



Australian Capital Territory

Cooperatives Regulations 2003

Subordinate Law SL2003-22

The Australian Capital Territory Executive makes the following regulations under the *Cooperatives Act 2002*.

Dated 3 July 2003.

JON STANHOPE
Minister

TED QUINLAN
Minister



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Cooperatives Act 2002

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Part 1 Preliminary

1 Name of regulations

These regulations are the *Cooperatives Regulations 2003*.

2 Commencement

These regulations commence on the day after their notification day.

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

3 Dictionary

The dictionary at the end of these regulations is part of these regulations.

Note The dictionary at the end of these regulations defines certain terms used in these regulations, and includes references (*signpost definitions*) to other terms defined elsewhere in these regulations.

For example, the signpost definition '*family member*, for schedule 3—see schedule 3, clause 1.' means that the term '*family member*' is defined for that schedule in that clause.

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

4 Notes

A note included in these regulations is explanatory and is not part of these regulations.

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

5 Offences against regulations—application of Criminal Code etc

Other legislation applies in relation to offences against these regulations.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against these regulations (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Part 2 Rules

6 Content of rules—Act, s 102

The rules of a cooperative with a share capital must provide for the minimum number of shares to which a member of the cooperative must subscribe.

7 Maximum fine cooperative may impose on member—Act, s 103 (6)

The following amounts are prescribed:

- (a) for a trading cooperative—10 penalty units;
- (b) for a non-trading cooperative—1 penalty unit.

Part 3 Active membership

8 Deciding primary activities—Act, s 119 (2) (c)

The following factors and considerations are prescribed:

- (a) whether the cooperative actually carries on its primary activities;
- (b) for a cooperative whose activities include the provision of a taxi radio network—whether the cooperative actually carries on that activity.

9 Deciding if contribution significant—Act, s 119 (3)

An activity makes a significant contribution to the business of a cooperative—

- (a) if it contributes at least 10% of the cooperative's—
 - (i) turnover; or
 - (ii) income; or
 - (iii) expenses; or
 - (iv) surplus; or
- (b) if, in the registrar's opinion, failure by the cooperative to conduct the activity would reduce the business conducted by the cooperative by more than 10%.

10 How to notify member whose whereabouts unknown of membership cancellation—Act, s 131 (1)

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.

11 Particulars to include in register of cancelled memberships— Act, s 136 (2)

The particulars mentioned in schedule 1, clause 5 are prescribed.

Part 4 Shares

12 Person who may make valuation for bonus share issue— Act, s 155 (c)

A person who has been engaged in valuing assets of the kind concerned for, or for periods totalling, at least 5 years is a prescribed person.

Part 5 **Voting and meetings**

13 **Postal ballots—Act, s 199 (1)**

- (1) A postal ballot must be conducted in accordance with schedule 2.
- (2) A cooperative that holds a postal ballot must ensure that the ballot is conducted in accordance with schedule 2.

Maximum penalty (subregulation (2)): 10 penalty units.

Part 6 Management and administration of cooperatives

14 Certification of date of release from prison—Act, s 214 (5)

The following entities are prescribed:

- (a) for a person released from prison in New South Wales—the Corrective Services Commission of New South Wales;
- (b) for a person released from prison in Victoria—the governor of the prison in Victoria that had legal custody of the person on the person's release;
- (c) for a person released from prison in Queensland—the manager of the prison in Queensland that had legal custody of the person on the person's release;
- (d) for a person released from prison in Western Australia—the Permanent Head of the Department of Corrective Services of Western Australia;
- (e) for a person released from prison in South Australia—the Chief Executive of the Department for Correctional Services of South Australia;
- (f) for a person released from prison in Tasmania—the Director of Corrective Services Tasmania;
- (g) for a person released from prison in the Northern Territory—the Director of Correctional Services of the Northern Territory.

15 Registers to be kept by cooperatives—Act, s 245 (1) (g)

- (1) A cooperative must keep—
 - (a) a register of fixed assets; and
 - (b) a register of subordinated debt; and

- (c) a register of names of people who have provided to the cooperative financial accommodation that is subordinated debt.
- (2) The registers required to be kept under the Act or these regulations must contain the particulars mentioned in schedule 1.
- (3) A register may—
 - (a) be in written or electronic form; and
 - (b) include any document written in English in which the required particulars are recorded.

16 Registers to be open for inspection—Act, s 247 (1) (g)

The registers mentioned in the Act, section 245 (1) (b), (c), (e) and (f) must be open for inspection by members.

17 Maximum fee for copy—Act, s 247 (5)

The amounts prescribed are—

- (a) \$5 for the first page; and
- (b) \$1 for each additional page.

18 Documents to be available for inspection—Act, s 247 (7)

The following documents are prescribed:

- (a) a copy of the cooperative's rules;
- (b) a copy of the last annual report of the cooperative given to the registrar under the Act, section 250 (Annual report to be filed with registrar).

Note For the latest republication of the Act and these regulations, see www.legislation.act.gov.au.

19 Particulars of appointment etc to be included in notices—Act, s 249 (2) (b)

The following particulars are prescribed:

- (a) the name of the cooperative or subsidiary;
- (b) the name and position of the person giving the notice;
- (c) for a person appointed—
 - (i) the person's full name; and
 - (ii) any former names; and
 - (iii) the person's full residential address; and
 - (iv) the person's date and place of birth; and
 - (v) the office the person held; and
 - (vi) the date the person was appointed to the office;
- (d) for a person ceasing to hold office—
 - (i) the person's full name; and
 - (ii) the person's date and place of birth; and
 - (iii) the office the person held; and
 - (iv) the date the person ceased to hold the office.

