



ACT DEPARTMENT OF JUSTICE
& COMMUNITY SAFETY

2003

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

COOPERATIVE REGULATIONS 2003

SUBORDINATE LAW SL2003-22

EXPLANATORY STATEMENT

Circulated by authority of the
Attorney General
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COOPERATIVES REGULATIONS 2003**SUBORDINATE LAW 2003 NO 22****Outline**

The *Cooperatives Act 2003* (the Act) is intended to:

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

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 Cooperatives Regulations 2003 (the Regulations) give effect to the substantive legislation. They are designed to allow it operate as effectively and efficiently as possible. The regulations supplement the new legislation to provide a clear and coherent framework for the formation, registration and management of cooperatives. They are also designed to enable flexibility in the operation and development of cooperatives.

The regulations have been prepared to ensure consistency with the Nationally Consistent Cooperative Legislation process and as such are aligned (to as much extent as is practical) with the Co-operatives Regulations that are currently in force in Queensland.

The adoption of a uniform national approach to legislation and regulations dealing with cooperative societies overcomes the lack of consistency between the legislation and regulations 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.

Clause Notes

Regulation 1 – Name of regulations – provides that the regulations are the *Cooperatives Regulations 2003*.

Regulation 2 – Commencement – provides that the regulations commence on the day after they are notified on the Legislation Register.

Regulation 3 – Dictionary – provides that the dictionary is part of the regulations.

Regulation 4 – Notes – provides that the notes included in the regulations are explanatory and do not form part of the regulations.

Regulation 5 – Offences against Regulations – application of Criminal Code etc – provides that other legislation applies in regard to the offences against this Regulation. For example chapter 2 of the Criminal Code applies to offences in this Act. This clause increases awareness of the Criminal Code and alerts the reader to the fact that chapter 2 of the Criminal Code, setting out the general principles of criminal responsibility, applies to these Regulations.

Regulation 6 – Content of rules – Act, s102 – provides that the rules of a cooperative that has share capital must state the minimum number of shares to which a member of the cooperative must subscribe.

Regulation 7 – Maximum fine cooperative may impose on member – Act, s103(6) - provides that for the purposes of section 103 of the Act, the maximum fine that a cooperative may impose on a member is:

- 10 penalty units for a trading cooperative; and
- 1 penalty unit for a non-trading cooperative.

A penalty unit is defined in the *Legislation Act 2001* as \$100.

Regulation 8 — Deciding primary activities – Act, s119(2)(c) – provides that for the purposes of section 119 of the Act, the following factors are relevant in determining the primary activities of a cooperative:

- if the cooperative actually carries on its primary activities; and
- whether the cooperative carries on the provision of a taxi radio network.

Regulation 9 – Deciding if a contribution is significant – Act, s119(3) – provides that for the purposes of section 119 of the Act, the following factors are relevant to determining whether an activity makes a significant contribution to the business of a cooperative:

- if it contribution 10% to the cooperatives turnover, income, expenses or surplus; or
- if the registrar believes that the business of the cooperative would reduce by over 10% if the activity was not conducted.

Regulation 10 – How to notify member whose whereabouts unknown of memberships cancellation – Act, s 131 (1) – provides that the board of a cooperative may give notice of its intention to cancel the membership of a member whose whereabouts are unknown by publishing a notice in a newspaper circulating in the ACT.

Regulation 11 – Particulars to include in register of cancelled memberships – Act, s136(2) – provides that the items specified in Schedule 1, clause 5 are prescribed. Clause 5 of Schedule 1 provides the detail of what must be included in a register of cancelled memberships.

Regulation 12– Person who may make a valuation for bonus share issue – Act, s155(c) – provides that a person who has been valuing assets of the kind concerned for at least five years can make a valuation for a bonus share issue.

Regulation 13– Postal ballots – Act, s199(1) – provides that it is an offence for a person to conduct a postal ballot other than in accordance with schedule 2. The maximum penalty for this offence is 10 penalty units.

This is a strict liability offence. Section 23 of the Criminal Code provides that if a law that creates an offence provides that the offence is one of strict liability, there are no fault elements for any of the physical elements of the offence. Essentially this means that conduct alone is sufficient to make the defendant culpable.

However, under the Criminal Code, all strict liability offences will have a specific defence of mistake of fact. Clause 23(3) of the Criminal Code makes it clear that other defences may still be available for use in strict liability offences.

Regulation 14– Certification of date of release from prison – Act, s214(5) – provides that in a proceeding under section 214 a certificate from a prescribed entity can provide a certificate stating that a person was released from prison on a stated date, which is, in the absence of evidence to the contrary, proof that the person was released from prison on that date. The prescribed entities include the Director of Corrective Services Tasmania and the Corrective Services Commission of NSW.

Regulation 15– Registers to be kept by cooperatives - Act, s245 – provides that a cooperative must keep a register of fixed assets, subordinated debt and a register of people who have provided financial accommodation that is a subordinated debt.

A *subordinated debt* is a debt incurred under an agreement under which, in the event of the winding-up of the cooperative, any claim of the creditor against the cooperative in relation to the debt is to rank in priority after creditors but before the claims of members to repayment of any share capital in the cooperative.

The registers must contain the particulars prescribed in schedule 1.

Regulation 16– Registers to be open for inspection - Act, s247(1)(g) – provides that the registers that a cooperative must keep are to be open for inspection by members

Regulation 17– Maximum fee for copy – Act, s247 (1) (g) – provides the maximum fee that can be charged for copies of documents.

Regulation 18– Documents to be available for inspection – Act, s247 (7) – prescribes the documents that a cooperative must have available for inspection.

