relation to proceedings brought or intervened in with leave under section 95.

## PART 5 – RULES

Part 5 of the Bill provides for the rules of a cooperative to constitute a contract between the cooperative and each member. This part also permits regulations to prescribe model rules.

- Clause 101 Describes the effect of the rules of a cooperative as a contract under seal between the cooperative and each member, between the cooperative and each director, the principal executive officer and the secretary, and between a member and each other member.
- Clause 102 Specifies that the rules of the cooperative must comply with the requirements mentioned in schedule 2.
- Clause 103 Specifies other requirements about the content and layout of the rules.
- Clause 104 Provides for the obtaining a copy of the cooperative's rules.
- Clause 105 Provides that a person who gives a false copy of the rules of a cooperative to a member or a person intending to become a member is guilty of an offence.
- Clause 106 Provides for the approval of model rules by the Registrar by a notifiable instrument.
- Clause 107 Provides that the rules of a cooperative cannot be altered except in accordance with this Act.
- Clause 108 Provides that a proposed alteration of a cooperative's rules must be approved by the Registrar in writing before the passing of the resolution to alter the rules.
- Clause 109 Provides that a draft of the proposed alteration of the rules of a cooperative must be given to the registrar at least 28 days before and also provides that the registrar may approve or refuse to approve the alteration.
- Clause 110 Provides that the rules of a cooperative must be altered by special resolution unless otherwise specified in this Part.
- Clause 111 Provides that certain alterations of a cooperative's rules may be affected by a resolution passed by the board.
- Clause 112 Provides for the process for the registration of an alteration of the rules and the issuing of a certificate of registration of any alteration of the rules of a cooperative.
- Clause 113 Provides that an alteration of a cooperative's rules does not take effect unless and until it is registered by the Registrar.

## PART 6 – ACTIVE MEMBERSHIP

Part 6 of the Bill deals with active membership. Active membership arises out of the cooperative principle of member economic participation and ensures that only those members actively participating in the cooperative control the cooperative. The active member provisions were introduced into the *Co-operation Act 1923* (NSW) during 1987 with some further refinements occurring in 1988 and the *Cooperatives Act 1992* (NSW).

If a member's whereabouts is not known to the cooperative or the member has not fulfilled the active membership obligations under the rules of the cooperative for a period of three years, or less if the rules so provide, the board is required to cancel the membership of the member and repay the amount due to the member in respect of that cancellation. If repayment would adversely affect the financial position of the cooperative, the board may convert the amount due to a deposit or debenture. The deposit or debenture must be repaid within 10 years. However, a member of a trading cooperative whose membership has been cancelled under this part is still considered to be a member for certain purposes for a period of five years.

### **Division 6.1: Definitions**

- Clause 114 Defines the expression “primary activity”.
- Clause 115 Defines an “active member” for the purposes of this Act.
- Clause 116 Defines what are active membership provisions and resolutions (the primary activities of a cooperative and how and to what extent a member may be required by the cooperative to do something in relation to the primary activities).

### **Division 6.2: Rules to contain active membership provisions**

- Clause 117 States that a cooperative must have at least one primary activity.
- Clause 118 Requires the board of a cooperative to ensure that the rules of the cooperative contain active membership provisions in accordance with this Part.
- Clause 119 Specifies the factors and considerations for determining which of a cooperative's activities are its primary activities, and for determining an appropriate activity test in relation to each activity.
- Clause 120 Provides for the active membership provisions required of trading cooperatives.
- Clause 121 Provides that payment of a regular subscription may be an adequate active membership requirement for a non-trading cooperative.

### **Division 6.3: Active membership resolutions**

- Clause 122 Provides for the giving of notice of a meeting at which an active membership resolution is to be proposed.
- Clause 123 Specifies which members are eligible to vote on an active membership resolution.
- Clause 124 Specifies which directors are eligible to vote at a board meeting on a proposal to submit an active membership resolution to a meeting of the cooperative.
- Clause 125 Provides that this Division does not affect other entitlements of members.

### **Division 6.4: Cancellation of membership of inactive members**

- Clause 126 Provides for the cancellation of the membership of an inactive member.
- Clause 127 Provides that the shares of a member are to be forfeited at the same time as the member's membership is cancelled under section 126.
- Clause 128 Provides that failure by the board of a cooperative to cancel a membership as required by this Part renders a director who did not use all due diligence to prevent that failure guilty of an offence.
- Clause 129 Provides that cancellation of a membership may be deferred by the board for periods up to 1 year according to certain grounds.
- Clause 130 Provides that cancellation of a member's membership is prohibited in certain circumstances.
- Clause 131 Provides for the giving of notice to a member of the intention to cancel their membership.
- Clause 132 Empowers the Supreme Court to order against the cancellation of a membership.
- Clause 133 Requires a cooperative to repay certain amounts to a member whose membership has been cancelled under this Part, or otherwise apply those amounts within 12 months after the cancellation of the former membership.
- Clause 134 Provides for the accrual of interest when amounts owed to a former member are applied as a deposit with the cooperative or the cooperative allots or issues debentures to the former member in satisfaction of the amount owed.
- Clause 135 Provides for the repayment of the deposits and debentures referred to in section 134.
- Clause 136 Requires a cooperative to keep a register of cancelled memberships.

### **Division 6.5: Entitlement of former members of trading cooperatives**

- Clause 137 Provides that this Division only applies to trading cooperatives.
- Clause 138 Provides that former shareholders are to be regarded as shareholders for certain purposes.
- Clause 139 Provides for the entitlement of a former member whose shares have been forfeited within 5 years of a merger of, or a transfer of engagements by, the cooperative of which he/she was a member.
- Clause 140 Provides for the set-off of amounts repaid to a person under section 133 (repayment of amounts due in respect of cancelled membership) or section 135 (repayment of deposits and debentures) against any entitlement of the person under section 138.
- Clause 141 Provides for the entitlement of former members to any distribution from the reserves of the cooperative that takes place within 5 years after the person's membership was cancelled.
- Clause 142 Provides that the Registrar may exempt a specified cooperative or a cooperative that is a member of a specified class of cooperatives from all or specified provisions of this Division.

## **PART 7 – SHARES**

Part 7 of the Bill deals with cooperatives share capital. It provides for the issue of shares, the disclosure of beneficial and non-beneficial interests in shares and the procedure involved in the transfer of shares, as well as the repurchase of shares.