20 Particulars to be included in annual report—Acts 250 (1) (e)

The following particulars are prescribed:

- (a) the name of the cooperative;
- (b) the address of—
 - (i) the cooperative's registered office; and
 - (ii) the cooperative's principal place of business;
- (c) the name, address and position of the person sending the annual report to the registrar;
- (d) the date of the report;

- (e) the number of persons employed full-time and part-time by the cooperative at the end of the relevant financial year;
- (f) the number of persons who performed voluntary services for the cooperative in the relevant financial year;
- (g) the number of members in the cooperative at the end of the relevant financial year;
- (h) the number of shares forfeited under the Act, part 6 in the relevant financial year;
- (i) the number of memberships cancelled under the Act, part 6 in the relevant financial year;
- (j) the number and class of shares issued to members during the relevant financial year;
- (k) the date of the annual general meeting.

21 Advertising change of name—Act, s 256 (2)

A change of name must be advertised in at least 1 newspaper circulating in the ACT within 28 days after the day the registrar registers the change of name.

Part 7 Funds and property

22 Restriction on obtaining financial accommodation—Act, s 259

- (1) A deposit-taking cooperative must not obtain financial accommodation by accepting deposits of money from people other than its members and employees.

Maximum penalty: 10 penalty units.

- (2) An offence against subregulation (1) is a strict liability offence.
- (3) Subregulation (1) does not prevent a cooperative from accepting deposits of money from a person who had money deposited with the cooperative immediately before the commencement of this regulation.
- (4) Subregulation (3) and this subregulation expire 3 years after the day they commence.

23 Maximum term of compulsory loan by member—Act, s 268 (2)

The prescribed term is 10 years.

24 Maximum amount of *limited dividend*—Act, s 274 (3)

The prescribed amount is 10% more than the maximum rate of the nominal value of interest payable on a Commonwealth Bank 5-year term deposit of \$100 000 offered during the relevant financial year.

Part 8

Restrictions on acquisition of interests in trading cooperatives

25 Requirements for notices under Act, div 11.1—Act, s 279

- (1) The following particulars are prescribed:
 - (a) the name of the cooperative to which the notice is given;
 - (b) the name and address of the person giving notice;
 - (c) the date of giving notice;
 - (d) a description of the interest in relation to which the notice is given.
- (2) For a notice given under section 277 (Notice required to be given of voting interest), the following particulars are also prescribed:
 - (a) the name of the member whose right to vote is affected; and
 - (b) the date the person acquired, or ceased to have, the interest.
- (3) For a notice given under section 278 (Notice required to be given of substantial share interest), the following particulars are also prescribed:
 - (a) the percentage of the nominal value of the issued share capital of the cooperative the person has;
 - (b) the date of acquisition of, disposal of, or change in, that interest.

26 Maximum fee for inspection of register—Act, s 285 (4)

The amount prescribed is \$10.

Part 9 Arrangements and reconstructions

27 Information to be included in draft explanatory statement—Act, s 341 (2) (b) (i)

The information in schedule 3 is prescribed.

28 Information to be included in explanatory statement—Act, s 349 (3) (b) (i)

The information in schedule 3 is prescribed.

29 Particulars to be included in notice to remaining shareholders—Act, s 357 (1) (a)

A notice to the holder of remaining shares must—

- (a) state the name and address of the transferee; and
- (b) identify the relevant scheme or contract and state the date it was approved in accordance with the Act, section 354 (1) (Schemes and contracts to which div 13.3 applies); and
- (c) state—
 - (i) the number of shares the transferee is acquiring from the shareholder; and
 - (ii) the total price payable by the transferee to the shareholder for those shares; and
- (d) set out, or have with it, a copy of the Act, section 357 (Remaining shareholders may require acquisition); and
- (e) state the date the notice is given.

30 Corresponding laws—Act, s 362 (2)

The following provisions correspond to section 340 (Supreme Court ordered meeting of creditors):

- (a) the *Co-operatives Act 1992* (NSW), section 344;
- (b) the *Co-operatives Act 1996* (Vic), section 339;
- (c) the *Cooperatives Act 1997* (Qld), section 331;
- (d) the *Co-operatives Act 1997* (SA), section 334.
- (e) the *Co-operatives Act 1997* (NT), section 334.

Part 10 Foreign cooperatives

31 How to verify statements—Act, s 369 (2) (d)

A statement must be verified by statutory declaration by a director or the secretary of the applicant cooperative.

32 Documents to accompany application—Act, s 369 (2) (e)

The following documents and information are prescribed:

- (a) a copy of the cooperative's certificate of registration;
- (b) a copy of the latest audited accounts of the cooperative;
- (c) the full name, date and place of birth and residential address of each director of the cooperative.

33 How to verify statements—Act, s 370 (2) (b)

A statement must be verified by statutory declaration by a director or the secretary of the applicant cooperative.

34 Documents etc to accompany application for registration—Act, s 370 (2) (c)

- (1) The following documents are prescribed:
 - (a) a copy of the cooperative's certificate of registration;
 - (b) a copy of the latest audited accounts of the cooperative;
 - (c) the full name, date and place of birth and residential address of each director of the cooperative.
- (2) The address of a person mentioned in the Act, section 370 (2) (b) (iii) is prescribed information.

