



Australian Capital Territory

# **Cooperatives Act 2002**

**A2002-45**

**Republication No 9**

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Last amendment made by A2008-37

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Cooperatives Act 2002* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 2 February 2009. It also includes any amendment, repeal or expiry affecting the republished law to 2 February 2009.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

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- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

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- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

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Australian Capital Territory

## Cooperatives Act 2002

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

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## Part 1 Preliminary

### Division 1.1 Introductory

#### 1 Name of Act

This Act is the *Cooperatives Act 2002*.

#### 3 Objects

The objects of this Act are 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.

## Division 1.2 Interpretation

### 4 Dictionary

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

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

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

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

### 5 Notes

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

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

### 6 Qualified privilege

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

- (a) has qualified privilege in a proceeding for defamation; or
- (b) is not, in the absence of malice on the person's part, liable to an action for defamation.

(2) In subsection (1):

*malice* includes—

- (a) ill will towards the person concerned; and

- (b) any other improper motive.
- (3) Nothing in this section or in a provision of a kind mentioned in subsection (1) limits or affects any right, privilege or immunity that a person has, apart from this section or such a provision, as defendant in an action, or other proceeding, for defamation.

## **7 Interpretation to promote cooperative principles**

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

## **Division 1.3 Cooperative principles**

### **8 Cooperative principles**

The cooperative principles are the following principles:

1 Voluntary and open membership

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

2 Democratic member control

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

3 Member economic participation

Members contribute equitably to, and democratically control, the capital of their cooperative. At least part of that capital is usually the common property of the cooperative. They usually receive limited compensation

(if any) on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes:

- (a) developing the cooperative, possibly by setting up reserves, part of which at least would be indivisible;
- (b) benefiting members in proportion to their transactions with the cooperative;
- (c) supporting other activities approved by the membership.

4 Autonomy and independence

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

5 Education, training and information

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

6 Cooperation among cooperatives

Cooperatives serve their members most effectively and strengthen the cooperative movement by working together through local, national, regional and international structures.

7 Concern for the community

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

## Division 1.4 Application of Corporations Act generally

### 9 Regulation may apply certain provisions of Corporations Act

A regulation may apply, with any prescribed changes, a provision of the Corporations Act to cooperatives if the provision does not apply to cooperatives of its own force or by operation of this Act.

### 10 Corporations Act provisions applied by this Act

- (1) A provision of the Corporations Act applied by this Act in relation to cooperatives is taken to be part of this Act.

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

- (2) If—
- (a) a provision of this Act (the *application provision*) applies provisions of the Corporations Act (the *applied provisions*) to cooperatives; and
  - (b) some parts of the applied provisions apply to cooperatives of their own force; and
  - (c) other parts of the applied provisions do not apply to cooperatives of their own force;

the application provision applies only the parts mentioned in paragraph (c).

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



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

- (1) A provision of the Corporations Act applied by this Act is taken to apply with—
- (a) any changes provided by this Act; and
  - (b) any other changes that may be necessary or desirable for the effective application of the Act.

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

- (2) In particular—
- (a) a reference to—
    - (i) articles or memorandum of association; or
    - (ii) constitution; or
    - (iii) replaceable rules;is a reference to rules; and
  - (b) a reference to a company is a reference to a cooperative; and
  - (c) a reference to ASIC is a reference to the registrar; and
  - (d) a cross-reference to another provision of the Corporations Act is, if the cross-reference is not appropriate (because, for example, the provision cross-referred to is not among the provisions applied)—
    - (i) if there is a corresponding provision of this Act—a cross-reference to that provision; or
    - (ii) in any other case—to be disregarded; and
  - (e) a reference to notification (however described) in the Gazette is a reference to notification under the Legislation Act; and

- (f) a reference to the Commonwealth is a reference to the Territory; and
  - (g) any provision of the Corporations Act applied by this Act that is not relevant to cooperatives, or that cannot be applied to cooperatives, is to be ignored.
- (3) In applying subsection (2) (e) to an instrument, the instrument is taken to be a notifiable instrument.

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

- (4) A regulation may make changes that are necessary or desirable for the effective operation of the applied provisions of the Corporations Act, and the changes take effect accordingly (except to the extent of any inconsistency with this Act).
- (5) The definitions of words and expressions and other interpretative provisions contained in the Corporations Act apply in relation to provisions of the Corporations Act applied by this Act.
- (6) This section has effect subject to any specific requirements of provisions of this Act that apply provisions of the Corporations Act.

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

- (1) If a provision of this Act applies a provision (the *applied provision*) of the Corporations Act to cooperatives, the following provisions are also applied by force of this section and are taken to be part of this Act:
- (a) the provisions of any regulation (an *applied regulation*) from time to time in force under the applied provision;
  - (b) any provision of the Corporations Act that creates an offence in relation to a contravention of the applied provision;
  - (c) the provisions of the Corporations Act, part 9.4B (Civil consequences of contravening civil penalty provisions) for a

provision of the Corporations Act applied by this Act that is a civil penalty provision within the meaning of that part.

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

- (2) A regulation may prescribe changes to any of the provisions applied by subsection (1) for their application under this section, and the provisions apply subject to the prescribed changes.
- (3) If a provision of the Corporations Act or the regulations under that Act applied by this Act (including under this section) creates an offence and the penalty for that offence is provided in another provision (the *penalty provision*) of the Corporations Act or those regulations, the penalty provision is taken to be part of this Act for the purpose of deciding the maximum penalty applying to the offence.

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

- (1) A provision of the Corporations Act applied by this Act applies as in force from time to time.
- (2) If a group of provisions of the Corporations Act is applied by this Act (whether by the application of a chapter, part, division or otherwise), and the Corporations Act is amended to insert a new provision into the group of provisions, the new provision forms part of the group of provisions applied by this Act.
- (3) Subsection (2) is subject to any changes prescribed by regulation.

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

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

## Division 1.5 Application of Corporations Act— excluded matter

### 15 Excluded matter

- (1) A cooperative is declared to be an excluded matter for the purposes of the Corporations Act, section 5F in relation to the whole of the Corporations legislation to which the Corporations Act, part 1.1A (Interaction between Corporations Legislation and State and Territory laws) applies, other than to the extent specified in subsections (3) to (5).

*Note* This section ensures that neither the Corporations Act nor the ASIC Act, pt 3 will apply in relation to a cooperative, other than to the extent specified in this section. The Corporations Act, s 5F provides that, if a State or territory law declares a matter to be an excluded matter in relation to all or part of the Corporations legislation to which the Corporations Act, pt 1.1A applies (see s 5D), that legislation does not apply, except to the extent specified, in relation to that matter in the State or Territory. However, other provisions of this Act apply certain provisions of the Corporations Act to cooperatives as ACT laws.

- (2) Without limiting subsection (1) and to remove any doubt, an act or omission by an entity in relation to a cooperative is declared to be an excluded matter for the purposes of the Corporations Act, section 5F in relation to the whole of the Corporations legislation to which the Corporations Act, part 1.1A applies, other than to the extent specified in subsections (3) to (5).
- (3) Subsections (1) and (2) do not exclude the application of the following provisions of the Corporations legislation to cooperatives to the extent that those provisions would otherwise apply to them:
- (a) provisions that relate to anything that the regulations provide is not to be excluded from the operation of the Corporations legislation;
  - (b) provisions that relate to the role of a cooperative in the formation of a company;

- (c) provisions that relate to substantial shareholdings, by or involving a cooperative, in a company;
- (d) provisions that give functions to a cooperative as a member, or former member, of a corporation;
- (e) provisions relating to dealings by a cooperative in securities of a body corporate, other than securities of the cooperative itself;
- (f) provisions that give functions to a cooperative in its dealings with a corporation, other than dealings in securities of the cooperative;
- (g) provisions that relate to securities of a cooperative, other than shares in, debentures of or deposits with a cooperative;
- (h) provisions relating to derivatives;
- (i) provisions relating to—
  - (i) financial services licensees (within the meaning of the Corporations Act, section 761A) whose licence covers dealing in, or providing advice about, securities; or
  - (ii) regulated principals (within the meaning of the Corporations Act, section 1430) when dealing in, or providing advice about, securities as authorised by that Act, part 10.2 (Transitional provisions relating to the *Financial Services Reform Act 2001*), division 1, subdivision D;
- (j) provisions relating to the carrying on of a financial services business (within the meaning of the Corporations Act, section 761A) relating to securities;
- (k) provisions relating to financial statements and audits of financial statements, of—
  - (i) financial services licensees (within the meaning of the Corporations Act, section 761A) whose licence covers dealing in, or providing advice about, securities; or

- (ii) regulated principals (within the meaning of the Corporations Act, section 1430) when dealing in, or providing advice about, securities as authorised by that Act, part 10.2 (Transitional provisions relating to the *Financial Services Reform Act 2001*), division 1, subdivision D;
  - (l) provisions relating to money and scrip of clients of—
    - (i) financial services licensees (within the meaning of the Corporations Act, section 761A) whose licence covers dealing in, or providing advice about, securities; or
    - (ii) regulated principals (within the meaning of the Corporations Act, section 1430) when dealing in, or providing advice about, securities as authorised by that Act, part 10.2 (Transitional provisions relating to the *Financial Services Reform Act 2001*), division 1, subdivision D;
  - (m) provisions relating to registers of interests in securities.
- (4) To remove any doubt, subsections (1) and (2) do not exclude the operation of the following provisions of the Corporations Act, except in relation to shares in, debentures of or deposits with a cooperative:
- (a) part 1.2A (Disclosing entities);
  - (b) chapter 2L (Debentures);
  - (c) chapter 6D (Fundraising);
  - (d) part 7.10 (Market misconduct and other prohibited conduct relating to financial products and financial services).
- (5) If a cooperative is directed by an order of the Supreme Court under section 88 (i) (Orders that Supreme Court may make) to become registered as a company under the Corporations Act, subsections (1) and (2) do not exclude the application of that Act to the cooperative

to the extent necessary for the cooperative to be registered as a company under that Act, chapter 5B (Bodies corporate registered as companies, and registrable bodies).

## **Part 2                    Formation**

### **Division 2.1            Types of cooperatives**

#### **16                    Types of cooperatives**

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

#### **17                    Trading cooperatives**

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

#### **18                    Non-trading cooperatives**

- (1) A non-trading cooperative is a cooperative with rules that prohibit it from giving returns or distributions on surplus or share capital to



members, other than the nominal value of shares (if any) at winding-up.

- (2) A non-trading cooperative may have a share capital.
- (3) A non-trading cooperative must have a membership of—
  - (a) for an association—2 or more cooperatives; and
  - (b) for a federation—2 or more associations; and
  - (c) for any other non-trading cooperative—
    - (i) if a number of active members less than 5 is prescribed by regulation for this paragraph—at least that number of active members; or
    - (ii) in any other case—5 or more active members.

## **Division 2.2                      Formation meeting**

### **19                      Formation meeting**

- (1) Before a proposed cooperative (other than an existing corporation) can be registered, a formation meeting must be held in accordance with this section.
- (2) At the formation meeting—
  - (a) subject to section 20 (8), a disclosure statement approved under section 20 must be presented to the meeting; and
  - (b) the proposed rules of the cooperative approved under section 21 in relation to the proposed cooperative, and including active membership provisions in accordance with part 6, must be passed by  $\frac{2}{3}$  of the proposed members of the proposed cooperative attending the meeting; and
  - (c) the proposed members of the proposed cooperative must sign the application for membership; and

- (d) the proposed members must elect the first directors of the proposed cooperative in accordance with the proposed rules; and
- (e) the proposed members must authorise a person—
  - (i) to apply to the registrar for registration of the proposed cooperative; and
  - (ii) to do anything necessary to have the proposed cooperative registered.