Part of the interface arrangements with the Corporations Act requires that shares may not be held by non-members.

### **Division 7.1: Nature of share in cooperative**

Clause 143 Describes the nature of a share or other interest in a cooperative.

### **Division 7.2: Disclosure**

Clause 144 Requires the board of a cooperative to provide to intending shareholders with a disclosure statement, in the specified form, before shares are issued to the intending shareholder.

Clause 145 Requires that the last annual report be sent with the disclosure statement to a person intending to become a shareholder under section 144.

Clause 146 Provides for exemptions for the provision of disclosure statements as required under section 144 or 145.

### **Division 7.3: Issue of shares in a cooperative**

Clause 147 Provides for the amount of share capital to be in accordance to the nominal value of shares from time to time subscribed, the value of shares and the classes of shares of a cooperative, and states that, with certain exceptions, shares must not be issued to a non-member.

Clause 148 Provides that a share must not be allotted unless at least 10% of the nominal value of the share has been paid.

Clause 149 States that a cooperative must not issue shares at a discount.

Clause 150 Provides for the issue of shares at a premium.

Clause 151 Allows for joint ownership of shares.

Clause 152 Provides that members may be required to take up additional shares.

Clause 153 Provides for the issue of bonus shares by a cooperative.

Clause 154 Places a number of restrictions on the issuing of bonus shares by a cooperative.

Clause 155 Specifies the content of the notice which must be given to members of the meeting or postal ballot at which a special resolution is to be proposed for the approval of a bonus share issue.

**Division 7.4: Beneficial and non-beneficial interests in shares**

Clause 156 Provides that notice of non-beneficial ownership of shares (where this is reasonably expected) must be given at the time of the transfer of those shares.

Clause 157 Provides for the notification of non-beneficial ownership of shares where this was not notified at the time of transfer.

Clause 158 Provides that, where notice of non-beneficial ownership has been given under section 156, but on registration of the transfer the transferee holds some or all of those shares beneficially, notice of that fact must be given to the cooperative.

Clause 159 Requires notification of a change in the nature of a person's shareholding.

Clause 160 Provides that, for the purpose of this Division, a person is presumed to have been aware of a circumstance of which an employee or agent of the person was aware.

Clause 161 Specifies certain circumstances in which non-beneficial interest ownership of shares will be presumed.

Clause 162 Requires the noting of beneficial interests in a cooperative's register of members.

Clause 163 Provides for the registration of a trustee, executor or administrator as the holder of a share in a cooperative previously held by a person who has died.

Clause 164 Provides for the registration of an administrator as the holder of a share in a cooperative previously held by a person who has died.

Clause 165 Provides for the registration of the Official Trustee in Bankruptcy as the holder of a share in a cooperative previously held by a person who has become bankrupt.

Clause 166 Provides for the liability of persons registered as holders of shares under sections 163, 164 and 165.

Clause 167 Provides for the noting in the register of members, with the consent of the cooperative, of shares held on trust.

Clause 168 Provides that no notice of a trust is to be entered on a register except as provided in this Division.

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

- Clause 169 Provides for the sale or transfer of shares.
- Clause 170 Provides for the transfer of shares on the death of a member.
- Clause 171 Places a restriction of 20% (or a lower percentage specified in the rules of a cooperative) on the shareholding to be held by a shareholder.
- Clause 172 Provides that a transfer of shares is not effective until registered.

**Division 7.6: Repurchase of shares**

- Clause 173 Provides for the purchase and repayment of shares by a cooperative.
- Clause 174 Provides that if a cooperative repurchases a share of a member, the cooperative may instead of paying the purchase price to the member apply an amount owed as an interest bearing deposit by the member with the cooperative; or allot or issue debentures in satisfaction of the amount.
- Clause 175 Requires a cooperative to cancel any share purchased by or forfeited to the cooperative.

## **PART 8 – VOTING AND MEETING**

Part 8 of the Bill deals with voting. Cooperatives are democratic organisations. This part makes it clear that each member of a cooperative will have only one vote. Voting rights attach to membership, not to shareholding. This part of the Bill also provides for the holding of meetings and the passing of resolutions. An ordinary resolution is passed by a simple majority. A special resolution is that passed by a two-thirds majority at a meeting or by post; certain special resolutions must be held by special postal ballot, and this requires a three-quarters majority. A required majority is ascertained by the number of members who at a meeting or in a postal ballot actually vote on the resolution.

### **Division 8.1: Voting entitlements**

- Clause 176 Applies this Part to all voting on all resolutions.
- Clause 177 Describes members' right to vote.
- Clause 178 Provides for voting by proxy.
- Clause 179 Places a restriction on the voting entitlement under a power of attorney.
- Clause 180 Places a restriction on voting by representatives of corporations.
- Clause 181 Provides that inactive members are not entitled to vote.
- Clause 182 Prohibits a person from controlling the exercise of the right to vote of a member.
- Clause 183 Provides that a member of a cooperative can not vote if the member has sold or transferred, or disposed of the beneficial interest in, the members' shares or has agreed to do so.
- Clause 184 Provides that a member of a cooperative is not entitled to vote if another person (whether or not a member of the cooperative) has a relevant interest in any share held by the member or in the right to vote.
- Clause 185 Provides for the rights of representatives of members to vote.
- Clause 186 Provides that other rights and duties of members are not affected by a member's ineligibility to vote.
- Clause 187 Provides that any vote of a disentitled member is to be disregarded.

### **Division 8.2: Resolutions**

- Clause 188 Provides that, except as otherwise provided, decisions by a cooperative are to be determined by ordinary resolution.
- Clause 189 Defines "ordinary resolution".
- Clause 190 Defines "special resolution".

- Clause 191 Specifies how a majority obtained at a meeting or by postal ballot is to be ascertained.
- Clause 192 Permits the Registrar to disallow a proposed special resolution before it is passed.
- Clause 193 Provides for proof by declaration of the passing of a special resolution at meetings and by postal ballot.
- Clause 194 Provides for the date from which special resolutions take effect and requires a special resolution to be registered if it is to have an effect.
- Clause 195 Requires the lodgement of two copies of a special resolutions with the Registrar for registration.
- Clause 196 Requires the Registrar to register a special resolution if satisfied of certain matters.

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

- Clause 197 Provides this Division applies a resolution of a cooperative if the cooperative has fewer than 50 members and the resolution is required or permitted under this Act or the rules of the cooperative to be passed at a general meeting of the cooperative.
- Clause 198 Provides that if all the members of a cooperative have signed a document that sets out the terms of the resolution and contains a statement that they are in favour of the resolution, the resolution is taken to have passed at a general meeting of the cooperative.