35 Application of Act to foreign cooperatives—Act, s 374

- (1) The provisions of the Act mentioned in schedule 4, clause 1 apply to a participating cooperative.
- (2) The provisions of the Act mentioned in schedule 4, clause 2 apply to a nonparticipating cooperative.

36 Documents to accompany particulars of notifiable change—Act, s 375 (1)

The following documents are prescribed:

- (a) for a change of name resulting in the issue of a new or amended certificate of registration in the cooperative's home State—a certified copy of the new or amended certificate;
- (b) for a change affecting the rules of the cooperative—a certified copy of the new or amended rules.

37 Provisions of Act to be complied with—Act, s 378 (1)

For a cooperative proposing to apply for registration as a foreign cooperative in another participating State, the following provisions of the Act are prescribed:

- (a) part 5 (Rules);
- (b) part 6 (Active membership);
- (c) division 9.5 (Restrictions on directors and officers);
- (d) division 9.6 (Declaration of interests);
- (e) division 9.7 (Financial statements, reports and audit);
- (f) division 10.1 (Power to raise money).

38 Documents to be given to cooperative—Act, s 378 (3)

The following documents are prescribed:

- (a) a certified copy of the cooperative's certificate of registration;

Part 10 Foreign cooperatives

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- (b) a certified copy of the cooperative's rules;
- (c) a certified copy of the last audited accounts of the cooperative filed with the registrar;
- (d) a list giving the full name, date and place of birth and residential address of each director of the cooperative;
- (e) the address of the cooperative's registered office in the Territory.

Part 11 Supervision and protection of cooperatives

39 Allowances etc payable to involved person attending for examination—Act, s 406 (5)

The allowances and expenses payable to a witness in a proceeding before the Supreme Court are prescribed.

Part 12 Administration of Act

40 Prescribed documents—Act, s 435 (1) (b)

A person may inspect the documents that are kept by the registrar relating to a cooperative, other than the following:

- (a) a document given to the registrar under any of the following provisions of the Act:
 - (i) section 251 (List of members to be provided at request of registrar);
 - (ii) section 252 (Special return to be provided at request of registrar);
 - (iii) section 327 (4) (Termination of appointment of administrator);
 - (iv) section 332 (Administrator to report to registrar);
 - (v) section 401 (4) (Client legal privilege in relation to requirements under div 15.1);
 - (vi) section 407 (3) (Client legal privilege of involved person who is a lawyer);
 - (vii) section 411 (1) or (2) (Report of investigator);
- (b) a report made or filed under the Act, schedule 4, clause 13 (Reports by receiver);
- (c) a document filed under any of the following provisions of the Corporations Act as applied by the Act:
 - (i) section 438D (Reports by administrator);
 - (ii) section 533 (Reports by liquidator).
 - (iii) part 7.10 (Market misconduct and other prohibited conduct relating to financial products and financial

services) (other than section 1041D (b) (Dissemination of information about illegal transactions);

41 Application of Act, s 407 and s 408

For regulation 40, the Act, section 406 (Examination of involved person) and section 407 (Client legal privilege of involved person who is a lawyer) are taken to apply subject to the following changes:

- (a) a reference to an involved person is taken to be a reference to a person to whom a notice is given under either of those regulations;
- (b) a reference to an investigator is taken to be a reference to the registrar;
- (c) the reference in section 407 (3) to 50 penalty units is taken to be a reference to 10 penalty units.

42 Extension of time by registrar

- (1) The registrar may extend the time for doing something under—
 - (a) the Act; or
 - (b) a notice under the Act.
- (2) The registrar may extend the time for doing something under—
 - (a) these regulations; or
 - (b) a notice under these regulations.
- (3) For subregulations (1) and (2), the registrar may extend the time for doing something even if the time for doing the thing has passed.
- (4) The Act, part 18 (Review of registrar's decisions) is taken to apply to a decision of the registrar under this regulation—
 - (a) to extend time for a particular period or until a particular date; or

- (b) not to extend time.
- (5) A decision of a kind mentioned in subregulation (4) is taken, for that subregulation, to be a reviewable decision (within the meaning of the Act, part 18).

Part 13 Relevant interests

43 Exclusions—holders of prescribed offices—Act, sch 1, cl 19

The offices mentioned in schedule 5 are prescribed.

Part 14 Miscellaneous

44 Laws for registration of securities—Act, sch 3, cl 8

The following laws are prescribed:

- (a) the *Instruments Act 1933*, part 4 (Liens on crops) and part 5 (Liens on wool and stock mortgages);
- (b) the *Liens on Crops and Wool and Stock Mortgages Act 1898* (NSW), parts 2 and 3;
- (c) the *Instruments Act 1958* (Vic), parts 7 and 8;
- (d) the *Bills of Sale and Other Instruments Act 1955* (Qld), part 2, to the extent to which it relates to the registration of stock mortgages, liens on crops and liens on wool, and part 4;
- (e) the *Liens on Crops of Sugar Cane Act 1931* (Qld);
- (f) the *Bills of Sale Act 1899* (WA), sections 7 and 8 and parts 9-11;
- (g) the *Liens on Fruit Act 1923* (SA);
- (h) the *Stock Mortgages and Wool Liens Act 1924* (SA);
- (i) the *Bills of Sale Act 1900* (Tas), section 36;
- (j) the *Stock, Wool and Crop Mortgages Act 1930* (Tas);
- (k) the *Instruments Act 1935* (NT).