*Note*      If a form is approved under s 466 for an application for membership, the form must be used.

- (3) The formation meeting must be held—
  - (a) for an association—by not fewer than 2 suitably qualified cooperatives; and
  - (b) for a federation—by not fewer than 2 suitably qualified associations; and
  - (c) for any other organisation—by not fewer than 5 people (or, if a lesser number is prescribed by regulation, not fewer than that number of people), each of whom is suitably qualified to be a member of the proposed cooperative.
- (4) For subsection (3), a person is *suitably qualified* to be a member if—
  - (a) there are reasonable grounds to believe the person will be an active member of the proposed cooperative; and
  - (b) for an individual—the person is at least 18 years old; and
  - (c) the person satisfies the requirements for membership under the proposed rules.
- (5) Each cooperative forming a proposed association and each association forming a proposed federation may be represented at the formation meeting by a single person.

## **Division 2.3                      Approval of disclosure statement and rules**

### **20                      Approval of disclosure statement**

- (1) A draft disclosure statement of a proposed cooperative (the *draft statement*) must be submitted to the registrar at least 28 days (or, if the registrar allows a shorter period, that period) before the formation meeting of the proposed cooperative is proposed to be held.
- (2) For a proposed trading cooperative, the draft statement must contain the information necessary to ensure that prospective members are adequately informed of the nature and extent of a person's financial involvement or liability as a member of the cooperative, including, so far as applicable—
  - (a) the estimated costs of formation; and
  - (b) the nature of the proposed membership of the cooperative; and
  - (c) the rights and liabilities attaching to shares in the proposed cooperative (including the capital required for the cooperative); and
  - (d) the projected income and expenditure of the cooperative for its first year of operation; and
  - (e) information about any contracts required to be entered into by the cooperative; and
  - (f) any other information that the registrar, by notice, requires.
- (3) For a proposed trading cooperative, the draft statement must not include a statement purporting to be made by an expert or to be based on a statement made by an expert unless—
  - (a) the expert has given, and has not withdrawn, the expert's written consent to the submission of the draft statement with

the statement included in the form and context in which it is included; and

- (b) there appears in the draft statement a statement that, at the time of preparation of the statement, the expert has given, and has not withdrawn, the expert's consent.
- (4) For a proposed non-trading cooperative, the draft statement must contain the information that the registrar, by written notice, requires.

*Note* If a form is approved under s 466 for a draft statement, the form must be used.

- (5) The registrar may, by notice—
- (a) approve the draft statement as submitted; or
  - (b) amend the draft statement, or require a stated amendment of the draft statement and then approve the amended draft statement; or
  - (c) approve a statement different from the draft statement as submitted; or
  - (d) refuse to approve the draft statement; or
  - (e) require the person submitting the draft statement to give the registrar any additional information that the registrar reasonably requires and then act under paragraph (a), (b), (c) or (d).
- (6) Approval under subsection (5) (a), (b) or (c) may be given—
- (a) at any time before the formation meeting is held; and
  - (b) subject to the conditions (if any) the registrar states in the notice of approval.
- (7) The registrar is taken to have approved the draft statement as submitted to the registrar unless, at least 5 days before the formation meeting is proposed to be held, the registrar gives—

- (a) a notice under subsection (5); or
  - (b) notice that the registrar is still considering the matter.
- (8) For a particular proposed non-trading cooperative, the registrar may, by notice, and subject to the conditions (if any) that the registrar states in the notice, dispense with the requirement to present a disclosure statement to the formation meeting.
- (9) Notice by the registrar under this section must be given to the person who submitted the draft statement (the *applicant*), or to someone else nominated in writing to the registrar by the applicant for the purpose of receiving the notice.

## **21 Approval of rules**

- (1) A draft of the rules proposed for the cooperative (including active membership provisions in accordance with part 6) must be submitted to the registrar at least 28 days (or, if the registrar allows a shorter period, that period) before the formation meeting is proposed to be held.
- (2) The proposed rules must—
- (a) comply with sections 102 (Content of rules—generally) and section 103 (Other requirements about contents of rules etc); and
  - (b) if the rules contain any alterations of the model rules—be accompanied by a statement setting out the alterations and the reasons for the alterations.

*Note 1* If a form is approved under s 466 for proposed rules, the form must be used.

*Note 2* If the rules do not provide for a matter included in the model rules, the provision of the model rules is taken to be included in the rules (see s 106 (3))

- (3) The registrar may—
- (a) approve the rules as submitted; or

- (b) approve rules different from the rules as submitted; or
  - (c) refuse to approve the rules.
- (4) The registrar approves the rules by giving notice of the approval of the rules to the person who submitted them to the registrar.
- (5) The registrar must give notice of the refusal to approve the rules to the person who submitted the rules to the registrar.

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

### **22 Application for registration of proposed cooperative**

- (1) An application for registration of a proposed cooperative (other than an existing corporation) must—
- (a) be signed by—
    - (i) for an association or federation—at least 2 directors; and
    - (ii) for any other organisation—at least 5 suitably qualified members (including 2 directors elected at the formation meeting); and
  - (b) be accompanied by—
    - (i) 2 copies of the proposed rules signed and certified by the people who acted as chairperson and secretary at the formation meeting; and
    - (ii) for a proposed trading cooperative—a copy of the disclosure statement presented to the formation meeting signed and certified by the people who acted as chairperson and secretary at the formation meeting; and
    - (iii) a statement listing the name, address, occupation and place and date of birth of each director; and

- (iv) any other particulars that the registrar may require in a particular case.

*Note 1* A fee may be determined under s 465 for this subsection.

*Note 2* If a form is approved under s 466 for an application, the form must be used.

- (2) The application must be filed with the registrar within—
  - (a) 2 months after closure of the formation meeting for the proposed cooperative; or
  - (b) if the registrar, in writing, allows a longer period—that longer period.

## **23 Registration of proposed cooperative and its rules**

- (1) The registrar must register a proposed cooperative as a cooperative, and register its rules, if—
  - (a) an application is made under this division for registration of the proposed cooperative; and
  - (b) the registrar is satisfied it meets the requirements for registration mentioned in subsection (2).
- (2) The requirements for registration of the proposed cooperative under this division are as follows:
  - (a) the proposed rules of the proposed cooperative must be the rules approved by the registrar under section 21;
  - (b) the requirements of this Act must have been complied with in relation to the proposed cooperative and compliance must be likely to continue;

- (c) the proposed cooperative must be designed to function in accordance with the cooperative principles or, if it is not designed to function entirely in accordance with the cooperative principles, the registrar must be satisfied that there are special reasons why the cooperative should be registered under this Act;
  - (d) there must be no reasonable cause for refusing registration of the proposed cooperative.
- (3) If the registrar is not satisfied that the requirements for registration of the proposed cooperative as a cooperative have been met, the registrar must—
- (a) refuse to register the proposed cooperative and its rules; and
  - (b) give to the applicant notice setting out the reasons for the refusal.

**24 Incorporation of proposed cooperative and certificate of registration**

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

**Division 2.5 Registration of existing corporation**

**25 Existing corporation can be registered**

A corporation (other than a cooperative taken to be registered under this Act) may apply to the registrar to be registered as a cooperative under this Act if the corporation is—

- (a) incorporated or registered, or taken to be registered, under the Corporations Act; or



- (b) incorporated or registered under any other law relating to the incorporation or registration of corporations.

## **26 Formation meeting for corporation**

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

## **27 Application for registration by corporation**

An application for registration must be accompanied by—

- (a) a written declaration signed by the directors or the committee of management of the corporation stating that at a meeting of the directors or committee they formed the opinion that the corporation will be able to pay its debts as they fall due; and
- (b) a report about the affairs of the corporation that shows its assets and liabilities, made up to the latest practicable date before the application; and
- (c) a copy of the memorandum and articles of association or rules of the corporation in force at the date of the application; and

- (d) 2 copies of the proposed rules of the cooperative, as provided for by the special resolution; and
- (e) for a proposed trading cooperative—a copy of the disclosure statement presented to the formation meeting held under section 26, signed and certified by the directors or committee of management of the corporation; and
- (f) a list containing the name, address, occupation and place and date of birth of each director; and
- (g) evidence to the satisfaction of the registrar of the incorporation of the corporation; and
- (h) any other particulars that the registrar may require in a particular case.

*Note 1* A fee may be determined under s 465 for this subsection.

*Note 2* If a form is approved under s 466 for an application or report, the form must be used.

## **28 Requirements for registration of corporation**

- (1) The registrar must register a corporation as a cooperative, and register its rules, if—
  - (a) an application is made under this division for registration of the cooperative; and
  - (b) the registrar is satisfied it meets the requirements for registration mentioned in subsection (2).
- (2) The requirements for registration of a cooperative under this division are as follows:
  - (a) the proposed rules of the proposed cooperative must be the rules approved by the registrar under section 21;
  - (b) the requirements of this Act must have been complied with in relation to the proposed cooperative and compliance must be likely to continue;

- (c) there must be no reasonable cause for refusing registration of the proposed cooperative.
- (3) If the registrar is not satisfied that the requirements for registration of the cooperative have been met, the registrar must refuse to register the cooperative and its rules.
- (4) If the registrar has decided under this section to register a corporation under this Act, the corporation must tell the authority responsible for registering the corporation under the law under which it was previously registered of that decision.
- (5) Despite anything to the contrary in this division, the registration of a corporation as a cooperative does not take effect until the corporation ceases to be registered under the law under which it was previously registered as a corporation.
- (6) The corporation must notify the registrar in writing within 7 days after the day it ceases to be registered under the other law.

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

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

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

**30 Name of corporation registered as cooperative**

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

**31 Effect of registration of corporation**

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

**Division 2.6 Conversion of cooperative**

**32 Procedure for conversion**

- (1) A cooperative may, by alteration of its rules, convert from—
  - (a) a cooperative with share capital to a cooperative without share capital or vice versa; or
  - (b) a trading cooperative to a non-trading cooperative or vice versa.
- (2) An alteration of the rules for the conversion of a cooperative must be approved by special resolution passed by a special postal ballot.

**Division 2.7 General**

**33 Stamp duty exemption for certain cooperatives**

- (1) This section applies to a cooperative that—
  - (a) has as its primary activity the providing of any community service or benefit; and
  - (b) was, before it was incorporated under this Act, an unincorporated club, association or body operating to provide

sporting or recreational facilities for its members and not carried on for the financial profit of its members.

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

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

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

Maximum penalty: 50 penalty units.

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

Maximum penalty: 50 penalty units.

### **35 Issue of duplicate certificate of registration**

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

*Note* A fee may be determined under s 465 for this section.

## **Part 3                      Legal capacity and powers**

### **Division 3.1              General powers**

#### **36                      Effect of incorporation**

A cooperative—

- (a) is a corporation; and
- (b) has perpetual succession; and
- (c) has a common seal; and
- (d) may sue and be sued in its corporate name; and
- (e) may take, buy, lease, hold, sell and dispose of real and personal property.

#### **37                      Power to form companies and enter into joint ventures etc**

Without limiting any other provision of this Act, a cooperative has power—

- (a) to form or take part in the formation of a corporation or unit trust; and
- (b) to acquire interests in and sell or otherwise dispose of interests in corporations, unit trusts and joint ventures; and
- (c) to form or enter into a partnership, joint venture or other association with other entities.

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

### **38                      Definitions for div 3.2**

In this division:

*doing*, an act by a cooperative, includes the following:

- (a) the making of an agreement by the cooperative;
- (b) a transfer of property to or by the cooperative.

*legal capacity* includes powers.