### **Division 8.4: Postal Ballots**

- Clause 199 Provides for the holding of postal ballots.
- Clause 200 Provides for the holding of special postal ballots.
- Clause 201 Specifies the circumstances in which a special postal ballot is required.
- Clause 202 Provides for the requisitioning by members of a postal ballot.
- Clause 203 Describes the expenses that are to be considered to constitute the “expenses involved in holding the ballot” for the purposes of section 202.

### **Division 8.5: Meetings**

- Clause 204 Provides for the timing of the holding of annual general meetings by cooperatives, including the first annual general meeting.
- Clause 205 Provides for the convening of special general meetings by the board.

- Clause 206 Requires the giving of 14 days notice to members of each general meeting.
- Clause 207 Makes provision for the quorum for a meeting of a cooperative to be specified in its rules and provides that business cannot be transacted without a quorum present.
- Clause 208 Provides for the manner of determining a question for decision at a general meeting.
- Clause 209 Provides for the convening of a general meeting on the requisition of at least 20% of members or any lesser percentage specified in the rules.
- Clause 210 Provides for the entering and confirming of minutes of each general meeting, board meeting and sub-committee meeting.

## **PART 9 – MANAGEMENT AND ADMINISTRATION OF COOPERATIVES**

Part 9 deals with the management and administration of cooperatives. In particular, it provides for the election of directors and includes provisions for a limited number of independent directors to be elected to the boards of cooperatives. The majority of directors will still need to be members. Such independent directors will bring additional expertise to the operation of cooperatives either by virtue of being an employee of the cooperative or as otherwise determined in the rules. This part also deals with the duties and responsibilities of directors, and the keeping and auditing of accounts and registers, records and returns.

### **Division 9.1: The Board**

- Clause 211 Provides that the business of a cooperative is to be managed by a board of directors which may exercise all the powers of the cooperative in general meeting.
- Clause 212 Provides for the election of directors.
- Clause 213 Specifies the qualification of directors.
- Clause 214 Specifies disqualified persons who must not act as a director or directly or indirectly take part in or be concerned with the management of a cooperative.
- Clause 215 Provides for the holding, timing and procedure of board meetings.
- Clause 216 Provides for the transaction of business by the board outside board meetings.
- Clause 217 Provides for the appointment of deputy directors.
- Clause 218 Allows the board to delegate the exercise of specified functions (other than the power of delegation) to a director or committee.
- Clause 219 Provides for the removal from and vacation of office of a director.

### **Division 9.2: Secretary**

- Clause 220 Provides that a cooperative shall have a secretary.

### **Division 9.3: Duties and liabilities of directors, officers and employees**

- Clause 221 Defines “officer” for the purposes of this Division.
- Clause 222 Requires officers of cooperatives to act honestly in the exercise of their powers and the discharge of their duties. It is an offence for a person to intentionally or recklessly contravene this clause.
- Clause 223 Specifies the standard of care and diligence of officers of cooperatives.

- Clause 224 Prohibits the improper use of information or position by officers of cooperatives.
- Clause 225 Empowers a court that convicts a person for contravention of this Division to order payment of compensation by the convicted person to the cooperative.
- Clause 226 Provides for the recovery of damages by a cooperative from a person who has contravened this Division, whether or not the person has been convicted of an offence.
- Clause 227 Provides that this Division does not affect other legal duties and liabilities relating to a person's office or employment in relation to a cooperative.
- Clause 228 Deals with the indemnification of officers and auditors. It specifies that a provision exempting or indemnifying an officer or auditor of a cooperative from liability is void. The clause allows a cooperative under its rules or otherwise to indemnify an officer or auditor of the cooperative against any liability incurred by the person in defending any proceeding.
- Clause 229 Adopts and applies the provisions of the Corporations Act in regard to offences.

#### **Division 9.4: Employee Entitlements**

- Clause 230 This division applies part 5.8A of the Corporations Act, which deals with employee entitlements to a cooperative and its employees.

#### **Division 9.5: Restrictions on directors and officers**

- Clause 231 Restricts directors' fees, concessions and other benefits that are approved at a general meeting of the cooperative. It also prohibits officers from obtaining certain financial accommodation from the cooperative.
- Clause 232 Provides for financial accommodation to directors and associates of directors under specified conditions.
- Clause 233 Restricts directors of certain cooperatives from selling land to the cooperative.
- Clause 234 Provides that a cooperative must not enter into a management contract unless that contract has first been approved by special resolution.

### **Division 9.6: Declaration of interests**

- Clause 235 Requires directors to declare the nature and extent of any interest in contracts or proposed contracts with the cooperative.
- Clause 236 Requires declarations under this Division to be recorded in the minutes.
- Clause 237 Provides that this Division does not affect other laws or rules restricting a director from having any interest in contracts with the cooperative.
- Clause 238 Specifies that certain interests need not be declared.

### **Division 9.7: Financial statements, reports and audit**

- Clause 239 Defines “entity” and “control” for the purposes of this Division.
- Clause 240 Specifies requirements for the provision of financial records, statements and reports of a cooperative with particular accordance with the Corporations Act.
- Clause 241 Empowers the Registrar to grant exemptions from all or specified provisions of the regulations made for the purposes of this Part.
- Clause 242 Requires directors to make certain disclosures in relation to the affairs of the cooperative and of any entity that the cooperative controls that are required by the regulations.
- Clause 243 Provides qualified privilege for auditors and persons who publish documents prepared by auditors.
- Clause 244 Provides for the financial year of a cooperative as provided under the rules of a cooperative.

### **Division 9.8: Registers, records and returns**

- Clause 245 Specifies the registers to be kept by cooperatives.
- Clause 246 Specifies the required location of a cooperative’s registers.
- Clause 247 Provides that a cooperative must have certain registers, records and returns available for the inspection.
- Clause 248 Restricts the use of information contained in a cooperative’s registers.
- Clause 249 Requires the giving of notice to the Registrar of the appointment of a director, principal executive officer or secretary of the cooperative.
- Clause 250 Requires a cooperative to file with the Registrar within the required period in each year an annual report containing the matters specified.

Clause 251 Requires a cooperative to provide a list of members at the request of the Registrar.