45 Inspection of register of charges—Act, sch 3, cl 41 (3) (b)

The amount prescribed for each inspection of a cooperative's register of charges is \$10.

46 Maximum fee for copy—Act, sch 3, cl 41 (5) (a)

The amounts prescribed are—

- (a) \$5 for the first page; and
- (b) \$1 for each additional page.

47 Interpretation of applied Corporations Act provisions

In the provisions of the Corporations Act applied by the Act or these regulations:

Court means the Supreme Court.

prescribed form means a form approved for the particular purpose under the Act, section 466.

Schedule 1 Particulars to be included in registers

(see reg 11 and reg 15)

1 Register of members, directors and shares

- (1) A cooperative's register of members, directors and shares must contain the following particulars for each member:
 - (a) the name and address of the member;
 - (b) the date the member was admitted to the cooperative;
 - (c) a reference to the minute evidencing the board's decision to admit the member;
 - (d) if the cooperative has share capital—a statement of the following for each member who holds shares:
 - (i) the number of shares held beneficially and non-beneficially;
 - (ii) the identifying number of each share held;
 - (iii) the date the shares were allotted;
 - (iv) the amount paid or agreed to be considered as having been paid on the shares;
 - (e) the date and circumstances under which the person's membership ended (if applicable);
 - (f) if shares are purchased under rules made under the Act, section 173 (1) (Purchase and repayment of shares)—a statement of the number of shares purchased and the date the shares were purchased;

- (g) if shares are forfeited under the Act, section 281 (Shares to be forfeited to remedy contravention)—a statement of the number of shares forfeited and the date the shares were forfeited;
 - (h) if there is a conversion to a cooperative without share capital—the date of repayment of the share capital or the date of disposal and the name and address of the entity to whom the share capital was repaid.
- (2) A cooperative's register of members, directors and shares must contain the following particulars for each director:
- (a) the name, date and place of birth and address of each director;
 - (b) the date of that person's election or appointment as a director;
 - (c) whether the director is a non-member director;
 - (d) the date and circumstances under which the director's appointment terminated (if applicable).

2 Register of loans etc to cooperative

- (1) A cooperative's register (the *register*) of loans to, securities given by, debentures issued by and deposits received by the cooperative must contain the following particulars for each loan:
- (a) the name of the lender;
 - (b) the amount of the loan;
 - (c) the date the cooperative received the loan;
 - (d) a reference to the minute evidencing the board's decision to accept the loan;
 - (e) a reference identifying the account created for the loan;
 - (f) the date of each payment made in relation to the loan and the amount of each payment made;

Schedule 1 Particulars to be included in registers

Clause 2

- (g) if the loan is secured by a mortgage over real property—the address and particulars of title of the property and a reference identifying the mortgage agreement;
 - (h) if the loan is secured otherwise than by a mortgage over real property—particulars of the security given and a reference identifying the agreement that evidences the security;
 - (i) the location of the documents relating to the security given for the loan;
 - (j) particulars of any movement of the documents from that location;
 - (k) the date of the final payment made in relation to the loan.
- (2) The register must contain the following particulars for each debenture issued:
- (a) the name and address of each person to whom a debenture is payable;
 - (b) the number and series of the debenture;
 - (c) the date of its issue;
 - (d) the amount of the debenture;
 - (e) the rate of interest;
 - (f) the dates of payment of principal;
 - (g) the place of payment;
 - (h) the name and address of any trustee;
 - (i) if the debenture is transferred to someone else—
 - (i) the name, address and occupation of the transferor; and
 - (ii) the date of transfer.

- (3) The register must contain the following particulars for each deposit received:
- (a) the name and address of the depositor;
 - (b) the date of receipt;
 - (c) the amount deposited;
 - (d) the rate of interest (if any);
 - (e) the amount repaid;
 - (f) the date of conversion to shares or debentures (if applicable);
 - (g) the due date for repayment;
 - (h) the balance.

3 Register of lenders, depositors and holders of securities and debentures

A cooperative's register of names of people who have given loans or deposits to, or hold securities or debentures given or issued by, the cooperative must contain the following details for each person:

- (a) the person's name and address;
- (b) whether the person—
 - (i) has given a loan or deposit to the cooperative; or
 - (ii) holds securities given by the cooperative; or
 - (iii) holds debentures issued by the cooperative;
- (c) a reference to the relevant entry in the register of loans or deposits to, securities given by or debentures issued by the cooperative.

4 Register of loans etc by cooperative

- (1) A cooperative's register (the *register*) of loans made or guaranteed by and securities taken by the cooperative must contain the following details for each loan made:
 - (a) the name of the member to whom the loan is made;
 - (b) the amount of the loan;
 - (c) the date the loan was approved;
 - (d) a reference to the minute evidencing the board's decision to make the loan;
 - (e) a reference identifying the account created for the loan;
 - (f) the date of each advance made in relation to the loan and the amount of each advance made;
 - (g) if the loan is secured by a mortgage over real property—the address and particulars of title of the property and a reference identifying the mortgage agreement;
 - (h) if the loan is secured otherwise than by a mortgage over real property—particulars of the security taken and a reference identifying the agreement that evidences the security;
 - (i) the location of the documents relating to the security taken for the loan;
 - (j) particulars of any movement of the documents from that location;
 - (k) the date of the final payment made in relation to the loan.
- (2) The register must contain the following particulars for each loan guaranteed:
 - (a) the name of the member;
 - (b) the name of the lender;

- (c) the amount of the loan;
- (d) the date of the guarantee;
- (e) the security documents held and any other information necessary to identify the parties to the security documents;
- (f) the date for repayment;
- (g) a reference to the minutes evidencing the board's decision to guarantee the loan.