### **39                      Objects of div 3.2**

The objects of this division are—

- (a) to provide that the doctrine of ultra vires does not apply to cooperatives; and
- (b) without affecting the validity of a cooperative's dealings with others, to ensure that the 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.

### **40                      Legal capacity of cooperative**

- (1) A cooperative has, both within and outside the ACT and Australia, the legal capacity of an individual.
- (2) Without limiting subsection (1), a cooperative has, both within and outside the ACT and Australia, power—
  - (a) to issue and allot fully or partly paid shares in the cooperative; and
  - (b) to issue debentures of the cooperative; and
  - (c) to distribute any of the property of the cooperative among the members, in kind or otherwise; and

- (d) to give security by charging uncalled capital; and
  - (e) to grant a charge on property of the cooperative; and
  - (f) to procure the cooperative to be registered or recognised as a corporation in any place outside the ACT and Australia; and
  - (g) to do any other act that it is authorised to do by any other law (including a law of a place outside the ACT or Australia).
- (3) Subsections (1) and (2) apply in relation to a cooperative—
- (a) subject to this Act, but despite section 41 (2); and
  - (b) if the cooperative’s rules contain an express or implied restriction on, or an express or implied prohibition of, the exercise by the cooperative of any of its powers—despite that restriction or prohibition; and
  - (c) if the rules of the cooperative contain a provision stating the objects of the cooperative—despite that fact.
- (4) The fact that the doing of an act by a cooperative would not be, or is not, in its best interests does not affect its legal capacity to do the act.

#### **41 Restrictions on cooperatives by its rules**

- (1) A cooperative’s rules may contain an express restriction on, or an express prohibition of, the exercise by the cooperative of a power of the cooperative.
- (2) A cooperative contravenes this section if—
  - (a) it exercises a power contrary to an express restriction in the cooperative’s rules on, or an express prohibition in the cooperative’s rules of, the exercise of the power; or
  - (b) the rules of the cooperative contain a provision stating the objects of the cooperative and the cooperative does an act otherwise than in pursuance of the objects.



- (3) An officer of a cooperative who is involved in a contravention by the cooperative of this section also contravenes this section.
- (4) Contravention of this section is not an offence.

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

- (1) The exercise of a power or the doing of an act in contravention of section 41 is not invalid only because of the contravention.
- (2) An act of an officer of a cooperative is not invalid only because, by doing the act, the officer contravenes section 41.
- (3) The fact that the exercise of a power or the doing of an act contravenes or would contravene section 41 may be asserted or relied on only in—
  - (a) a prosecution of a person for an offence against this Act; or
  - (b) an application for an order under division 4.5 (Oppressive conduct of affairs); or
  - (c) an application for an injunction under section 454 to restrain the cooperative from entering into an agreement; or
  - (d) a proceeding (other than an application for an injunction) by the cooperative, or by a member of the cooperative, against the present or former officers of the cooperative; or
  - (e) an application by the registrar or by a member of the cooperative for the winding-up of the cooperative.
- (4) If, apart from subsection (3), the Supreme Court would have power under section 454 to grant, on the application of a person, an injunction restraining a cooperative or an officer of a cooperative from engaging in particular conduct in contravention of section 41, the court may, on the application of the person, order the cooperative or the officer to pay damages to the person or anyone else.

## Division 3.3            Dealings with cooperatives

### 43            When assumptions may be made

- (1) Subject to section 45, a person is entitled to make the assumptions mentioned in section 44 in relation to—
  - (a) dealings with a cooperative; and
  - (b) dealings with a person who has, or purports to have, directly or indirectly acquired title to property from a cooperative.
- (2) If a person is entitled to assume a matter, the cooperative or anyone mentioned in subsection (1) (b) is not entitled to assert in a proceeding in relation to the dealings that the matter is incorrect.

### 44            The assumptions

- (1) The assumptions that a person may make are as follows:
  - (a) that the cooperative's rules have been complied with;
  - (b) that anyone who appears, from information provided by the cooperative that is available to the public from the registrar, to be a director or officer of the cooperative—
    - (i) has been properly appointed; and
    - (ii) has authority to exercise the functions customarily exercised by a director or officer of a similar cooperative;
  - (c) that anyone who is held out by the cooperative to be an officer or agent of the cooperative—
    - (i) has been properly appointed; and
    - (ii) has authority to exercise the functions customarily exercised by that kind of officer or agent of a similar cooperative;

- (d) that anyone who is, or may be assumed to be, an officer or agent of the cooperative who has authority to issue a document or a certified copy of a document on its behalf also has authority to warrant that the document is genuine or is a true copy;
- (e) that a document has been properly executed by the cooperative if it is signed by 2 people, 1 of whom is, or may be assumed to be, a director of the cooperative, and the other a director or officer of the cooperative;
- (f) that a document has been properly sealed by the cooperative if it bears what appears to be an impression of the cooperative's seal and the sealing of the document appears to be witnessed by 2 people, 1 of whom is, or may be assumed to be, a director of the cooperative, and the other a director or officer of the cooperative;
- (g) that the officers and agents of the cooperative properly exercise their duties to the cooperative.

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

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

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

**46                    Filing of documents not to constitute constructive knowledge**

- (1) A person is not taken to have knowledge of a cooperative's rules, any of the contents of a cooperative's rules, a document, the contents of a document, or any particulars, only because of either or both of the following:
  - (a) the rules, the document or the particulars have been filed with the registrar;
  - (b) the rules, the document or the particulars are mentioned in any other document that has been filed with the registrar.
- (2) Subsection (1) does not apply in relation to a document, or in relation to the contents of a document, that has been filed under schedule 3 to the extent that the document relates to a charge that is registrable under that schedule.
- (3) Despite subsection (1), a member of a cooperative is taken to have knowledge of the rules of the cooperative.

**47                    Effect of fraud**

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

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

### **48                      Common seal**

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

### **49                      Official seal**

- (1) A cooperative may, if authorised by its rules, have, for use outside the ACT in place of its common seal, 1 or more official seals, each of which is a facsimile of the common seal of the cooperative with the addition on its face of the name of every place where it is to be used.
- (2) The person attaching an official seal must, by writing signed by the person, certify on the instrument to which it is attached the date when and the place where it is attached.
- (3) A document sealed with an official seal is taken to be sealed with the common seal of the cooperative.

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

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

- (a) both of whom are directors of the cooperative; or
- (b) 1 of whom is a director, and the other of whom is an officer, of the cooperative.

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

- (1) A cooperative may, by writing under its common seal, authorise a person, either generally or in relation to a particular matter, as its agent or attorney to execute deeds on its behalf.
- (2) A deed signed by the agent or attorney on behalf of the cooperative and under the seal of the agent or attorney, or under the appropriate official seal of the cooperative, binds the cooperative and has effect as if it were under the common seal of the cooperative.
- (3) The authority of the agent or attorney, as between the cooperative and a person dealing with the agent or attorney, continues during—
  - (a) if the instrument giving the authority specifies the period during which the authority continues—that period; or
  - (b) in any other case—until notice of the revocation or termination of the authority of the agent or attorney has been given to the person dealing with the agent or attorney.

**52 Execution under seal**

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

**53 Contractual formalities**

- (1) So far as concerns the formalities of making, varying or discharging a contract, a person acting under the express or implied authority of a cooperative may make, vary or discharge a contract in the name of, or on behalf of, the cooperative as if that contract were made, varied or discharged by an individual.

- (2) The making, varying or discharging of a contract in accordance with subsection (1) is effective in law and binds the cooperative and other parties to the contract.
- (3) This section does not prevent a cooperative from making, varying or discharging a contract under its seal.

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

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

**Division 3.5 Pre-registration contracts**

**56 Contracts before registration**

- (1) If a person enters into, or purports to enter into, a contract (the *pre-registration contract*) on behalf of, or for the benefit of, a proposed cooperative, the cooperative becomes bound by the contract and entitled to its benefit if the cooperative, or a cooperative reasonably identifiable with it, is registered and ratifies the contract—
  - (a) within a reasonable period after the contract is entered into; or
  - (b) within any period agreed to by the parties to the contract.
- (2) The person is released from any liability under the pre-registration contract if the cooperative enters into another contract in substitution for it—
  - (a) within a reasonable period after the pre-registration contract is entered into; or
  - (b) within any period agreed to by the parties to the pre-registration contract.

- (3) Subject to section 57 (3), the person who entered into, or purported to enter into, the pre-registration contract is liable to pay damages to each other party to the contract if a cooperative is not registered, or a cooperative is registered but does not ratify the contract or enter into a substitute for it—
  - (a) within a reasonable period after the contract is entered into; or
  - (b) if a period agreed to by the parties to the contract—within that period.
- (4) The maximum amount of damages the person is liable to pay to a party is the amount the cooperative would be liable to pay to the party if the cooperative had been registered and had ratified the contract and then completely failed to perform it.
- (5) If a proceeding is brought to recover damages under subsection (3) because the cooperative is registered but does not ratify the pre-registration contract or enter into a substitute for it, the court may do anything that it considers just in the circumstances, including ordering the cooperative—
  - (a) to pay all or part of the damages that the person is liable to pay; and
  - (b) to transfer property that the cooperative received because of the contract to a party to the contract; and
  - (c) to pay an amount to a party to the contract.
- (6) If the cooperative ratifies the pre-registration contract but fails to perform all or part of it, the court may order the person to pay all or part of the damages that the cooperative is ordered to pay.

**57 Person may be released from liability but is not entitled to indemnity**

- (1) Any of the parties to the pre-registration contract may release the person who entered into, or purported to enter into, the contract from any liability in relation to that contract.



- (2) The release must be in writing.
- (3) The party giving the release is not entitled to recover damages under section 56 from the person.
- (4) Despite any rule of law or equity, the person does not have any right of indemnity against the cooperative in relation to the person's liability under this division.
- (5) Subsection (4) applies even if the person was acting, or purporting to act, as trustee for the cooperative.

**58 Div 3.5 replaces other rights and liabilities**

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

## **Part 4                    Membership**

### **Division 4.1            General**

#### **59                    Becoming a member**

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

#### **60                    Members of associations**

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

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

## **61 Members of federations**

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

## **62 Qualification for membership**

- (1) A person is qualified to be admitted to membership of a cooperative only if—
- (a) there are reasonable grounds for believing that the person will be an active member of the cooperative; and
  - (b) the person is eligible under the rules of the cooperative.
- (2) The rules of a cooperative must contain provisions that—

- (a) impose a duty on everyone who becomes a member to be an active member; and
- (b) explain the consequences of failing to be or ceasing to be an active member.

**63            Membership may be joint**

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

**64            Members under 18 years old**

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

**65            Representatives of corporations**

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

**66 Notification of shareholders and shareholdings**

On the request of the board of a cooperative, a corporation that is a member of the cooperative must make available for inspection by the board—

- (a) a list of the names of all the shareholders of the corporation and the number of shares held by each shareholder; or
- (b) for a corporation without share capital—a list of the members of the corporation.

Maximum penalty: 20 penalty units.

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

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

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

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

- (a) the person's share is transferred to someone else in accordance with the rules of the cooperative, and the transferee is registered as holder in the person's place;
- (b) the person's share is forfeited under this Act or the rules of the cooperative;
- (c) the person's share is sold by the cooperative under a power given by the rules of the cooperative, and the purchaser is registered as holder in the person's place;
- (d) the person's share is purchased by the cooperative under this Act;
- (e) the amount paid up on the person's shares is repaid to the person in accordance with the rules of the cooperative.

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

- (1) If a cooperative continues to carry on business for more than 28 days after the day the number of members is reduced below the minimum number of members allowed, every person who is a director of the cooperative while it so continues to carry on business, and who knows it is carrying on business with fewer than the minimum number of members allowed, commits an offence.