Clause 252 Allows a register to require from a cooperative a special return on the subject matter and in the form specified by the request of the Registrar.

**Division 9.9: Name and registered office**

Clause 253 Specifies the required components of a cooperative's name.

Clause 254 Allows the use of certain abbreviations in a cooperative's name.

Clause 255 Requires the name of a cooperative to appear on its seal, advertisements and business documents.

Clause 256 Provides for the change of name of a cooperative.

Clause 257 Requires a cooperative to have a registered office.

## PART 10 – FUNDS AND PROPERTY

Part 10 of the Bill deals with the funds and property of cooperatives. Division 1 of this part makes it clear that a cooperative may only obtain finance and accommodation, which includes the obtaining of credit or borrowing or raising money by any means, or give security for the repayment of money as provided by its rules and in accordance with the regulations.

The registrar may give a cooperative directions as to the obtaining, repayment or refinancing of financial accommodation. The Bill provides for deposit taking by cooperatives if the cooperative currently has a deposit-taking power. It is intended that existing cooperatives without a deposit-taking power and all new cooperatives will not be able to accept deposits in view of the movement of financial cooperatives to the Financial Institutions Code.

Cooperatives may obtain financial accommodation by way of debentures from both non-members and members under appropriate disclosure regimes. Part 10 also provides for the registration of charges and matters in relation to receivers and other controllers of property of cooperatives.

### **Division 10.1: Power to raise money**

- Clause 258 Includes a definition of “financial accommodation” for the purposes of this Division.
- Clause 259 Requires fund raising by a cooperative to be in accordance with the Act and its regulations.
- Clause 260 Restricts the ability to take deposits to those cooperatives which were authorised to do so prior to the commencement of this Act.
- Clause 261 Provides that members are not required to see to the application of money provided to the cooperative by way of loan or deposit.
- Clause 262 Empowers the Registrar to give directions to a cooperative in relation to the obtaining by the cooperative of financial accommodation.
- Clause 263 Allows a cooperative to incur subordinated debt as defined in the Act.
- Clause 264 Provides that the provisions of Parts 1.2A, 2L, 6D, and 7.11 of the Corporations Act are adopted and apply to and in respect of debentures of a cooperative, except where an issue of debentures is made by a cooperative solely to members or solely to members and employees.
- Clause 265 Requires a cooperative to provide a disclosure statement for the issuing of debentures, containing the specified matters, where an issue of debentures is solely to members and employees of the cooperative.
- Clause 266 Provides that a debenture of a cooperative cannot be sold or transferred except with the consent of the board and in accordance with the rules of the cooperative.

- Clause 267 Adopts and applies section 124 and 563AAA of the Corporations Act in relation to the reissue of redeemed debentures issued by a cooperative to any of its members.
- Clause 268 Provides that a cooperative may require its members to lend money, with or without security, to the cooperative, in accordance with a proposal approved by special resolution of the cooperative.
- Clause 269 Provides for the rate of interest payable on a compulsory loan made under section 268.

#### **Division 10.2: Charges**

- Clause 270 Gives effect to Schedule 3 (Registration etc of Charges) and specifies the mortgages, charges and encumbrances to which the Schedule does not apply.

#### **Division 10.3: Receivers and other controllers of property of cooperatives**

- Clause 271 Gives effect to Schedule 4 (Receivers, and other controllers, of property of cooperatives).

#### **Division 10.4: Disposal of surplus from activities**

- Clause 272 Allows a cooperative to retain all or any part of its surplus for the benefit of the cooperative.
- Clause 273 Provides that the rules of a cooperative may authorise the cooperative to apply a specified proportion of its surplus for any charitable purpose and that the rules of a trading cooperative may authorise the cooperative to apply a part of its surplus for supporting any activity approved by the cooperative.
- Clause 274 Provides for the distribution by a trading cooperative of surplus or reserves to members.
- Clause 275 Provides for the crediting of a part of a cooperative's surplus to a person who is not a member, but is qualified to be a member, by way of rebate in proportion to the business done by him or her with the cooperative.

#### **Division 10.5: Acquisitions and disposal of assets**

- Clause 276 Provides that a cooperative may do any of the things specified (relating to the acquisition and disposal of assets) providing they are approved by special resolution by a special postal ballot.

## **PART 11 – RESTRICTIONS ON ACQUISITION OF INTERESTS IN TRADING COOPERATIVES**

Part 11 of the Bill deals with restrictions on the acquisition of shares in cooperatives. The provisions apply only to trading cooperatives. Division 1 sets out requirements relating to relevant interests in the voting rights or shares of members.

A relevant interest is not to exceed 20 per cent of the nominal value of the issued share capital of the cooperative. The registrar may increase the maximum percentage in a particular case or approve a special resolution by special postal ballot increasing the maximum percentage. Division 2 of this part places restrictions on offers to purchase shares in a cooperative. Part 11 is designed to ensure that adequate information on matters relating to shares and voting entitlements is available to all members or other concerned persons. The provisions in this Bill do not prevent a cooperative from being taken over. They do, however, ensure that all relevant information relating to such takeovers, including various share or voting entitlements, are made public, thus enabling active members to make a fully informed decision in any particular case.

### **Division 11.1: Restrictions on share and voting interests**

- Clause 277 Requires a person to give notice to a trading cooperative of a relevant interest, or the cessation of a relevant interest, in the right to vote of a member of the cooperative within 5 days of becoming aware that the person has a relevant interest.
- Clause 278 Requires a person to give notice to a cooperative of a substantial share interest, a substantial change in a substantial share interest or a cessation of a substantial share interest, in the cooperative.
- Clause 279 Specifies the requirements for notices under this Division.
- Clause 280 Specifies the maximum permissible level of a relevant interest in shares of a cooperative.
- Clause 281 Provides that shares held in contravention of this Division are declared to be forfeited by the board of the cooperative to the extent necessary to remedy the contravention.
- Clause 282 Specifies the powers of the board of a cooperative in response to a suspected contravention of section 277.
- Clause 283 Specifies the powers of the Supreme Court with respect to a contravention of section 277.
- Clause 284 Requires a cooperative to inform the Registrar of a relevant interest which exceeds the maximum permissible level.
- Clause 285 Requires a cooperative to keep a register of notifiable interests.