5 Register of cancelled memberships

- (1) A cooperative's register (the *register*) of memberships cancelled under the Act must contain the following particulars for each person whose membership is cancelled:
- (a) the name of the person;
 - (b) if the whereabouts of the person are unknown—
 - (i) the date the required period of the person's whereabouts being unknown started; and
 - (ii) if the amount required to be paid to the person because of the cancellation is more than \$50 and notice was published in a newspaper under regulation 10—the date of publication of the notice and the name of the newspaper;
 - (c) if the whereabouts of the person are known—
 - (i) the date of the person's last active dealing with the cooperative; and
 - (ii) the date the person was given the notice under the Act, section 131 (1) (Notice of intention to cancel membership);
 - (d) the date of the board's resolution cancelling the membership.

- (2) Also, if the member's shares are forfeited because of cancellation of the person's membership, the register must contain the following particulars:
- (a) the amount subscribed in relation to the shares forfeited;
 - (b) the date of the board's resolution forfeiting the shares;
 - (c) if the date fixed by the board's resolution for repayment of the amount paid up on shares is within 1 year of forfeiture—
 - (i) the date of repayment; or
 - (ii) if the amount is dealt with under the Act, section 132 (Supreme Court order against cancellation of membership)—the date and how the amount is applied;
 - (d) if the amount owing is to be transferred to a debenture or deposit account—
 - (i) the date of repayment; and
 - (ii) the date of transfer to the account.
- (3) Subclause (2) applies only to cooperatives that have a share capital.
- (4) In this clause:
required period—see the Act, section 126 (6).

6 Register of fixed assets

A cooperative's register of fixed assets of the cooperative must contain the following particulars for each fixed asset:

- (a) a short description of the fixed asset;
- (b) the method of financing the asset if it is leased;
- (c) where the asset is;
- (d) the date of its purchase or installation;
- (e) how depreciation is calculated;

- (f) the annual percentage at which depreciation is calculated;
- (g) the annual amount of depreciation or amortisation;
- (h) the total amount of depreciation or amortisation;
- (i) the revaluation increment;
- (j) if the asset is sold—
 - (i) the sale price; and
 - (ii) the date sold.

7 Register of subordinated debt

A cooperative's register of subordinated debt must contain the following particulars for each subordinated debt incurred:

- (a) the name and address of the person to whom the debt is owed;
- (b) the amount of the debt;
- (c) the date the debt was incurred;
- (d) a reference to the minute evidencing the board's decision to incur the debt;
- (e) a reference identifying the account created for the debt;
- (f) the date of each payment made in relation to the debt and the amount of each payment made;
- (g) the date of the final payment made in relation to the debt.

8 Register of names for subordinated debt

A cooperative's register of names of people who provided to the cooperative financial accommodation that is a subordinated debt must contain, in relation to each person—

- (a) the person's name and address; and
- (b) a reference to the relevant entry in the cooperative's register of subordinated debt.

Schedule 2 Postal ballots

(see reg 13)

1 Ballots

The board must formulate the proposal or proposals on which a ballot is to be held and fix a date for the close of the ballot.

2 Returning officer

- (1) The board must appoint a person (other than a director) as returning officer for a ballot.
- (2) In exercising the functions of returning officer, the returning officer may appoint, as assistants, anyone eligible to be a returning officer.

3 Preparation of voting roll and ballot papers

The returning officer must—

- (a) prepare a roll stating—
 - (i) the name and address of each member of the cooperative, as disclosed by the register of members, directors and shares; and
 - (ii) the number of votes to which each member is entitled under the rules of the cooperative; and
- (b) send the following to each member at least 21 days before the date fixed for the close of the ballot:
 - (i) a ballot paper and an inner, middle and outer envelope;
 - (ii) a copy of the proposal on which the vote is to be held;
 - (iii) for a special postal ballot—a copy of the disclosure statement mentioned in the Act, section 200 (Special postal ballots).

4 Duplicate ballot papers

The returning officer may send a duplicate ballot paper to a voter if the returning officer is satisfied that—

- (a) the voter has not received a ballot paper; or
- (b) the ballot paper received by the voter has been lost, spoilt or destroyed and the voter has not already voted.

5 Voting

A voter casts a vote—

- (a) by writing 'yes' or 'no' in the appropriate place or places on the ballot paper or indicating the voter's intention in another way; and
- (b) by completing any other particulars required by the ballot paper; and
- (c) by sending the ballot paper, in the envelopes supplied, to the returning officer.

6 Safekeeping of ballot papers

The returning officer must place all outer envelopes received before the close of the ballot (and their contents) in a locked ballot box.