Maximum penalty: 20 penalty units.

- (2) Each person who commits an offence against subsection (1) is also liable to satisfy all obligations of the cooperative incurred after the 28 days mentioned in that subsection, and may be sued without any other member being joined in the action.

- (3) The minimum number of members allowed is—
  - (a) for an association or federation—2; or
  - (b) for any other cooperative—5 or, if a lesser number is prescribed by regulation, that number.
- (4) The registrar may, by notice, extend and further extend in a particular case the period of 28 days mentioned in subsection (1).
- (5) An application for an extension must be made before the period to be extended ends.

*Note* If a form is approved under s 466 for an application, the form must be used.

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

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

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

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

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

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

Maximum penalty: 20 penalty units.

**72 Liability of members to cooperative**

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

**73 Cooperative to provide information to person intending to become a member**

- (1) The board of a cooperative must provide each person intending to become a member of the cooperative with—
  - (a) a consolidated copy of the rules of the cooperative; and
  - (b) a copy of all special resolutions passed by the members of the cooperative that will apply to the person as a member, except special resolutions providing for an alteration of the rules of the cooperative; and
  - (c) a copy of the last annual report (if any) of the cooperative.
- (2) The board of a cooperative may comply with subsection (1) by—



- (a) giving the person intending to become a member notice that the documents mentioned in that subsection may be inspected by the person at—
  - (i) the registered office of the cooperative; and
  - (ii) at any other office of the cooperative (whether the office is in the ACT, elsewhere in Australia or outside Australia); and
- (b) making those documents available for inspection at the registered office and any offices to which paragraph (a) (ii) applies.

#### **74 Entry fees and regular subscriptions**

- (1) The rules of a cooperative may—
  - (a) require the payment by members of entry fees and regular subscriptions; and
  - (b) authorise the amount of entry fees and regular subscriptions, based on the business done by shareholders with the cooperative; and
  - (c) provide for the repayment of the fees and subscriptions on a person ceasing to be a member.
- (2) The amount of a particular member's regular subscription may be worked out by reference to the amount of business the member does with the cooperative.
- (3) A cooperative must give to anyone intending to become a member notice of any entry fees or regular subscriptions payable by a member to the cooperative.
- (4) A person who becomes a member of the cooperative is not liable to pay any entry fees or regular subscriptions except—
  - (a) fees or subscriptions of which the person was given notice before becoming a member; and

- (b) any regular subscriptions that may be imposed by any subsequent alteration of the rules and of which the member has been given notice.

## **75 Fines payable by members**

- (1) A cooperative may impose a fine on a member for any infringement of the rules of the cooperative if the rules of the cooperative so provide.
- (2) A fine imposed under subsection (1) must not exceed the maximum fine (if any) specified by the cooperative's rules.
- (3) A fine may be imposed only if—
  - (a) notice of intention to impose a fine and the reason for it has been given to the member; and
  - (b) the member has been given a reasonable opportunity to appear before the board in person (with or without witnesses), or to send to the board a written statement, for the purpose of showing cause why the fine should not be imposed.
- (4) The cooperative may set off the fine against any amount owing to the member in relation to any produce delivered by the member to the cooperative, but the fine must not be set off against any advance owing to the member from the cooperative in accordance with the rules against produce so delivered.

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

- (1) A cooperative has, in relation to any debt owing by a member or former member to the cooperative, a charge on each of the following:
  - (a) the share or interest in the capital and the credit balance and deposits of the member or former member;
  - (b) any rebate, bonus, dividend or interest payable to the member or former member;

- (c) any entry fees and regular subscriptions required to be repaid to a member when the member ceases to be a member.
- (2) The cooperative may set off any amount paid on account of the share or other thing, or any amount credited or payable to the member or former member, in or towards payment of the debt.
- (3) The charge created by this section may be enforced by the appropriation by the cooperative of the share or other thing subject to the charge, but only after at least 7 days notice has been given to the member or former member.
- (4) Any share in relation to which capital has been appropriated must be cancelled.

## **77            Repayment of shares on expulsion**

- (1) If a member is expelled from a cooperative in accordance with its rules, the cooperative must, within 1 year after the day of the expulsion—
  - (a) repay to the former member an amount (the *repayable amount*) equal to the amount paid up on the shares held by the former member at the expulsion, less any amount owed by the former member to the cooperative at the expulsion under the rules of the cooperative or any contract or otherwise; or
  - (b) apply, in accordance with subsection (2), the repayable amount if—
    - (i) the board is of the opinion that repayment would adversely affect the financial position of the cooperative; or
    - (ii) the board and the former member agree.

- (2) The repayable amount may be applied in 1 of the following ways:
  - (a) the cooperative may appropriate the amount owing as a donation to the cooperative, but only if the former member agrees in writing to the donation;
  - (b) if the cooperative is a deposit-taking cooperative—the cooperative may apply the amount as a deposit by the former member with the cooperative;
  - (c) the cooperative may allot or issue debentures of the cooperative to the former member in satisfaction of the amount.
- (3) However, the deposit or debenture must be repaid at the time required under section 135 (2).
- (4) Payment of any amount payable under this section must be made at the time decided by the board of the cooperative, but not later than 1 year after the day of the expulsion.
- (5) Shares in relation to which capital has been repaid must be cancelled.

## Division 4.3 Death of member

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

In this division:

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

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

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

Subject to section 170 (Transfer on death of member), on the death of a member, the board must transfer the member's share or interest in the cooperative to—

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

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

- (1) If the total value of a dead member's shares or interest in a cooperative is less than \$10 000 (or, if another amount is prescribed by regulation, that amount), the board may, on the basis of the evidence it considers sufficient, transfer the shares or interest to—
  - (a) if the member died leaving a valid will—the person who appears to the board to be entitled to the shares or interest under the will of the member; or
  - (b) if the member died without leaving a valid will—anyone who appears to the board to be entitled to obtain a grant of administration of the estate of the member.
- (2) A person to whom shares or an interest of a dead member is transferred under subsection (1) (b) holds the shares or interest on the trusts that the person would have held the shares or interest on if the person had obtained a grant of administration of the estate of the member.
- (3) A transfer must not be made under this section after evidence has been produced to the cooperative of the grant of letters of administration of the estate, or probate of the will, of the dead member.

- (4) In this section:  
*transfer*, of an interest, includes the payment of money.

**81 Value of shares and interests**

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

**82 Cooperative protected**

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

**Division 4.4 Disputes involving members**

**83 Grievance procedure**

- (1) The rules of a cooperative must set out a grievance procedure for dealing with any dispute under the rules between—
- (a) a member and another member; or
  - (b) a member and the cooperative.
- (2) A member may appoint anyone to act on behalf of the member in the grievance procedure.
- (3) The grievance procedure must require natural justice to be applied.
- (4) In this section:  
*member* includes anyone who was a member at any time during the 6 months that ended on the day when the dispute happened.

## **84 Application to Supreme Court**

- (1) The Supreme Court may, on the application of a cooperative or a member of a cooperative, make an order declaring and enforcing—
  - (a) the rights or liabilities of members of the cooperative between themselves; or
  - (b) the rights or liabilities of the cooperative and any member between themselves.
- (2) An order may be made under this section whether or not a right of a proprietary nature is involved and whether or not the applicant has an interest in the property of the cooperative.
- (3) The Supreme Court may refuse to make an order on the application or may make an order for costs against a party, whether successful or not, if it is of the opinion that—
  - (a) the issue raised in the application is trivial; or
  - (b) having regard to the importance of the issue, the nature of the cooperative, any other available way of resolving the issue, the costs involved, lapse of time, acquiescence or any other relevant circumstance, it was unreasonable to make the application; or
  - (c) the unreasonable or improper conduct of a party—
    - (i) has been responsible for the making of the application; or
    - (ii) has added to the cost of the proceeding.
- (4) In this section:

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

## Division 4.5                    Oppressive conduct of affairs

### 85                    Meaning of *member* in div 4.5

In this division:

*member*, of a cooperative that has a share capital, includes a person to whom a share in the cooperative has been transmitted by will or by operation of law.

### 86                    Application of div 4.5

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

### 87                    Who may apply for court order

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

- (a) the registrar;
- (b) a member who believes that the affairs of the cooperative are being conducted in a way that is—
  - (i) oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member; or
  - (ii) contrary to the interests of the members as a whole;
- (c) a member who believes that an act or omission, or a proposed act or omission, by or on behalf of the cooperative, or a resolution, or a proposed resolution, of a class of members, was or would be—
  - (i) oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member; or
  - (ii) contrary to the interests of the members as a whole.



**88 Orders that Supreme Court may make**

- (1) On application under this division, the Supreme Court may make any order it considers appropriate.
- (2) The orders that may be made include (but are not limited to) the following:
  - (a) an order that the registrar appoint an administrator of the cooperative;
  - (b) an order that the cooperative be wound up;
  - (c) an order for regulating the conduct of affairs of the cooperative in the future;
  - (d) an order for the repayment under this Act of the member's shares;
  - (e) an order for the purchase of the shares of any member by the cooperative and for the reduction accordingly of the cooperative's capital;
  - (f) an order directing the cooperative to bring, continue, defend or discontinue a proceeding, or authorising a member of the cooperative to bring, continue, defend or discontinue a proceeding in the name and on behalf of the cooperative;
  - (g) an order appointing a receiver or a receiver and manager of property of the cooperative;
  - (h) an order restraining a person from engaging in conduct or doing anything;
  - (i) an order directing a cooperative to take steps necessary for it to become registered as a company under the Corporations Act;
  - (j) an order requiring a person to do anything;
  - (k) an order about costs.

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

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

- (a) that the affairs of a cooperative are being conducted in a way that is—
  - (i) oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member, whether or not in the capacity of a member; or
  - (ii) contrary to the interests of the members as a whole; or
- (b) that an act or omission, or a proposed act or omission, by or on behalf of a cooperative, or a resolution, or a proposed resolution, of a class of members of a cooperative, was or would be—
  - (i) oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member, whether or not in the capacity of a member; or
  - (ii) contrary to the interests of the members as a whole.

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

- (1) The Supreme Court need not make an order under this division for the winding-up of a cooperative if it is of the opinion that the winding-up of the cooperative would unfairly prejudice an oppressed member.
- (2) In this section:  
*oppressed member* means a member mentioned in section 89 (a) (i) or (b) (i).

**91 Application of winding-up provisions**

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

**92 Changes to rules**

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

- (a) the alteration has effect as if it had been made by special resolution of the cooperative; and
- (b) the cooperative must not (despite any other provisions of this Act) without the leave of the Supreme Court make any further alteration to the rules inconsistent with the provisions of the order.

**93 Copy of order to be filed with registrar**

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

Maximum penalty: 10 penalty units.

**Division 4.6 Proceedings on behalf of cooperatives**

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

- (1) A person may bring a proceeding on behalf of a cooperative, or intervene in a proceeding to which a cooperative is a party for the purpose of taking responsibility on behalf of the cooperative for the

proceeding or a step in the proceeding (for example, compromising or settling them), if—

- (a) the person is—
  - (i) a member, former member, or person entitled to be registered as a member, of the cooperative or of a related corporation; or
  - (ii) an officer or former officer of the cooperative; or
  - (iii) the registrar; and
- (b) the person is acting with leave granted under section 95.

- (2) A proceeding brought on behalf of a cooperative may be brought in the cooperative's name.