- Clause 286 Requires an unlisted company (within the meaning of the Corporations Act) that is a member of a cooperative to furnish to the cooperative a list of the company's shareholders within 28 days after the end of each financial year of the company and within 28 days after a request by the Registrar.
- Clause 287 Provides that an excess share interest does not affect a loan liability of a member.
- Clause 288 Describes the extent of the operation of this Division.
- Clause 289 Allows the Registrar to grant exemptions from the operation of this Division.

### **Division 11.2: Restrictions on certain share offers**

- Clause 290 Specifies the share offers to which this Division applies.
- Clause 291 Specifies the requirements to be satisfied before an offer to which this Division applies can be made.
- Clause 292 Prohibits certain discriminatory offers.
- Clause 293 Provides that offers to which this Division applies must first be submitted to the board of the cooperative.
- Clause 294 Prohibits the public announcement of a proposed takeover involving the conversion of a cooperative to a company where the person making the announcement knows that the announcement is false, is recklessly indifferent as to whether it is true or false, or has no reasonable grounds for believing that the performance of obligations arising from the announcement is possible.
- Clause 295 Specifies additional disclosure requirements for offers involving the conversion of a cooperative to a company.
- Clause 296 Specifies the consequences of an offer to purchase shares in a cooperative made in contravention of this Division.
- Clause 297 Allows the Registrar to grant exemptions from all or specified provisions of this Division.

## **PART 12 – MERGER, TRANSFER OF ENGAGEMENTS, WINDING UP**

Part 12 of the Bill provides for mergers, transfers of engagements, transfers of incorporation, winding up, and appointment of administrators.

### **Division 12.1: Mergers and transfers of engagements**

- Clause 298 Provides that this Division does not apply to a merger or transfer of engagements to which Part 14 (Foreign Cooperatives) applies.
- Clause 299 Provides that any 2 or more cooperatives may consolidate all or any of their assets, liabilities or undertakings by way of merger or transfer of engagements approved under this Division.
- Clause 300 Specifies the requirements which must be complied with before an application can be made under this Division.
- Clause 301 Requires each cooperative to send to each of its members a disclosure statement approved by the Registrar at least 21 days before the ballot papers must be returned by members voting in the special postal ballot required by section 300.
- Clause 302 Provides for the making of an application to the Registrar for approval of a merger or transfer of engagements.
- Clause 303 Provides that the Registrar must approve a merger pursuant to an application under this Division if satisfied of certain specified matters.
- Clause 304 Provides that the Registrar must approve a transfer of engagements pursuant to an application under this Division if satisfied of certain specified matters.
- Clause 305 Provides for a transfer of engagements by direction of the Registrar.

### **Division 12.2: Transfer of registration or incorporation**

- Clause 306 Defines "new body" and "transfer" for the purposes of this Division.
- Clause 307 Provides for an application for transfer of incorporation of a cooperative to one of the bodies corporate specified in the section.
- Clause 308 Specifies the requirements that must be complied with before an application can be made under section 307.
- Clause 309 Provides that a transfer of incorporation under this Division must not impose greater or different liability on the members of the new body who were members of the cooperative.
- Clause 310 Describes the effect of a new certificate of registration or incorporation.

- Clause 311 Provides that on the issue of a certificate of incorporation in respect of a cooperative, the cooperative ceases to be registered as a cooperative under this Act.
- Clause 312 Provides that the new body is the same entity as the body corporate constituted by the cooperative.
- Clause 313 Provides that stamp duty previously paid is to be taken into account when assessing the stamp duty payable on an incorporation or registration pursuant to a transfer under this Division.

### **Division 12.3: Winding up and deregistration**

- Clause 314 Provides that a cooperative may be wound up voluntarily, by the Supreme Court or on a certificate of the Registrar.
- Clause 315 Provides for winding up on a Registrar's certificate only if the necessary grounds for the taking of that action exist, as mentioned in section 338.
- Clause 316 Provides that a cooperative may be deregistered in the same way and in the same circumstances as a company may be deregistered under the Corporations Act.
- Clause 317 Provides that the provisions of Parts 5.4 to 5.7 and Chapter 5A of the Corporations Act apply to the winding up and deregistration of a cooperative subject to specified modifications of the Corporations Act.
- Clause 318 Places certain restrictions on voluntary winding up of a cooperative.
- Clause 319 Specifies when a members' voluntary winding up commences.
- Clause 320 Provides for the distribution of surplus on a winding up of a non-trading cooperative.
- Clause 321 Provides that a vacancy in the office of liquidator (in the case of a voluntary winding up) may be filled by the Registrar.
- Clause 322 Provides for application to the Supreme Court for review of the remuneration of a liquidator.
- Clause 323 Provides for the liability of a member to contribute in a winding up where their membership is cancelled within 2 years of the commencement of the winding up.

#### **Division 12.4: Administration of cooperative- application of the Corporations Act**

Clause 324 Provides that the provisions of Part 5.3A and Division 3 of Part 5.9 of the Corporations Act apply to and in respect of a cooperative as if it were a company.

#### **Division 12.5: Appointment of administrator**

Clause 325 Provides for the appointment of an administrator by the Registrar.

Clause 326 Describes the effect of the appointment of an administrator.

Clause 327 Provides for the termination of appointment of an administrator by the Registrar.

Clause 328 Provides that the expenses of an administration are payable out of the funds of the cooperative.

Clause 329 Provides that an administrator is liable for any loss incurred by the cooperative which is incurred because of any fraud, dishonesty, negligence or wilful failure to comply with the Act, the regulations or the cooperative's rules by the administrator.

Clause 330 Provides the Registrar with additional powers where the Registrar has appointed directors of a cooperative under section 327.

Clause 331 Provides for a stay of proceedings against a cooperative where the Registrar has appointed an administrator to conduct the cooperative's affairs.

Clause 332 Requires an administrator to report to the Registrar if requested to do so by the Registrar.

#### **Division 12.6: Effect of merger, transfer of engagements and transfer of incorporation**

Clause 333 Provides for the application of this Division to a merger of cooperatives.

Clause 334 Provides for the application of this Division to a transfer of engagements of a cooperative to another cooperative under Division 12.1.

Clause 335 Provides for the application of this Division to a transfer of incorporation under Division 12.2.

Clause 336 Describes the effect of an event to which this Division applies (as provided for in sections 333, 334 and 335) on the property, liabilities etc of the relevant bodies.

Clause 337 Provides that certain instruments are not liable for stamp duty or to any fee payable under any law for registration.