7 Counting of votes

- (1) As soon as practicable after the close of the ballot, the returning officer must open the ballot box and deal with the contents as follows:
 - (a) remove from the ballot box each outer envelope and middle envelope containing particulars that identify the voter;
 - (b) reject any middle envelope that bears a name that does not correspond to 1 of the remaining names on the voting roll;
 - (c) draw a line on the voting roll through the name of each person from whom an unrejected middle envelope has been received;

- (d) discard each outer envelope, and each middle envelope that has not been rejected, and place the inner envelope containing the ballot paper in the ballot box;
 - (e) after discarding all the outer envelopes, and middle envelopes that have not been rejected, and putting all the inner envelopes into the ballot box, remove each inner envelope from the ballot box;
 - (f) remove each ballot paper from its inner envelope;
 - (g) count the votes on the ballot papers.
- (2) The returning officer must reject a ballot paper as informal if—
- (a) it is not initialled by the returning officer; or
 - (b) it is so imperfectly marked the returning officer cannot find out the voter's intention with certainty.
- (3) For each proposal, the returning officer must work out from the ballot papers—
- (a) the number of formal votes cast in favour of the proposal; and
 - (b) the number of formal votes cast against the proposal; and
 - (c) the number of informal votes cast.

8 Report

- (1) After the votes have been counted, the returning officer must report to the board the results of the ballot.
- (2) The returning officer must keep the following locked in the ballot box until the board directs the returning officer to destroy them:
- (a) all ballot papers;
 - (b) all rejected middle envelopes (and their contents);
 - (c) all voting rolls used for the conduct of the ballot.

Schedule 3 Information for draft explanatory statements and explanatory statements

(see reg 27 and reg 28)

1 Definitions for sch 3

In this schedule:

explanatory statement includes draft explanatory statement.

family member, of a person, means—

- (a) a domestic partner of the person; or
- (b) a parent or child of the person; or
- (c) a brother, sister, half-brother or half-sister of the person.

internal creditor, of a cooperative, means a creditor who is—

- (a) a member of the cooperative; or
- (b) a family member of a member of the cooperative; or
- (c) a family member of a domestic partner of a member of the cooperative.

scheme means a proposed compromise or arrangement.

scheme cooperative means a cooperative to which a scheme applies.

scheme creditor means a creditor or class of creditors of a cooperative to whom the scheme must apply.

scheme member means a member or class of members of a scheme cooperative.

2 Information about proposed compromise or arrangement with creditors

- (1) If a proposed compromise or arrangement is with creditors, the explanatory statement must include in relation to the proposed compromise or arrangement—
 - (a) the expected dividend that would be available to scheme creditors if the cooperative were to be wound up within 6 months after an application to the Supreme Court under the Act, section 340 (Supreme Court ordered meeting of creditors); and
 - (b) if a composition of debts is proposed—the expected dividend that would be paid to scheme creditors if the scheme were put into effect; and
 - (c) a list of the names of all known scheme creditors and the debts owed to them; and
 - (d) if a scheme creditor is known to be a guaranteed creditor—the name of the creditor and the amount owed to the creditor; and
 - (e) if a scheme creditor is known to be an internal creditor—the name of the creditor and the amount owed to the creditor.
- (2) The explanatory statement must also state that an order under the Act, section 340 is not an endorsement of, or expression of opinion on, the scheme.
- (3) The explanatory statement must also contain or include—
 - (a) a report of the cooperative showing the financial position of the cooperative at a day, within 1 month before the day the intended application under the Act, section 340 is to be made to the court; and
 - (b) a copy, certified by a director or the principal executive officer or secretary of the cooperative to be a true copy, of all

- accounts, including any group accounts, required to be presented to the cooperative at its annual general meeting; and
- (c) a copy of each document required by law to be attached to the accounts mentioned in paragraph (b); and
 - (d) if the scheme cooperative is a trustee—a statement of the following matters:
 - (i) the number of trusts the trustee administers;
 - (ii) whether the trustee carries on any business separate from the trust;
 - (iii) how the scheme creditors may obtain a copy of the relevant trust deed, free of charge, before the day of the meeting; and
 - (e) if anyone who would be appointed to manage the scheme proposes to charge for his or her services, and services of his or her staff, under a particular scale of charges—the scale of charges.

3 Information about proposed compromise or arrangement with members

- (1) If a proposed compromise or arrangement is with members, the explanatory statement must state in relation to the proposed compromise or arrangement—
 - (a) if the cooperative is being wound up or is under official management—in relation to each director of the cooperative—
 - (i) whether the director recommends accepting or rejecting the scheme and the reasons for the recommendation; or
 - (ii) if the director is not available to consider the scheme—that the director is not available to consider the scheme and the reasons the director is not available to consider it; or

- (iii) in any other case—that the director does not wish to make, or does not consider himself or herself justified in making, a recommendation and any reasons the director has for not making a recommendation; or
- (b) in any other case—in relation to each liquidator or official manager—
 - (i) whether the liquidator or official manager recommends accepting or rejecting the scheme and the reasons for the recommendation; or
 - (ii) if the liquidator or official manager does not wish to make a recommendation—the reasons for not wishing to make the recommendation.
- (2) The explanatory statement must also state—
 - (a) the number, description and amount of marketable securities of the cooperative the subject of the scheme held by or for each director of the cooperative or, if none are held by or for the director, a statement to that effect; and
 - (b) whether each director of the cooperative who holds shares, or for whom shares are held, in the cooperative—
 - (i) intends to vote for or against the scheme; or
 - (ii) has not decided whether to vote for or against the scheme; and
 - (c) if the other party to the proposed scheme is or includes a corporation—whether any marketable securities of the corporation are held by or for a director of the scheme cooperative and, if so, the number, description and amount of the marketable securities; and