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

- (1) For section 94 (1), a person mentioned in section 94 (1) (a) may apply to the Supreme Court for leave to bring, or to intervene in, a proceeding.
- (2) The Supreme Court may grant the leave if satisfied that—
  - (a) the cooperative is unlikely to bring the proceeding, or properly take responsibility for the proceeding or the step in the proceeding; and
  - (b) the applicant is acting honestly; and
  - (c) it is in the best interests of the cooperative that the applicant be granted leave; and
  - (d) if the applicant is applying for leave to bring the proceeding—there is a serious question to be tried; and
  - (e) either—
    - (i) at least 14 days before making the application, the applicant gave notice to the cooperative of the applicant's

intention to apply for leave and of the reasons for applying; or

(ii) it is otherwise appropriate to grant leave.

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

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

## **97 Effect of ratification by members**

- (1) A ratification or approval of conduct by members of a cooperative—

- (a) does not prevent a person from bringing or intervening in a proceeding with leave under section 95 or from applying for leave under that section; and
  - (b) does not have the effect that a proceeding brought or intervened in with leave under section 95 must be decided in favour of the defendant or that an application for leave under that section must be refused.
- (2) The Supreme Court may take into account a ratification or an approval of the conduct by members of a cooperative in deciding what order or judgment (including about damages) to make in a proceeding brought or intervened in with leave under section 95 or in relation to an application for leave under that section.
- (3) In taking a ratification or approval into account under subsection (2), the Supreme Court may have regard to—
- (a) how well informed about the conduct the members were when deciding whether to ratify or approve the conduct; and
  - (b) whether the members who ratified or approved the conduct were acting for proper purposes.

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

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

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

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

- (b) directions about the conduct of the proceeding (including requiring mediation); and
  - (c) an order directing the cooperative, or an officer of the cooperative, to do or not to do anything; and
  - (d) an order appointing an independent person to investigate, and report to the Supreme Court, on—
    - (i) the financial affairs of the cooperative; or
    - (ii) the facts or circumstances that gave rise to the cause of action the subject of the proceeding; or
    - (iii) the costs incurred in the proceeding and the person granted leave.
- (2) A person appointed by the Supreme Court under subsection (1) (d) is entitled, on giving reasonable notice (whether oral or in writing) to the cooperative, to inspect and make copies of any books of the cooperative for any purpose related to their appointment.

**100 Power of Supreme Court to make costs order for proceedings brought etc with leave**

The Supreme Court may, in relation to a proceeding brought or intervened in with leave under section 95 or an application for leave under that section, make any orders it considers just about the costs of the person who applied for or was granted leave, of the cooperative or of any other party to the proceeding or application (including an order requiring indemnification for costs).

## Part 5 Rules

### 101 Effect of rules

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

### 102 Content of rules—generally

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

### 103 Other requirements about contents of rules etc

- (1) The rules must be divided into paragraphs numbered consecutively.
- (2) The rules may state the objects of the cooperative.
- (3) The rules may incorporate any provision of the model rules approved under section 106.
- (4) The rules may provide for the imposition of a fine on a member for any infringement of the rules.
- (5) If the rules provide for the imposition of a fine, the rules must specify the maximum fine that may be imposed on a member.



- (6) The maximum fine provided under the rules must not exceed any amount prescribed by regulation as the maximum fine.
- (7) The rules may contain other provisions not inconsistent with this Act or another territory law.

#### **104 Obtaining copy of rules**

- (1) A member is entitled to obtain from a cooperative a copy of its rules on payment of the amount required by the rules of the cooperative or, if the rules do not require an amount, on payment of \$5 (plus any GST payable in relation to the supply).
- (2) The amount required by the rules must not exceed the fee (if any) determined under section 465 (Determination of fees) for obtaining a copy of the rules from the registrar.
- (3) A person is entitled to obtain a copy of the rules of a cooperative from the registrar.

*Note* A fee may be determined under s 465 for this subsection.

#### **105 False copies of rules**

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

Maximum penalty: 10 penalty units.

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

Maximum penalty: 10 penalty units.

## **106 Model rules**

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

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

- (2) The model rules may make provision for anything for which the rules of a cooperative may make provision.
- (3) If the model rules provide for a matter and the rules of a cooperative to which the model rules apply do not provide for the matter, the provision of the model rules relating to the matter is taken to be included in the rules of the cooperative.
- (4) Model rules approved under this section are a notifiable instrument.

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

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

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

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

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

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

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

- (1) A draft of the proposed alteration of the rules of a cooperative must be given to the registrar at least 28 days (or, if the registrar allows a shorter period, that period) before the day—
  - (a) notice of the proposed special resolution altering the rules is given to the members by the cooperative; or

- (b) the resolution is passed by the board of the cooperative.
- (2) The proposed alteration must—
- (a) comply with section 102 (Content of rules—generally) and section 103 (Other requirements about contents of rules etc); and
  - (b) be accompanied by a statement setting out the reasons for the alteration.
- Note* If a form is approved under s 466 for a proposed alteration, the form must be used.
- (3) The registrar may—
- (a) approve the proposed alteration as submitted; or
  - (b) approve a different alteration to the proposed alteration as submitted; or
  - (c) refuse to approve the proposed alteration.
- (4) If the registrar approves the proposed alteration, the registrar must give notice of the approval to the person who submitted the alteration to the registrar.
- (5) If the registrar refuses to approve the proposed alteration, the registrar must give notice of the refusal to the person who submitted the alteration to the registrar.

## **110 Alteration by special resolution**

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

## **111 Alteration by resolution of board**

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

- (2) If the rules of a cooperative are altered under this section, the cooperative must tell its members in writing about the alteration—
- (a) as soon as practicable after the alteration takes effect; and
  - (b) not later than the day when notice is given to the members of the next annual general meeting of the cooperative after the alteration takes effect.

### **112 Registration of alteration**

- (1) An application for registration of an alteration must—
- (a) be made within 28 days after the day the alteration is made or, if another period is prescribed by regulation, that period; and
  - (b) be accompanied by a consolidated copy of the rules of the cooperative (including the alteration).

*Note* If a form is approved under s 466 for an application, the form must be used.

- (2) The registrar must register the alteration unless the registrar refuses to register it under subsection (3).
- (3) The registrar must refuse to register the alteration if—
- (a) the registrar is satisfied that the alteration is contrary to this Act; or
  - (b) the registrar has other reasonable cause to refuse to register the alteration.
- (4) The registrar must give notice of the decision to the person who applied for registration of the alteration.
- (5) A certificate of registration of any alteration of the rules of a cooperative given by the registrar is, in favour of anyone advancing money to the cooperative on the faith of the certificate or in favour of any guarantor of that advance, conclusive evidence that the alteration was properly made.

**113      Alteration takes effect only if registered**

An alteration of the rules of a cooperative takes effect only if it is registered by the registrar.

## Part 6                            Active membership

### Division 6.1                    Interpretation

#### 114            **Meaning of *primary activity***

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

#### 115            **Who is an *active member***

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

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

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

- (1) The *active membership provisions* of the rules of a cooperative are the provisions of the rules that specify—
  - (a) the activities of the cooperative that are its primary activities; and
  - (b) how, and to what extent, a member of the cooperative is required to use or support an activity of, or maintain a relationship or an arrangement with, the cooperative, in

relation to the carrying on of a primary activity of the cooperative, to establish active membership of the cooperative.

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

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

### **117                      Number of primary activities required**

A cooperative must have at least 1 primary activity.

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

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

### **119                      Factors and considerations for deciding primary activities etc**

- (1) The board of a cooperative must ensure that the relevant factors and considerations are taken into account in deciding—
- (a) which of the activities of a cooperative are its primary activities; and
  - (b) how, and to what extent, a member is required to use or support an activity of, or maintain a relationship or an arrangement with, a cooperative, in relation to the carrying on of a primary activity of the cooperative, to establish active membership of the cooperative.
- (2) The relevant factors and considerations are—
- (a) the primary activity (or, if there are 2 or more primary activities, the primary activities taken together) must constitute

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

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

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

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



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

- (1) Active membership provisions for a non-trading cooperative may include provision that the payment of a regular subscription by a member of the cooperative, to be applied in relation to a primary activity of the cooperative, is sufficient to establish active membership of the cooperative.
- (2) A member of a cooperative who would, on payment of such a subscription, be an active member of a cooperative is taken to be an active member until the subscription is owing.

**Division 6.3 Active membership resolutions**

**122 Notice of meeting**

- (1) At least 21 days notice must be given to members of a cooperative of a meeting at which an active membership resolution is to be proposed.
- (2) The notice must, in addition to the other matters required to be specified—
  - (a) state whether the member is eligible to vote on the resolution; and
  - (b) state the full text of the proposed resolution; and
  - (c) contain a copy of section 126 (Cancellation of membership of inactive members).
- (3) If the notice to a member states that the member is not eligible to vote on a resolution, the member may, after trying to settle the matter with the cooperative, apply to the registrar for a decision about the member's eligibility.
- (4) The registrar may decide the matter, on the information available to the registrar, by written direction to the cooperative and the member.

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

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

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

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

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

- (a) subject to paragraph (b), a director is only eligible to vote on that proposal if the director would be eligible to vote on the resolution at the meeting of the cooperative; or
- (b) if fewer than 2 directors (whether or not they are present at the meeting of the board) would be eligible to vote on the resolution at the meeting of the cooperative—all the directors are eligible to vote on that proposal at the meeting of the board.

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

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

## Division 6.4                      Cancellation of membership of inactive members

### 126                      Cancellation of membership of inactive members

- (1) The board of a cooperative must declare the membership of a member cancelled if—
  - (a) the whereabouts of the member are not known to the cooperative and have not been known to the cooperative for at least the required period; or
  - (b) the member is not an active member of the cooperative and has not been an active member of the cooperative at any time during the required period.
- (2) This section applies to a member only if the member was a member of the cooperative throughout the required period.
- (3) The question whether a member was an active member at a particular time in the past must be decided as if the active membership provisions concerned had been in force at that time.
- (4) The board's declaration under this section in relation to a member has the effect of cancelling the membership of the member.
- (5) A person may apply to the Supreme Court for an order under section 132 against the cancellation of the person's membership under this section.
- (6) In this section:  
*required period*, for a cooperative, means—
  - (a) the last 3 years; or
  - (b) if a shorter period is provided in the rules of the cooperative— that shorter period.

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

- (1) If a cooperative has a share capital, the board of the cooperative must declare the shares of a member to be forfeited at the same time as the member's membership is cancelled under section 126.
- (2) The board's declaration has the effect of forfeiting the shares.
- (3) This section does not affect the operation of section 133 (Repayment of amounts owing in relation to cancelled membership).

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

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

Maximum penalty: 20 penalty units.

**129 Deferral of forfeiture by board**

- (1) The board of a cooperative may, by resolution, defer cancellation of a member's membership for up to 1 year—
  - (a) if the board has reasonable grounds to believe that a member has ceased to be an active member because of unusual circumstances that prevent the member fulfilling the member's active membership obligations; or
  - (b) if—
    - (i) the board considers that during that period an active membership resolution may be put to the members of the cooperative; and
    - (ii) the effect of the resolution would be relevant to the question whether the member is an active member.

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

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

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

- (a) if the cooperative is insolvent; or
- (b) if the cooperative is under administration under the Corporations Act, part 5.3A (Administration of a company's affairs with a view to executing a deed of company arrangement) as applied by this Act; or
- (c) if a compromise or an arrangement is being administered in relation to the cooperative; or
- (d) if the cooperative is in the course of being wound up; or
- (e) if an appointment of a receiver (whether or not a receiver and manager) of any property of the cooperative is in force; or
- (f) if the cooperative has, for the purposes of being registered as a company under the Corporations Act, filed with the registrar a copy of the entry made in the minute book of the cooperative under section 199 (Postal ballots); or
- (g) in any other circumstances prescribed by regulation.