**Division 12.7: Miscellaneous**

- Clause 338 Specifies the grounds for a winding up, a transfer of engagements and the appointment of an administrator.
- Clause 339 Provides that the provisions of Part 5.7B of the Corporations Act apply to a cooperative.

## **PART 13 – ARRANGEMENTS AND RECONSTRUCTIONS**

Part 13 provides for arrangements and reconstructions.

### **Division 13.1: General requirements**

- Clause 340 Specifies the requirements for a binding compromise or arrangement.
- Clause 341 Provides for a meeting of creditors as ordered on application by the Supreme Court.
- Clause 342 Provides for the giving of notice to the Registrar of the hearing of an application for an order under this Division and is given opportunity to make submissions to the Supreme Court.
- Clause 343 Provides that the results of 2 or more meetings of creditors to be held in relation to a proposed compromise or arrangement are to be aggregated.
- Clause 344 Specifies persons who are disqualified from administering a compromise or arrangement approved under this Act.
- Clause 345 Provides for the application of certain provisions of Schedule 4 to this Act, and the application of section 536 of the Corporations Act, to persons appointed to administer a compromise or arrangement.
- Clause 346 Requires a cooperative to ensure that a copy of an order of the Supreme Court approving a compromise or arrangement is annexed to each future copy of the cooperative's rules.
- Clause 347 Requires the directors of a cooperative in respect of which a compromise or arrangement has been proposed to instruct that certain reports be prepared and made available.
- Clause 348 Empowers the Supreme Court to restrain further proceedings in respect of a cooperative that has proposed a compromise or arrangement with any of its creditors.
- Clause 349 Provides that the Supreme Court need not approve a compromise or arrangement unless it is satisfied of certain matters.

### **Division 13.2: Explanatory statements**

- Clause 350 Provides that an explanatory statement, containing the specified information, must be sent with every notice to creditors convening the court-ordered meeting, and to members for the purpose of the conduct of the special postal ballot.
- Clause 351 Specifies further requirements for the explanatory statement referred to in section 350.

- Clause 352 Provides that a contravention of this Division constitutes an offence.
- Clause 353 Specifies provisions for facilitating reconstructions and mergers.

### **Division 13.3: Acquisition of shares of dissenting shareholders**

- Clause 354 Defines "dissenting shareholder" and "excluded shares" for the purposes of this Division.
- Clause 355 Describes the schemes and contracts to which this Division applies.
- Clause 356 Provides for the acquisition of shares pursuant to a compulsory acquisition notice sent to a dissenting shareholder.
- Clause 357 Specifies certain restrictions to the application of section 356 where the nominal value of excluded shares exceeds 10% of the aggregate nominal value of all the shares to be transferred under the scheme.
- Clause 358 Provides that remaining shareholders in the transferor cooperative may require the transferee to acquire the holders' shares.
- Clause 359 Provides for the transfer of shares pursuant to a compulsory acquisition.
- Clause 360 Provides for the disposal of the consideration received for shares compulsorily acquired by the transferor.

### **Division 13.4: Miscellaneous**

- Clause 361 Requires a person appointed to administer a compromise or arrangement to give written notice to the Registrar of his/her appointment.
- Clause 362 Empowers the Supreme Court, when an application is made to it under this Part, to require certain reports concerning the proposed compromise or arrangement to be given to it.
- Clause 363 Describes the effect of an out-of-jurisdiction compromise or arrangement.
- Clause 364 Requires the jurisdiction of the Supreme Court under this Part to be exercised in harmony with its jurisdiction under the Corporations Act.
- Clause 365 Allows the Registrar (or his/her representative) to appear and be heard in any proceedings before the Supreme Court under this Part.

## **PART 14 – FOREIGN COOPERATIVES**

Part 14 of the Bill introduces new provisions in relation to foreign cooperatives. A foreign cooperative may be either a participating cooperative or from a non-participating jurisdiction. A participating cooperative is a cooperative registered under a cooperatives law. It is intended

that a cooperatives law, for the purposes of this part, is a law that has been enacted that contains the core consistent provisions of this Bill. The core consistent provisions are those that are subject to an intergovernmental arrangement. Non-participating jurisdictions include overseas jurisdictions to enable registration of a cooperative from outside Australia for the first time. All foreign cooperatives registered under this part are to be subject to at least the prescribed core consistent provisions. Provision has also been included for a cooperative and a foreign cooperative to consolidate all or any of their assets, liabilities and undertakings by way of merger or transfer of engagements.

### **Division 14.1: Introductory**

- Clause 366 Contains a number of definitions for the purposes of this Part.
- Clause 367 Provides that the Minister may make a declaration that a law of a State is a cooperatives law for this Part by a notifiable instrument.

### **Division 14.2: Registration of foreign cooperatives**

- Clause 368 Provides that a foreign cooperative must not carry on business in the Territory unless it is registered under this Part.
- Clause 369 Specifies what constitutes carrying on business.
- Clause 370 Provides for an application for registration as a foreign cooperative by a participating cooperative in the Territory.
- Clause 371 Provides for an application for registration as a foreign cooperative by a non-participating cooperative in the Territory.
- Clause 372 Provides that a non-participating cooperative is not eligible for registration unless the Registrar is satisfied as to certain matters in relation to the cooperative's rules.
- Clause 373 Provides that a foreign cooperative is eligible for registration if the name it proposes to use in the Territory is not likely to be confused with the name of a body corporate or a registered Territory business name.
- Clause 374 Requires the Registrar to register a foreign cooperative if satisfied that it is eligible for registration.
- Clause 375 Applies the Act and regulations to foreign cooperatives as if they were cooperatives.
- Clause 376 Specifies certain changes affecting a foreign cooperative of which the Registrar must be notified within 28 days of the alteration.
- Clause 377 Requires the lodgement by a foreign cooperative of a balance sheet and any accompanying documents within 6 months (or such longer period as allowed by the Registrar) of the end of each of its financial years.

- Clause 378 Requires a foreign cooperative to notify the Registrar within 7 days of ceasing to carry on business as a cooperative in the Territory.
- Clause 379 Provides for the issue of a certificate of compliance by the Registrar to a cooperative that proposes to apply to be registered as a foreign cooperative in another participating State.