- (d) particulars of any payment or other benefit that is proposed to be made or given to—
 - (i) any director, principal executive officer or secretary of the scheme cooperative as compensation for loss of, or as consideration for retirement from, office in the cooperative or a related corporation; or
 - (ii) any director, principal executive officer or secretary of a related corporation as compensation for loss of, or as consideration for retirement from, office in the related corporation or the scheme cooperative; and
- (e) if there is any other agreement or arrangement made between a director of the scheme cooperative and someone else in relation to or conditional on the outcome of the scheme—particulars of the agreement or arrangement; and
- (f) if the object of the scheme is for a cooperative to acquire control of another corporation that is a company—particulars of the nature and extent of any interest of a director of the company in any contract entered into by the cooperative; and
- (g) unless paragraph (h) applies—whether, to the knowledge of the directors of the cooperative the subject of the scheme, the financial position of the cooperative has materially changed since the date of the last balance sheet presented to the cooperative in a general meeting and if so, full particulars of the change; and
- (h) if the cooperative is in liquidation or under official management—whether, to the knowledge of the liquidator or official manager, the financial position of the cooperative has materially changed since the date of the last balance sheet presented to the cooperative in a general meeting and, if so, full particulars of the change; and

Clause 3

- (i) any other information material to making a decision in relation to the scheme that has not previously been disclosed to the scheme members and is within the knowledge of any director, liquidator or official manager of the scheme cooperative or a related scheme.
- (3) The explanatory statement must include a copy of a report, complying with subclause (4) if—
- (a) the other party to the proposed reconstruction or amalgamation of the scheme cooperative has a prescribed shareholding in the cooperative; or
- Note* **Prescribed shareholding** is defined in subclause (8).
- (b) a director of any corporation that is the other party to the proposed reconstruction or amalgamation is a director of a scheme cooperative.
- (4) A report mentioned in subclause (3) must be made by an expert who is not associated with the corporation that is the other party and state whether, in his or her opinion, the proposed scheme is in the best interests of the members of the scheme cooperative and the reasons for the opinion.
- (5) If the scheme cooperative obtains 2 or more reports, each of which could be used for subclause (3), the statement must include a copy of each report.
- (6) Subclause (7) applies if—
- (a) the scheme cooperative obtains a report for subclause (3); and
 - (b) the report contains—
 - (i) a forecast of the profits or profitability of the cooperative; or
 - (ii) a statement that the market value of an asset or assets of the cooperative or a related corporation differs from an

amount at which the value of the asset or assets is shown
in the books of the cooperative or the related corporation.

- (7) A report mentioned in subclause (6) must not be included in the statement unless—
- (a) its inclusion has the written consent of the registrar; and
 - (b) any conditions of the consent are met.
- (8) For subclause (3)—
- (a) a person has a ***prescribed shareholding*** in a cooperative if the person is entitled to at least 30% of the voting shares in the cooperative; and
 - (b) a person has a ***prescribed shareholding*** in a cooperative in which the voting shares are divided into 2 or more classes of shares if the person is entitled to at least 30% of the shares in 1 of those classes.
- (9) If all or part of the consideration to be offered to a scheme member consists of marketable securities issued, or to be issued, by a corporation, the explanatory statement must set out the formula to be applied to find out the number of marketable securities to be issued to each scheme member and the basis on which the formula was developed.
- (10) If marketable securities of the same class as those mentioned in subclause (9) are given official quotation on a securities exchange, the explanatory statement must state the fact, specify the securities exchange and state—
- (a) the latest recorded sale price before the day the statement is sent to the registrar; and
 - (b) the highest and lowest recorded sale prices in the 3 months before the day the statement is sent to the registrar and the dates of the relevant sales; and

- (c) if the scheme has been the subject of a public announcement in newspapers or in any other way before the statement was sent to the registrar—the latest recorded sale price immediately before the public announcement.
- (11) If the marketable securities mentioned in subclause (9) are given official quotation on more than 1 securities exchange, it is enough compliance with subclause (8) if information on the marketable securities is given for the securities exchange where there has been the greatest number of recorded dealings in the securities in the 3 months before the day the statement is sent to the registrar.
- (12) However, if the securities have not been given official quotation on a securities exchange, the statement must include all the information a director, liquidator or official manager of the scheme cooperative or of a related corporation has about the number of securities sold in the 3 months before the explanatory statement was prepared and the price of the securities or, if the information or any part of it cannot be found, a statement to that effect.
- (13) The explanatory statement must include particulars of the intentions of the directors of the cooperative the subject of the scheme in relation to—
- (a) the continuation of the business of the cooperative or, if the undertaking of the cooperative or any part of the undertaking is to be transferred, how the undertaking or the part of the undertaking must be conducted in the future; and
 - (b) any major changes to be made to the business of the cooperative, including any redeployment of fixed assets of the cooperative; and
 - (c) the future employment of the present employees of the cooperative.

Schedule 4 Provisions of Act and regulations applying to foreign cooperatives

(see reg 35)

1 Provisions applying to participating cooperatives

The following provisions apply to participating cooperatives:

- division 1.4 (Application of Corporations Act generally)
- section 247 (Inspection of registers etc)
- section 262 (Registrar's directions about fundraising)
- section 317 (Application of Corporations Act—winding up and deregistration of cooperatives), but only to the extent that it applies the provisions of the Corporations Act, part 5.4B (Winding up in insolvency or by the Court)
- part 17 (Offences and proceedings)
- section 461 (Service of documents on foreign cooperative).