**131 Notice of intention to cancel membership**

- (1) The board of a cooperative must ensure that a member is given not less than 28 days notice of its intention to declare the membership of the member cancelled.
- (2) Notice is not required to be given under this section if—

- (a) the member's whereabouts are unknown to the cooperative; and
- (b) the amount required to be repaid to the member in relation to the cancelled membership (whether because of the cancellation of shares or otherwise) does not exceed \$50.

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

- (1) If the Supreme Court is satisfied that the cancellation of a member's membership under section 126 was or would be unreasonable, the court may order that the membership should not have been cancelled or should not be cancelled.
- (2) While an order is in force under this section—
  - (a) if the membership was cancelled—the person whose membership was cancelled must be reinstated as a member of the cooperative with all the rights and entitlements (including any shareholding) attaching to or arising from the former membership; and
  - (b) if the membership is proposed to be cancelled—the membership must not be cancelled and any shareholding of the member must not be forfeited.
- (3) Subsection (2) applies subject to any directions of the Supreme Court.

**133 Repayment of amounts owing in relation to cancelled membership**

- (1) If the membership of a member of a cooperative is cancelled under this part, the cooperative must, within 1 year after the day of the cancellation—
  - (a) repay to the former member the amount owing to the member in relation to the cancellation; or
  - (b) apply the amount in accordance with subsection (2) if—

- (i) the board is of the opinion that repayment would adversely affect the financial position of the cooperative;  
or
  - (ii) the board and the former member so agree.
- (2) The amount owing may be applied as follows:
  - (a) if the cooperative is a deposit-taking cooperative—the cooperative may apply the amount as a deposit by the former member with the cooperative (subject to the requirements of section 134 about interest on the deposit);
  - (b) the cooperative may allot or issue debentures of the cooperative to the former member in satisfaction of the amount;
  - (c) the cooperative may appropriate the amount owing as a donation to the cooperative, but only if the former member agrees in writing to the donation.
- (3) The amount owing to a former member in relation to the cancellation of membership includes any amount paid up in relation to shares forfeited because of the cancellation of membership.
- (4) If the former member is subsequently readmitted to membership, any amount held by the cooperative under this section must, if the member asks, be applied towards the cost of admission to membership (including any subscription for share capital).

## **134 Interest on deposits and debentures**

- (1) This section applies if the amount owing to a former member under section 77 (Repayment of shares on expulsion) or section 133 is applied as a deposit with the cooperative or the cooperative allots or issues debentures to the former member in satisfaction of the amount.
- (2) The deposit or debenture bears interest during any period—

- (a) for a cooperative with share capital—
- (i) at the rate (or, if there is more than 1 rate, at the higher or highest rate) of dividend payable in relation to that period on the share capital of the cooperative; or
  - (ii) if the rate of dividend payable in relation to that period has not been decided—at the rate (or the higher or highest rate) payable in relation to the last period for which a rate has been decided; or
  - (iii) if a rate of dividend has never been decided in relation to the share capital of the cooperative—at the rate that the board of the cooperative considers reasonable; or
- (b) for a cooperative without share capital—at the rate that the board of the cooperative considers reasonable; or
- (c) if the rules provide for a rate to be payable that is higher than the rate applying under paragraph (a) or (b)—at the higher rate.
- (3) A former member may agree to the rate of interest being less than that which would otherwise be payable under this section and may agree to no interest being paid.
- (4) The following provision of the Corporations Act (as applied by section 264 (Application of Corporations Act—issue of debentures)) do not apply to an allotment or issue of debentures under this section:
- chapter 2L (Debentures)
  - chapter 6D (Fundraising).

### **135 Repayment of deposits and debentures**

- (1) If an amount is owing to a former member under this division or section 77 (Repayment of shares on expulsion) in relation to a deposit or debenture, the amount must be repaid to the former member as soon as repayment would not, in the opinion of the board, adversely affect the financial position of the cooperative.



- (2) The deposit or debenture must, in any case, be repaid within 10 years (or, if the cooperative's rules require a shorter period, that period) after cancellation of the member's membership.

**136 Register of cancelled memberships**

- (1) A cooperative must keep a register of people whose membership has been cancelled under this division.
- (2) The register must contain the particulars prescribed by regulation.

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

**137 Application of div 6.5**

This division applies only to trading cooperatives.

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

- (1) Even though a person's shares in a cooperative have been forfeited under this part, the person is taken to be the holder of shares in the cooperative (the same in all respects as the shares that were forfeited) for the following purposes:
  - (a) the entitlements of a shareholder in relation to the purchase of shares in the cooperative in accordance with an offer mentioned in section 290 (1) (a), (b) or (c) or the purchase of all the shares in the cooperative, if the offer or purchase happens within 5 years after the day the person's shares were forfeited;
  - (b) the entitlement of a shareholder when the cooperative becomes registered as a company if the relevant special resolution under section 308 is passed within 5 years after the day the person's shares were forfeited;

- (c) the entitlement of a shareholder to a distribution of surplus in a winding-up of the cooperative that begins within 5 years after the day the person's shares were forfeited.
- (2) Subsection (1) (a) does not apply in relation to—
  - (a) an offer mentioned in section 290 (1) (a) or (c) that is made by another cooperative; or
  - (b) the purchase of all the shares in the cooperative by another cooperative.
- (3) Subsection (1) (c) does not apply if the winding-up is for a merger under division 12.1.
- (4) To remove any doubt, the entitlement under subsection (1) (a) of a person whose shares have been forfeited does not include an entitlement to vote on anything.
- (5) This section does not apply to a forfeited shareholding in a cooperative if the forfeited shareholding is taken under section 139 to be a forfeited shareholding in another cooperative.

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

- (1) This section applies if a person's shares in a cooperative (the *original cooperative*) are forfeited under this part and within 5 years after the day of the forfeiture—
  - (a) the original cooperative becomes a subsidiary of another cooperative (the *new cooperative*); or
  - (b) another cooperative (the *new cooperative*) is created because of a merger under division 12.1 involving the original cooperative; or
  - (c) the engagements of the original cooperative are transferred to another cooperative (the *new cooperative*) under division 12.1.
- (2) The person is, for the operation of section 138 (and the further operation of this section), taken to have held shares in the new

cooperative and as having had the shares in the new cooperative forfeited under this part when the person's shares in the original cooperative were forfeited.

- (3) The extent of the forfeited shareholding in the new cooperative must be decided as follows:
  - (a) if the entitlement of active members of the original cooperative is solely an entitlement to be allotted shares in the new cooperative—the forfeited shareholding in the new cooperative is the shareholding to which the person would have been entitled had the person's shares in the original cooperative not been forfeited;
  - (b) in any other case—the forfeited shareholding in the new cooperative is the shareholding that is the same in all respects as the forfeited shareholding in the original cooperative.
- (4) A decision under subsection (3) (a) about the person's shareholding in the new cooperative must be made—
  - (a) solely on the basis of the person's shareholding in the original cooperative when the shares were forfeited or (in a further operation of this section in relation to the person) when the person was first taken to have a forfeited shareholding in the original cooperative; and
  - (b) without regard to any additional shareholding in the original cooperative to which the person would have become entitled had the shares not been forfeited (whether because of any bonus share issue or otherwise).

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

- (1) If a person has an entitlement because of section 139, the entitlement operates to extinguish any liability of the cooperative—
  - (a) to repay to the person under section 133 (Repayment of amounts owing in relation to cancelled membership) any

amount in relation to the person's forfeited shares in the cooperative; or

- (b) in relation to a deposit held by the cooperative, or debentures allotted or issued to the person, under section 133 in relation to the person's forfeited shares in the cooperative (except a liability to pay any interest owing).
- (2) If an amount has been repaid to a person under section 133 or section 135 (Repayment of deposits and debentures), the amount repaid must be set off against any entitlement of the person under section 138 in relation to the forfeited shares.
  - (3) If the amount repaid cannot be set off against the entitlement because the entitlement is not, or is only partly, an entitlement to money, the entitlement is lost unless the person pays to the cooperative the amount repaid to the person and does so within the period required under subsection (4).
  - (4) If the circumstances mentioned in subsection (3) arise, the cooperative must—
    - (a) give notice of the matter by prepaid post to the person at the person's address last known to the cooperative, stating a period of not less than 28 days after the notice is given during which any amount repaid must be paid to the cooperative; and
    - (b) publish a general notice to that effect in a newspaper circulating generally in the district where the registered office of the cooperative is located.

#### **141 Entitlement to distribution from reserves**

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

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

- (1) The registrar may, in writing, exempt a cooperative from this division or a provision of this division.
- (2) An exemption is a notifiable instrument.

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

## **Part 7 Shares**

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

#### **143 Nature of share**

- (1) A share or other interest in a cooperative—
  - (a) is personal property; and
  - (b) is transferable or transmissible as provided under this Act and the rules of the cooperative; and
  - (c) is, subject to the rules of the cooperative, capable of devolution by will or by operation of law.
- (2) Subject to subsection (1)—
  - (a) the laws applying to ownership of and dealing with personal property apply to a share or other interest of a member in a cooperative as they apply to other property; and
  - (b) equitable interests in relation to a share or other interest of a member in a cooperative may be created, dealt with and enforced as in the case of other personal property.

### **Division 7.2 Disclosure**

#### **144 Disclosure to intending shareholders**

- (1) The board of a trading cooperative must give to a person who intends to acquire shares in the cooperative and is not already a shareholder in the cooperative a current disclosure statement that—
  - (a) has been approved by the registrar under section 20; or
  - (b) contains the particulars required by subsection (6) and has been filed by the cooperative with the registrar.

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

(c) any other information that the registrar orders.

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

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

- (a) has already been given to the person under this Act; or
- (b) has been made available for inspection by notice to the person given under section 73 (2) (Cooperative to provide information to person intending to become a member).

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

- (1) The registrar may, in writing, exempt the board of a trading cooperative from this division or a provision of this division.
- (2) The registrar may give the exemption only if the registrar is satisfied that compliance would be inappropriate in the circumstances or would impose an unreasonable burden.

**Division 7.3 Issue of shares in cooperative**

**147 Issue of shares generally**

- (1) The share capital of a cooperative varies in amount according to the nominal value of shares from time to time subscribed.
- (2) Shares must be of a fixed amount that is specified in the rules of the cooperative.
- (3) A cooperative may have more than 1 class of shares provided the shareholding and the rights of shareholders comply with the cooperative principles.
- (4) Subject to this part and part 4 (Membership), shares must not be issued to a nonmember.



**148 Minimum paid-up amount**

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

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

A cooperative must not issue shares at a discount.

**150 Issue of shares at premium**

- (1) A trading cooperative may issue shares at a premium.
- (2) A premium may be in the form of cash or other valuable consideration.
- (3) If a trading cooperative issues shares for which it receives a premium, an amount equal to the aggregate amount or value of the premiums on the shares must be transferred to a share premium account.
- (4) The share premium account is taken to be paid-up share capital of the trading cooperative and may be applied in any 1 or more of the following ways:
  - (a) in paying up unissued shares to be issued to members of the cooperative as fully-paid bonus shares;
  - (b) in paying up in whole or part the balance unpaid on shares previously issued to members of the cooperative;
  - (c) in the payment of dividends, if those dividends are satisfied by the issue of shares to members of the cooperative;

- (d) in writing off the preliminary expenses of the cooperative;
- (e) in providing for the premium payable on redemption of shares or debentures.