### **Division 14.3: Mergers and transfers of engagements**

- Clause 380 Defines "appropriate Registrar", "Territory cooperative" and "Territory registrar" for the purposes of this Division.
- Clause 381 Provides for the merger of or transfer of engagements between a Territory cooperative and a participating cooperative or according to certain requirements a merger of or transfer of engagements between a Territory cooperative and a non-participating cooperative.
- Clause 382 Specifies the requirements that must be complied with before an application can be made under this Division.
- Clause 383 Requires that a disclosure statement, containing the specified matters, be sent to each member by each cooperative prior to the passing of the special resolution approving the merger or transfer of engagements.
- Clause 384 Provides for the making of an application to the Territory Registrar for approval of a merger or transfer of engagements under this Division.
- Clause 385 Provides for the approval of a merger under this Division by the Territory Registrar.
- Clause 386 Provides for the approval of a transfer of engagements under this Division by the Territory Registrar.
- Clause 387 Describes the effect of a merger or transfer of engagements under this Division.
- Clause 388 Provides that this Division applies instead of Division 1 of Part 12 of the Act.

## **PART 15 – SUPERVISION AND PROTECTION OF COOPERATIVES**

Part 15 deals with the supervision and inspection of cooperatives and the holding of inquiries into cooperatives. In general terms the provisions dealing with inspection and supervision of cooperatives have been strengthened to ensure that the general interests of members and the public are better protected

### **Division 15.1: Supervision and inspection**

- Clause 389 Contains certain definitions for the purposes of this Part.
- Clause 390 Provides that, in this Part, "cooperative" includes subsidiaries, foreign cooperatives and cooperative ventures.
- Clause 391 Provides for the appointment of inspectors by the Registrar for the purposes of the Act.
- Clause 392 Provides that the Registrar and investigators have and may exercise all the functions of an inspector.
- Clause 393 Requires the Registrar to provide each inspector with an identity card, which must be produced by the inspector on request.
- Clause 394 Provides that inspectors may require certain persons to appear, answer questions and produce documents.
- Clause 395 Specifies inspectors' powers of entry to certain premises.
- Clause 396 Specifies the powers of inspectors on premises that they are authorised to enter.
- Clause 397 Specifies the functions of inspectors in relation to taking possession or making copies of relevant documents found on the premises.
- Clause 398 Provides that failure to comply with any requirement of an inspector constitutes an offence.
- Clause 399 Provides that a person is not excused from making a statement on the grounds that the statement might tend to incriminate him or her, but the statement is not admissible against him or her in criminal proceedings other than proceedings under this Division.
- Clause 400 Provides for the issuing of search warrants by a magistrate to inspectors.
- Clause 401 Provides for the admissibility into evidence of copies or extracts of records relating to the affairs of a cooperative.
- Clause 402 Relates to documents containing privileged legal communications, and allows a legal practitioner to refuse to comply with a requirement under section 394 or 397 under certain circumstances. It also stipulates circumstances where a legal practitioner is required to comply with such requirements.

Clause 403 Provides for the giving of assistance by the Police to inspectors.

### **Division 15.2: Inquiries**

Clause 404 Contains definitions of "affairs", "costs" and "involved person" for the purposes of this Division.

Clause 405 Provides for the appointment of investigators.

Clause 406 Specifies the powers of investigators.

Clause 407 Provides for the examination of "involved persons" by investigators.

Clause 408 Provides for the entitlement of legal professional privilege of an involved person who is a legal practitioner.

Clause 409 Creates a number of offences by involved persons.

Clause 410 Creates a number of offences relating to documents.

Clause 411 Provides for the admissibility into evidence of a record of an examination made under section 407 but this does not preclude the admission of other written or oral evidence.

Clause 412 Provides for interim and final reports to be made by an investigator to the Registrar.

Clause 413 Provides for the institution of legal proceedings following an inquiry under this Division.

Clause 414 Provides for the admissibility into evidence of an investigator's report.

Clause 415 Provides that the payment of the costs of an inquiry under this Division be paid out of money appropriated by the Legislative Assembly.

### **Division 15.3: Prevention of fraud and certain other conduct**

Clause 416 Prohibits the falsification of the records of a cooperative.

Clause 417 Prohibits the obtaining of any property of a cooperative by fraud or misappropriation of the assets of a cooperative.

Clause 418 Prohibits the offering or paying of a commission, fee or reward to an officer of a cooperative in connection with a transaction of the cooperative.

Clause 419 Prohibits an officer from accepting such commission, fee or reward.

Clause 420 Prohibits the making of false statements in or in relation to any loan application, request or demand for money made to or of any cooperative.

#### **Division 15.4: Miscellaneous powers of the Registrar**

- Clause 421 Provides for the calling by the Registrar of a special meeting or the holding of an inquiry, on the application of a majority of members of the board or not less than one third of the members of a cooperative.
- Clause 422 Provides for the holding of a special meeting by the Registrar.
- Clause 423 Provides for the payment of expenses of a special meeting called or an inquiry held under this Division.
- Clause 424 Allows the Registrar, without any application, to hold a special inquiry into a cooperative.
- Clause 425 Provides for the calling by the Registrar of a special meeting following an inquiry under this Division.
- Clause 426 Allows the Registrar to require information and evidence from an applicant in relation to any application for registration or approval of any rule or document under the Act.
- Clause 427 Allows the Registrar to extend or abridge any time for doing anything required to be done by a cooperative under the Act, the regulations or the rules of a cooperative.
- Clause 428 Empowers the Registrar to intervene in any proceedings relating to a matter arising under the Act or the regulations.

## **PART 16 – ADMINISTRATION OF ACT**

Part 16 deals with the administration of this Bill and the specific functions of the registrar. These provisions form part of the core consistent provisions.

### **Division 16.1: The Registrar**

- Clause 429 Requires the Minister to appoint a Registrar of Cooperatives.
- Clause 430 Specifies the Registrar's functions.
- Clause 431 Provides for the appointment of a Deputy Registrar and Assistant Registrars as are necessary for the purposes of the Act.
- Clause 432 Allows the Registrar to delegate any of his/her functions including this power of delegation.
- Clause 433 Establishes a Register of Cooperatives.
- Clause 434 Requires the Registrar to keep certain registers in the form and contain the particulars the Registrar thinks fit.
- Clause 435 Provides for the disposal of records by the Registrar.
- Clause 436 Provides for the inspection of the Register and the obtaining of copies of documents kept by the Registrar on payment of a prescribed fee.
- Clause 437 Allows the Registrar to indicate to an applicant for an approval under the Act that the approval is considered to have been granted at the end of a specified period unless the applicant is otherwise notified.
- Clause 438 Provides that a document is not considered to be lodged unless all required information is provided and the fee (if any) paid.
- Clause 439 Provides for lodgment of documents by facsimile or electronic transmission.
- Clause 440 Empowers the Registrar to reject or refuse to register documents under certain circumstances.