Regulation 19– Particulars of appointment etc to be included in notice – Act, s249 (2) (b) – prescribes the content of notices that must be given when a person is appointed or ceases to hold an office of the cooperative.

Regulation 20 - Particulars to be included in annual report – Act, s 250 (1) (e) - prescribes what must be included in a cooperative’s annual report.

Regulation 21 – Advertising change of name – Act 256 (2) – provides that a cooperative must advertise any change of name within a newspaper circulating in the ACT.

Regulation 22 – Restriction on obtaining financial accommodation – Act, s 259 – prescribes that it is an offence for a deposit-taking cooperative to obtain financial accommodation from anyone but its’ members and employees.

Regulation 23 – Maximum term of compulsory loan by member – Act s 268 (2) – provides the maximum term of a compulsory loan by a member.

Regulation 24 – Maximum amount of *limited dividend* – Act, s274 (3) – prescribes the maximum amount of limited dividend that a cooperative may pay.

Regulation 25 – Requirements for notices under Act, div 11.1 – Act s 279 - provides what must be included in notices given in respect of acquisition of interests in trading cooperatives.

Regulation 26 – Maximum fee for inspection of register – Act, s 285 (4) – provides the fee to be charged for inspection of the register of notifiable interests

Regulation 27 – Information to be included in draft explanatory statement – Act, s 341 (2) (b) (i) – provides what must be included in a draft explanatory statement provided by a cooperative in respect of a compromise or arrangement.

Regulation 28 – Information to be included in explanatory statement – Act, s 341 (2) (b) (i) – provides what must be included in an explanatory statement provided by a cooperative in respect of a compromise or arrangement is prescribed in Schedule 3 of the regulations.

Regulation 29 – Particulars to be included in notice to remaining shareholders – Act, s 357 (1) (a) – prescribes the particulars that must be included in a notice to remaining shareholders following a compromise or arrangement being entered into.

Regulation 30 – Corresponding laws – Act, s 362 (2) – provides a list of laws of other jurisdictions that correspond to section 340 of the *Cooperatives Act 2002*.

Regulation 31 – How to verify statements – Act, s 369 (2) (d) – provides the method by which a statement by a foreign participating cooperative must be verified.

Regulation 32 – Documents to accompany application – Act, s 369 (2) (e) – prescribes the documents and information that must accompany and application for registration by a foreign participating cooperative.

Regulation 33 – How to verify statements – Act, s 370 (2) (b) – provides the method by which a statement by a foreign non-participating cooperative must be verified.

Regulation 34 – Documents etc to accompany application for registration – Act, s 370 (2) (c) – prescribes the documents and information that must accompany and application for registration by a foreign non-participating cooperative.

Regulation 35 – Application of Act to foreign cooperatives – Act 374 – provides that certain provisions of the Act apply to participating cooperatives and that other particular provisions apply to non-participating cooperatives.

Regulation 36 – Documents to accompany particulars of notifiable change – Act 375 (1) – prescribes the documents that must accompany particulars of a notifiable change by a foreign cooperative.

Regulation 37 – Provision of Act to be complied with – Act, s 378 (1) – provides the provisions of the Act that a foreign cooperative proposing to register must comply with.

Regulation 38 – Documents to be given to cooperative – Act, s 378 (3) – prescribes the documents that must be given to a cooperative proposing to register as a foreign cooperative.

Regulation 39 – Allowances etc payable to involved person attending for examination – Act, s 406 (5) – provides the allowances and expenses that are payable to a person attending an examination.

Regulation 40 – Prescribed documents – Act, s 435 (1) (b) – prescribes the documents kept by the registrar of cooperatives that may not be inspected.

Regulation 41 – Application of Act, s 407 and s 408 – prescribes that the sections of the Act dealing with examination of involved persons and client legal privilege of involved persons who are also lawyers apply to regulation 39 (with certain modifications).

Regulation 42 – Extension of time by the registrar – provides that the registrar may extend the time for something that is to be done under the Act and Regulations (or notices under the Act and Regulations).

Regulation 43 – Exclusions – holders of prescribed offices – Act, sch 1, cl 19 – provides that the offices detailed in schedule 5 of the regulations are excluded from the being allowed a vote or a proxy, where they have that vote or proxy by virtue of the office they hold.

Regulation 44 – Laws for registration of securities – Act, sch 3, cl 8 – provides the laws that are applicable to a reference in the Act to *a lien or charge on a crop, a lien or charge on wool or a stock mortgage* includes a reference to a security (however described) that is registrable under a law of a State or Territory.

Regulation 45 – Inspection of register of charges – Act, sch 3, cl 41 (3) (b) – prescribes the amount payable for the inspection of a cooperative's register.

Regulation 46 – Maximum fee for copy – Act, sch 3, cl 41 (5) (a) – prescribes the maximum amount payable for a copy of the register of charges or for part of the register.

Regulation 47 – Interpretation of applied Corporations Act provisions – provides definitions of ‘court’ and ‘prescribed form’ in the context of the provisions of the Corporations Act that are applied by the *Cooperatives Act 2002* or these regulations.

Schedule 1 – Particulars to be included in registers – provides for particulars to be included in the various registers prescribed by the Act.

Schedule 2 – Postal Ballots – provides for details of the procedures to be followed in conducting postal ballots.

Schedule 3 – Information for draft explanatory statements and explanatory statements – provides details of the information which must be included in draft explanatory statements and explanatory statements with regard to compromise or arrangements entered into by a cooperative.

Schedule 4 – Provisions of Act and regulations applying to foreign cooperatives – lists the provisions of the Act that apply (respectively) to participating and non-participating foreign cooperatives.

Schedule 5 – Holders of prescribed offices – lists the offices that are excluded from the being allowed a vote or a proxy, where they have that vote or proxy by virtue of the office they hold.