2 Provisions applying to nonparticipating cooperatives

The following provisions apply to nonparticipating cooperatives:

- division 1.3 (Cooperative principles)
- division 1.4 (Application of Corporations Act generally)
- section 13 (2) (Effect of amendments to applied provisions of Corporations Act)
- section 14 (Effect applied provisions of Corporations Act)
- section 15 (Excluded matter)
- division 3.1 (General powers)
- division 3.2 (Non-application of doctrine of ultra vires)
- division 3.3 (Dealings with cooperatives)
- division 3.4 (Authentication and execution of documents and confirmation of contracts)

Schedule 4 Provisions of Act and regulations applying to foreign cooperatives

Clause 2

- section 80 (Transfer of small shareholdings and interests on death)
- division 4.5 (Oppressive conduct of affairs)
- section 101 (Effect of rules)
- section 103 (Other requirements about contents of rules etc)
- section 104 (Obtaining copy of rules)
- section 251 (List of members to be provided at request of registrar)
- section 252 (Special return to be provided at request of registrar)
- section 255 (Name to appear on business documents etc)
- division 10.1 (Power to raise money)
- division 12.3 (Winding-up and deregistration)
- division 12.4 (Administration of cooperatives)
- division 12.5 (Appointment of administrator)
- division 12.6 (Effect of merger, transfer of engagements and transfer of incorporation)
- division 12.7 (Miscellaneous)
- part 13 (Arrangements and reconstructions)
- part 17 (Offences and proceedings)
- section 461 (Service of documents on foreign cooperative).

Schedule 5 Holders of prescribed offices

(see reg 43)

1 The Commonwealth

- 1 Treasurer
- 2 a trustee under the *Bankruptcy Act 1966* (Cwlth), part 4, 10 or 11
- 3 a person holding or acting in any of the following offices under the *Australian Securities and Investments Commission Act 2001* (Cwlth):
 - chairperson
 - deputy chairperson
 - member of the commission
 - president of the panel
 - member of the panel

2 Australian Capital Territory

- 1 Treasurer
- 2 master of the Supreme Court
- 3 registrar of the Supreme Court
- 4 public trustee

3 New South Wales

- 1 Treasurer
- 2 Public trustee under the *Public Trustee Act 1913* (NSW)
- 3 Master of the Supreme Court of New South Wales
- 4 the Supervisor of Loan Fund Companies under the *Loan Fund Companies Act 1976* (NSW)

Schedule 5 Holders of prescribed offices

Clause 4

5 the Protective Commissioner under the *Mental Health Act 1990* (NSW)

4 Victoria

1 Treasurer

2 Commissioner for Corporate Affairs

3 Public Trustee under the *Trustee Act 1958* (Vic)

4 Master of the Supreme Court of Victoria

5 Queensland

1 Treasurer

2 Commissioner for Corporate Affairs

3 Public Trustee under the *Public Trustee Act 1978* (Qld)

4 Registrar of the Supreme Court of Queensland

6 South Australia

1 Treasurer

2 Curator of Prisoners Property under the *Criminal Law Consolidation Act 1935* (SA)

3 Public Trustee under the *Administration and Probate Act 1919* (SA)

4 Master of the Supreme Court of South Australia

5 Accountant under the *Supreme Court Act 1935* (SA)

7 Western Australia

1 Treasurer

2 Commissioner for Corporate Affairs

3 Public Trustee under the *Public Trustee Act 1941* (WA)

- 4 Master of the Supreme Court of Western Australia
- 5 Registrar of the Supreme Court of Western Australia

8 Tasmania

- 1 Administrator under the *Criminal Code* (Tas), chapter 49
- 2 Treasurer
- 3 Commissioner for Corporate Affairs
- 4 Public Trustee under the *Public Trustee Act 1930* (Tas)
- 5 Registrar of the Supreme Court of Tasmania

9 Northern Territory

- 1 Treasurer
- 2 Public Trustee under the *Public Trustee Act 1979* (NT)
- 3 Master of the Supreme Court of the Northern Territory
- 4 Commissioner for Corporate Affairs

Dictionary

(see reg 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to these regulations.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- Commonwealth
- entity
- public trustee.

Note 3 Terms used in these regulations have the same meaning that they have in the *Cooperatives Act 2002* (see Legislation Act, s 148). For example, the following terms are defined in the *Cooperatives Act 2002*, dict:

- cooperative
- deposit-taking cooperative
- obtaining (financial accommodation)
- registered office
- registrar
- required period
- rules.

explanatory statement, for schedule 3—see schedule 3, clause 1.

family member, for schedule 3—see schedule 3, clause 1.

internal creditor, for schedule 3—see schedule 3, clause 1.

scheme, for schedule 3—see schedule 3, clause 1.

scheme cooperative, for schedule 3—see schedule 3, clause 1.

scheme creditor, for schedule 3—see schedule 3, clause 1.

scheme member, for schedule 3—see schedule 3, clause 1.

Endnotes

Penalty units

- 1 The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Notification

- 2 Notified under the Legislation Act on 3 July 2003.
(see www.legislation.act.gov.au)

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