### **Division 16.2: Evidence**

- Clause 441 Provides that certificates of registration issued under the Act are conclusive evidence of incorporation and that all requirements for registration have been complied with.
- Clause 442 Provides for the issue of certificates by the Registrar certifying that certain matters have or have not been done or that certain requirements of the Act have or have not been complied with.
- Clause 443 Provides for the admissibility into evidence of records kept by a cooperative.

- Clause 444 Provides that minutes purporting to be minutes of the business transacted at a meeting are evidence that the business recorded, was transacted at the meeting and that the meeting was duly convened and held.
- Clause 445 Provides that official certificates and other documents signed by or bearing the seal of the Registrar are to be received in evidence without further proof.
- Clause 446 Provides that judicial notice is to be taken of the Registrar's signature.
- Clause 447 Provides that a copy of a cooperative's rules verified by statutory declaration by the secretary of the cooperative to be a true copy of the rules is evidence of the rules.
- Clause 448 Provides that the registers of a cooperative are evidence of the particulars inserted therein.

## PART 17 – OFFENCES AND PROCEEDINGS

Part 17 provides for offences and proceedings.

- Clause 449 Provides that officers and directors involved in a contravention of the Act or the regulations by a cooperative are taken to have contravened the same provision.
- Clause 450 Provides that notice is to be given to each member of a cooperative of a conviction for an offence against this Act or the regulations by the cooperative or an officer within 28 days after the conviction is recorded.
- Clause 451 Imposes obligations of confidentiality, with specified exceptions, on persons involved in the administration of this or the former Act.
- Clause 452 Provides that the making of false or misleading statements in a document required for the purposes of the Act or lodged with the Registrar is an offence.
- Clause 453 Defines the term “exempt body” and imposes penalties on persons who trade or carry on business under any name or title including the word “cooperative” or “co-operative” or “co-op” or hold out in any manner that its trade or business is cooperative in nature.
- Clause 454 Creates a further offence for a continuing failure to do a required act under provisions of the Act.
- Clause 455 Provides that a contravention by a cooperative of the Act, the regulations or its rules in making, guaranteeing or raising any loan or receiving any deposit does not affect the civil rights and liabilities of the cooperative or any person in the recovery of the loan or deposit affected, but the money becomes immediately payable.
- Clause 456 Provides for the issuing of injunctions by the Supreme Court on the application of the Registrar or an affected person on certain specified grounds.
- Clause 457 Provides that proceedings for recovery of fines or penalties imposed under the rules of a cooperative may be taken only by the cooperative.

## **PART 18 – REVIEW OF REGISTRAR’S DECISIONS**

Part 18 deals with general matters in connection with the administration of the Bill.

- Clause 458 Provides for the definitions that relate to this Part. In particular the clause specifies those decisions of the Registrar as stated in the Act which are reviewable.
- Clause 459 Specifies that the Registrar must give written notice of a reviewable decision to people whose interests are affected by the decisions of the Registrar.
- Clause 460 Provides that a person whose interest are affected by a reviewable decision of the Registrar may apply to the Administrative Appeals Tribunal for a review of the decision.

## PART 19 – MISCELLANEOUS

- Clause 461 Provides an exemption from stamp duty in respect of certificates of incorporation of cooperatives and share certificates and other instruments issued or executed in connection with the share capital of cooperatives.
- Clause 462 Requires the Registrar to register a dissolution of a cooperative and cancel the registration of the cooperative.
- Clause 463 Provides for the service of documents on a cooperative.
- Clause 464 Provides for the service of documents on a member of a cooperative.
- Clause 465 Provides for the reciprocal exchange of information between State and Territory Registrars.
- Clause 466 Requires translations of documents that are not in English that are required to be furnished or lodged.
- Clause 467 Enables the Minister to determine fees for this Act. A determination made under this section is a disallowable instrument under the *Legislation Act 2001*.
- Clause 468 Allows the Registrar to approve forms for use under the Act.
- Clause 469 Provides that the Minister may make guidelines about the exercise of the Registrar's functions.
- Clause 470 States that in an Act or instrument other than this Act a reference to the *Cooperative Societies Act 1939* is taken to be a reference to this Act and a reference to a society or cooperative society registered under that Act is taken to be taken to be a reference to a cooperative registered under this Act.
- Clause 471 Provides for the making of regulations by the Executive under the Act.

## **PART 20 – REPEAL AND TRANSITIONAL**

- Clause 472 Repeals the *Cooperative Societies Act 1939*.
- Clause 473 Gives effect to Schedule 5 (Transitional).
- Clause 473 Provides that regulations may provide for transitional matters on the commencement of this Act.
- Clause 474 Enables the Regulations to modify this part or schedule 5 to make provision with respect to any matter that, in the Executive’s opinion, is not, or is not adequately, dealt with in the part or schedule.
- Clause 475 Provides for sunseting after year 1 after the commencement of this section for the following sections 468, 470 and this section and clauses 1 to 5, 7, 9, 10 and 12 to 14 of Schedule 5.
- Clause 472 Provides for sunseting in that this Part and Schedule 5 (so far as they remain in force) expire 2 years after the commencement of this section.

## **SCHEDULE 1**

### **Relevant Interests, associates, related bodies**

In relation to the dictionary of this Act, Schedule 1 defines and deals with the relevant interests, associates and related bodies with respect to the rights, meaning and powers of relevant interests, associates and related bodies.

## **SCHEDULE 2**

In relation to section 102 of the Act, Schedule 2 deals with matters which the rules of a cooperative must make provision for.

## **SCHEDULE 3**

In respect to section 270 of the Act, Schedule 3 deals with the notice, registration of charges, priority rules and other matters related to charges arranged by cooperatives.

## **SCHEDULE 4**

In respect to sections 271 and 345 of the Act, Schedule 4 deals with the powers and responsibilities of receivers and other controllers of property of cooperatives.

## **SCHEDULE 5**

In respect to section 473 of the Act, Schedule 5 gives effect to saving and transitional aspects of the Cooperatives Act. There is specific coverage of the treatment of existing cooperatives and societies started to be formed prior to the commencement of this Act.

### **Dictionary**

In respect to section 4 the Act contains a Dictionary providing definitions of key terms for interpreting the legislation.