**151 Joint ownership of shares**

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

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

- (1) If authorised by the rules of the cooperative, the board of a trading cooperative may require a member to take up or subscribe for additional shares in accordance with a proposal approved by a special resolution of the cooperative.
- (2) The board of a trading cooperative may deduct amounts, in payment for additional shares from amounts owing to members in relation to dealings with the cooperative, in accordance with a proposal approved by a special resolution of the cooperative.
- (3) Any proposal to require a member to take up or subscribe for additional shares must—
  - (a) be accompanied by a disclosure statement, approved in writing by the registrar, that explains the purpose for which the funds raised by the issue of the additional shares are to be used; and
  - (b) clearly show the total number of additional shares to be issued and the basis on which the shares are to be apportioned among members; and
  - (c) be accompanied by a statement telling the member that the member may tell the board, by notice given to the board on or before the date stated in the statement, that the member resigns on the passing of the special resolution.
- (4) The date stated in the statement must be a date before the passing of the special resolution.

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

### **153 Bonus share issues to members**

- (1) The rules of a trading cooperative may authorise the issue of bonus shares to members of the cooperative if assets of the cooperative—
- (a) have been sold at a profit; or
  - (b) have been revalued at a greater value than that disclosed before the revaluation in the books of the cooperative.

- (2) This section does not—
- (a) apply if the assets were acquired for resale at a profit; or
  - (b) affect the operation of section 274 (Distribution of surplus or reserves to members).

#### **154 Restrictions on bonus shares**

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

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

#### **155 Notice of resolution for bonus share issue**

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

- (a) a statement of the value of the assets concerned as disclosed in the books of the cooperative before the sale or revaluation; and
- (b) if the issue arises from, or partly from, a sale of assets—a statement of the price for which the assets were sold; and

- (c) if the issue arises from, or partly from, a revaluation of assets—a certificate of value of the assets that is provided for a valuation made not more than 1 year before the date of the notice by a person prescribed by regulation; and
- (d) particulars of acquisitions of shares in the cooperative made during the 3 years immediately before the date of the notice by or on behalf of each of its directors and his or her domestic partner and the father, mother, children, brothers and sisters of each director and domestic partner; and
- (e) a certificate signed by 2 directors of the cooperative stating that to the best of their knowledge and belief the issue of bonus shares would not be imprudent and that no circumstances are known to them about why the issue should not take place.

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

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

- (1) If it may reasonably be expected (having regard to all relevant circumstances) that on registration of a transfer of shares the transferee will hold some or all of the shares non-beneficially, the instrument of transfer must include a non-beneficial ownership notice.
- (2) A *non-beneficial ownership notice* is a notice that—
  - (a) contains a statement to the effect that, on registration of the transfer, the transferee will hold particular shares non-beneficially; and
  - (b) states particulars of the shares; and
  - (c) is signed by or on behalf of the transferee.

- (3) If an instrument of transfer is given, by or on behalf of the transferee, to the cooperative for registration, the transferee must ensure that this section is complied with.

Maximum penalty: 10 penalty units.

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

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

- (1) If on the registration of an instrument of transfer of shares the transferee holds non-beneficially any of the shares transferred, notice of that fact must be given to the cooperative.

- (2) The notice must—

- (a) set out the name and address of the transferee; and
- (b) contain a statement to the effect that, as from registration of the transfer, the transferee holds the shares non-beneficially; and
- (c) set out particulars of the shares; and
- (d) be signed by or on behalf of the transferee.

- (3) The notice must be given within 14 days after the registration of the transfer (even if before the end of that 14 days the transferee begins to hold any of the relevant shares beneficially).

- (4) The transferee of the shares must ensure that this section is complied with.

Maximum penalty: 10 penalty units.

- (5) This section does not apply in relation to any shares for which particulars were set out in a non-beneficial ownership notice under section 156 included in the instrument of transfer.

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

- (1) If an instrument of transfer of shares given to a cooperative includes a non-beneficial ownership notice under section 156 in relation to particular shares 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.
- (2) The notice must—
  - (a) state the name and address of the transferee; and
  - (b) contain a statement to the effect that, as from registration of the transfer, the transferee holds the relevant shares beneficially; and
  - (c) state particulars of the shares held beneficially; and
  - (d) be signed by or on behalf of the transferee.
- (3) The notice must be given within 14 days after the day of the registration of the transfer (even if before the end of that 14 days the transferee begins to hold any of the relevant shares non-beneficially).
- (4) The transferee of the shares must ensure that this section is complied with.

Maximum penalty (subsection (4)): 10 penalty units.

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

- (1) A person must notify the cooperative in accordance with this section of the change in the person's shareholding in the cooperative if the person—
  - (a) begins to hold any shares beneficially that the person currently holds non-beneficially; or

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

Maximum penalty: 10 penalty units.

- (2) The notice must—
- (a) state the name and address of the person; and
  - (b) contain a statement to the effect that, as from the time of the change, the person holds the shares beneficially or non-beneficially (as appropriate); and
  - (c) state the time of the change and particulars of the shares affected; and
  - (d) be signed by or on behalf of the person.
- (3) The notice must be given within 14 days after the day the change happens (even if before the end of that 14 days another such change affecting any of the shares happens).

### **160 Presumption of awareness**

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

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

- (1) A person who holds particular shares is taken to hold the shares non-beneficially if the person—
  - (a) holds the shares in a capacity other than that of sole beneficial owner; or



- (b) without limiting paragraph (a), holds the shares as trustee for, as nominee for, or otherwise on behalf of or on account of, someone else.
- (2) A person who holds particular shares is taken to hold the shares beneficially at a particular time unless the person holds the shares non-beneficially at that time.

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

- (1) The register of members kept by a cooperative must contain a statement of the shares that each member holds beneficially and of the shares that each member holds non-beneficially.
- (2) In deciding, for an entry in the register, whether a member of a cooperative holds shares beneficially or non-beneficially, regard is to be had only to the following information:
  - (a) information contained in a non-beneficial ownership notice under section 157 included in an instrument of transfer registered by the cooperative;
  - (b) information contained in a notice given to the cooperative under any other provision of this division.

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

- (1) A trustee, executor or administrator of the estate of a dead person who was the registered holder of a share in a cooperative may be registered as the holder of that share as trustee, executor or administrator of the estate.
- (2) A trustee, executor or administrator of the estate of a dead person who was entitled in equity to a share in a cooperative may, with the agreement of the cooperative and of the registered holder of the share, be registered as the holder of the share as trustee, executor or administrator of that estate.

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

- (1) This section applies to a person (the *appointed person*) who is appointed under a guardianship law to administer the estate of someone (the *incapable person*).
- (2) If the incapable person is the registered holder of a share in a cooperative, the appointed person may be registered as the holder of that share as administrator of the estate of the incapable person.
- (3) If the incapable person is entitled in equity to a share in a cooperative, the appointed person may, with the agreement of the cooperative and of the registered holder of that share, be registered as the holder of the share as administrator of the estate of the incapable person.
- (4) In this section:

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

**165 Registration as official trustee in bankruptcy**

- (1) This section applies if a share in a cooperative that is the property of a bankrupt vests under the *Bankruptcy Act 1966* (Cwlth) in the Official Trustee in Bankruptcy (the *official trustee*).
- (2) If the bankrupt is the registered holder of the share, the official trustee may be registered as the holder of that share as the Official Trustee in Bankruptcy.
- (3) If the bankrupt is entitled in equity to the share, the official trustee may, with the agreement of the cooperative and of the registered holder of the share, be registered as the holder of that share as the Official Trustee in Bankruptcy.

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

- (1) A person registered under section 163, section 164 or section 165 is, while so registered, subject to the same liabilities in relation to the share as those to which the person would have been subject if the share had remained, or had been, registered in the name of the dead person, the incapable person or the bankrupt.
- (2) The person registered is subject to no other liabilities in relation to the share.

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

Shares held by a trustee in relation to a particular trust may, with the agreement of the cooperative, be marked in the register of members in a way that identifies the shares as being held in relation to the trust.

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

Except as provided in this division—

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

**Division 7.5 Sale or transfer of shares**

**169 Sale or transfer of shares**

- (1) A share in a cooperative may be sold or transferred only—
  - (a) in accordance with division 4.3 and section 170, on the death of a member; or

- (b) to a person appointed to administer the estate of a shareholder under a law of a State or Territory relating to the administration of the estates of people who, through mental or physical infirmity, cannot manage their affairs; or
  - (c) with the board's agreement, to any person if there are reasonable grounds for believing that the person will be an active member of the cooperative.
- (2) A share in a cooperative may be sold or transferred only in accordance with the rules of the cooperative.

**170 Transfer on death of member**

- (1) On the death of a member, the member's share in the cooperative may be transferred to a person other than an administrator or executor only with the agreement of the board of the cooperative.
- (2) The board may only give its agreement under subsection (1) if there are reasonable grounds for believing that the person will be an active member of the cooperative.

**171 Restriction on total shareholding**

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

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

**172 Transfer not effective until registered**

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

**Division 7.6 Repurchase of shares**

**173 Purchase and repayment of shares**

- (1) The rules of a cooperative may authorise the cooperative to—
  - (a) buy any share of a member in the cooperative at the request of the member; and
  - (b) repay to a member, with the member's agreement, all or any part of the amount paid up on any share held by the member if the amount repaid is not required for the activities of the cooperative.
- (2) The amount paid by a cooperative under this section in buying shares or repaying any amount paid up on shares, or both, in any financial year of the cooperative must not exceed the total of—
  - (a) 5% of the nominal value of the issued share capital of the cooperative immediately before the beginning of the financial year; and
  - (b) the amount of any additional share capital of the cooperative subscribed for during the financial year.
- (3) The members of a cooperative may by special resolution exempt a cooperative from the operation of subsection (2) in relation to a particular financial year, either unconditionally or subject to conditions.

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

**174 Deposit or debentures instead of payment when share repurchased**

- (1) If a cooperative repurchases a share of a member, the cooperative may instead of paying the purchase price to the member—
  - (a) for a deposit-taking cooperative—apply the amount as an interest-bearing deposit by the member with the cooperative; or
  - (b) allot or issue debentures of the cooperative to the member in satisfaction of the amount.
- (2) Subsection (1) applies only if—
  - (a) the board is of the opinion that payment of the repurchase price would adversely affect the financial position of the cooperative; or
  - (b) the board and the member agree.

- (3) The deposit or debenture bears interest during any period—
- (a) for a cooperative with share capital—
    - (i) at the rate (or, if there is more than 1 rate, at the higher or highest rate) of dividend payable in relation to the period on the share capital of the cooperative; or
    - (ii) if the rate of dividend payable in relation to the period has not been decided—at the rate (or the higher or highest rate) payable in relation to the last period for which a rate has been decided; or
    - (iii) if a rate of dividend has never been decided in relation to the share capital of the cooperative—at the rate that the board of the cooperative considers reasonable; or
  - (b) for a cooperative without share capital—at the rate that the board of the cooperative considers reasonable; or
  - (c) if the rules provide for a rate to be payable that is higher than the rate applying under paragraph (a) or (b)—at the higher rate.
- (4) The deposit or debenture must be repaid to the member as soon as repayment would not, in the board's opinion, adversely affect the financial position of the cooperative.
- (5) The deposit or debenture must in any case be repaid within 10 years (or, if the rules of the cooperative provided for a shorter period, the shorter period) after the repurchase of the shares.

## **175 Cancellation of shares**

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

## **Part 8** Voting and meetings

### **Division 8.1** Voting entitlements

#### **176** Application of pt 8

The provisions of this part apply to voting on all resolutions.

#### **177** Voting

- (1) The right to vote attaches to membership and not shareholding.
- (2) Each member of a cooperative has only 1 vote at a meeting of the cooperative.
- (3) However, if its rules so provide, a member of an association or federation may have the number of votes at a general meeting (up to 5) provided in the rules.
- (4) Also, if the rules so provide, the chairperson has a second vote at a board meeting or general meeting.
- (5) In the case of joint membership—
  - (a) the joint members have only 1 vote between them; and
  - (b) that vote may be exercised (subject to the grant of a proxy or power of attorney) only by the joint member decided in accordance with the rules.
- (6) If shares are held jointly, each member (other than a joint member) holding the share is entitled to vote at a general meeting.

#### **178** Voting by proxy

- (1) If the rules so provide, voting may be by proxy at a general meeting.
- (2) The instrument of proxy may state how a proxy must vote in relation to a particular resolution.



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

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

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

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

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

**181 Inactive members not entitled to vote**

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

**182 Control of right to vote**

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

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

- (2) If a person controls the exercise of the right to vote of a member at a meeting of a cooperative the following votes are invalid:
- (a) the vote of the member;
  - (b) the vote of the person, if the person is a member.
- (3) This section does not prevent the exercise of a vote by proxy or power of attorney.

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

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

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

- (1) A member of a cooperative is not entitled to vote if someone else (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 of the member.
- (2) A member who is not entitled to vote because of this section may apply to the registrar to review the matter.
- (3) The registrar may order that the member is entitled to vote if the registrar is satisfied in the circumstances of the case that loss of the right to vote would be unjust or unreasonable.

**185 Rights of representatives to vote**

A person appointed as provided by this Act to represent a member of a cooperative, association or federation—

- (a) is entitled to receive notice of all meetings in the same way as the member represented; and
- (b) is entitled to exercise the same rights to vote as the member represented; and
- (c) is eligible to be elected to the board if the member represented holds the qualifications required for holding office as a director (other than any relating to age).

**186 Other rights etc of members not affected by ineligibility to vote**

A provision of this Act that disentitles a member of a cooperative to vote (either generally or in relation to a particular matter) does not affect any other right, entitlement, obligation or duty of the member as a member.

**187 Vote of disentitled member to be disregarded**

Any vote cast by or on behalf of a member of a cooperative who is not entitled to vote must be disregarded.

**Division 8.2 Resolutions**

**188 Decisions generally to be by ordinary resolution**

Except as otherwise provided under this Act or the rules of the cooperative, every question for decision by a cooperative must be decided by ordinary resolution.

### **189 Ordinary resolutions**

An ordinary resolution is a resolution of a cooperative passed by a simple majority at a general meeting of the cooperative or in a postal ballot of members.

### **190 Special resolutions**

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

**191 Working out majority**

- (1) A resolution is passed by a particular majority at a meeting if that majority of the members of the cooperative who are entitled to vote at the meeting vote in favour of the resolution (in person or, if proxies are allowed, by proxy).
- (2) A resolution is passed by a particular majority in a postal ballot if that majority of the members of the cooperative who are entitled to vote in the postal ballot cast formal votes in favour of the resolution.

**192 Disallowance by registrar**

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

**193 Declaration of passing of special resolution**

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

**194 Effect of special resolution**

- (1) A special resolution takes effect on the day it is passed.
- (2) However, a special resolution does not take effect until it is registered if it relates to any of the following matters:
  - (a) the removal of an auditor;
  - (b) the expulsion of a member;

- (c) anything for which a special resolution is required to be passed by special postal ballot.

### **195 Filing of special resolution**

- (1) A cooperative must apply to the registrar for registration of each special resolution passed by the cooperative.

*Note* A fee may be determined under s 465 for this section.

- (2) The application is made by filing 2 copies of the special resolution with the registrar in accordance with this section.
- (3) The copies must—
  - (a) be filed within 28 days after the day the special resolution is passed or, if the registrar allows a further period, the further period; and
  - (b) be signed by a director and the secretary of the cooperative.
- (4) A cooperative that, and any officer of the cooperative who, knowingly fails to file the required copies in accordance with this section commit an offence.

Maximum penalty: 20 penalty units.

- (5) This section and section 196 do not apply to a special resolution altering the rules of a cooperative.

### **196 Decision of registrar on application to register special resolution**

- (1) If the registrar is satisfied that the cooperative has complied with this Act in relation to a resolution, and that the resolution is not contrary to this Act, the registrar must register the resolution.
- (2) If the registrar is of the opinion that the effect of a special resolution filed for registration would be in contravention of this Act or any other law, the registrar may—
  - (a) refuse to register the special resolution; and

- (b) give notice to the cooperative that the special resolution—
  - (i) for a special resolution mentioned in section 194 (2) (a), (b) or (c)—has no effect; and
  - (ii) for any other special resolution—has no effect as from the day it was passed.
- (3) A certificate of registration of a special resolution given by the registrar is, in favour of any person advancing money to the cooperative on the faith of the certificate or in favour of any guarantor of that advance, conclusive evidence that the resolution was properly passed.

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

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

- (1) This division applies to a resolution of a cooperative (including a resolution appointing an officer or auditor or approving, or agreeing to, anything) if—
  - (a) the cooperative has fewer than 50 members; and
  - (b) 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.
- (2) However, this division does not apply to a resolution if—
  - (a) more than 14 days notice of the resolution is required under this Act to be given; or
  - (b) the resolution is required to be passed by a majority other than a simple majority.

**198 Resolution by circulation of document**

- (1) 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 been passed at a general meeting of the cooperative.
- (2) The document need not exist as a single document, but may exist in the form of 2 or more documents in identical terms.
- (3) The document is taken to constitute a minute of the general meeting.
- (4) Anything attached to the document and signed by the members signing the document is taken to have been presented to the cooperative at the general meeting.
- (5) The document is taken to have been signed by all the members when the last member signs the document.
- (6) The meeting mentioned in subsection (1) is taken to have been held on the day, and at the time, when the last member to sign the document does so.
- (7) This section does not affect any rule of law about the effectiveness of the assent of members of a cooperative given to a document, or to anything else, otherwise than at a general meeting of a cooperative.

**Division 8.4 Postal ballots**

**199 Postal ballots**

- (1) A postal ballot may be held as provided by the rules of a cooperative and must be conducted in accordance with the regulations.
- (2) On the declaration by the returning officer of the result of the ballot, the secretary of the cooperative must make an entry in the minute book of the cooperative showing—
  - (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.

## **200 Special postal ballots**

- (1) A special postal ballot is a postal ballot conducted as required by this section.
- (2) The ballot must be held not earlier than 21 days after notice of the ballot is given to members.
- (3) The cooperative must send to each member (along with any other material required to be sent in relation to the postal ballot) a disclosure statement that is approved in writing by the registrar and contains information about—
  - (a) the financial position of the cooperative; and
  - (b) the interests of the directors of the cooperative in the proposal with which the ballot is concerned (including any interests of the directors in another organisation concerned in the proposal); and
  - (c) any compensation or consideration to be paid to officers or members of the cooperative in relation to the proposal; and
  - (d) anything else the registrar directs.
- (4) If the registrar requires, the statement must be accompanied by a report made by an independent person approved in writing by the registrar about anything that the registrar directs.
- (5) Section 20 (except subsections (2), (4) and (9)) applies to the approval of a disclosure statement under this section with any necessary changes and, in particular, as if any reference in the section to a formation meeting were a reference to the notice of the special postal ballot.

## **201 When special postal ballot required**

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

- (a) conversion of—
  - (i) a share capital cooperative to a non-share capital cooperative or vice versa; or
  - (ii) a trading cooperative to a non-trading cooperative or vice versa;
- (b) transfer of incorporation;
- (c) an acquisition or disposal of assets mentioned in section 276;
- (d) the maximum permissible level of share interest in the cooperative;
- (e) takeover;
- (f) merger;
- (g) transfer of engagements;
- (h) members' voluntary winding-up.

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

- (1) The board of a cooperative must conduct a postal ballot (including a special postal ballot) for a special resolution on the written requisition of the number of members who together can cast at least 20% (or, if a lesser percentage is provided under the rules of the cooperative, the lesser percentage) of the total number of votes that can be cast at a meeting of the cooperative.
- (2) A member is entitled to be a requisitioning member only if the member is an active member.

- (3) A requisition for a postal ballot must—
- (a) state—
    - (i) the proposed special resolution to be voted on; and
    - (ii) the reasons for the making of the special resolution; and
    - (iii) the effect of the special resolution being passed; and
  - (b) be signed by the requisitioning members (and may consist of several documents in like form each signed by 1 or more of the requisitioning members); and
  - (c) be served on the cooperative by being lodged at the registered office of the cooperative.
- (4) The postal ballot must be conducted as soon as practicable and in any case must be conducted within 2 months after the requisition is served.
- (5) If the special resolution for which the requisitioned postal ballot is conducted is not passed, the cooperative may recover the expenses of the postal ballot from the members who requisitioned the postal ballot as a debt owing to the cooperative.

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

- (1) For section 202, the expenses of the postal ballot are all reasonable expenses incurred by a cooperative in relation to preparing for and holding a special postal ballot.
- (2) The expenses include (but are not limited to) the following expenses:
- (a) the cost of obtaining expert advice (including legal and financial advice) and of commissioning expert reports;
  - (b) costs attributable to the use of staff of the cooperative in relation to preparing for and holding the ballot;

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

## **Division 8.5 Meetings**

### **204 Annual general meetings**

- (1) A cooperative must hold an annual general meeting within—
  - (a) 5 months after the end of each financial year of the cooperative; or
  - (b) if further time is allowed by the registrar or prescribed by regulation—that further time.
- (2) However, the first annual general meeting of a cooperative must be held within—
  - (a) 18 months after the cooperative’s incorporation; or
  - (b) if a longer time applies under subsection (1)—that longer time.

### **205 Special general meetings**

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

### **206 Notice of meetings**

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

### **207 Quorum at meetings**

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

## **208 Decisions at meetings**

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

## **209 Calling of general meeting on requisition**

- (1) The board of a cooperative must call a general meeting of the cooperative on the written requisition of the number of members who together can cast at least 20% (or, if a lesser percentage is provided under the rules of the cooperative, the lesser percentage) of the total number of votes that can be cast at a meeting of the cooperative.
- (2) A member is entitled to be a requisitioning member only if the member is an active member.
- (3) A requisition for a general meeting must—
  - (a) state the objects of the meeting; and
  - (b) be signed by the requisitioning members (and may consist of several documents in like form each signed by 1 or more of the requisitioning members); and
  - (c) be served on the cooperative by being lodged at the registered office of the cooperative.

- (4) The meeting must be called and held as soon as practicable and in any case must be held within 2 months after the day the requisition is served.
- (5) If the board does not call the meeting within 21 days after the requisition is served, the following provisions apply:
  - (a) the requisitioning members (or any of them representing at least half their aggregate voting rights) may call the meeting in the same way as nearly as possible as meetings are called by the board;
  - (b) for that purpose they may ask the cooperative to supply a written statement setting out the names and addresses of the people entitled when the requisition was served to receive notice of general meetings of the cooperative;
  - (c) the board must send the requested statement to the requisitioning members within 7 days after the day the request for the statement is received;
  - (d) the meeting called by the requisitioning members must be held not later than 3 months after the requisition is served;
  - (e) any reasonable expenses incurred by the requisitioning members because of the board's failure to call the meeting must be paid by the cooperative;
  - (f) any amount required to be paid by the cooperative under paragraph (e) must be deducted by the cooperative from any amount owing by the cooperative, by way of fees or other remuneration, to the directors who were in default.

## **210        Minutes**

- (1) Minutes of each general meeting, board meeting and subcommittee meeting must be—
  - (a) entered in the appropriate records within 28 days after the meeting or before the next meeting, whichever is sooner; and

- (b) confirmed at the next meeting; and
  - (c) signed by the chairperson of that meeting.
- (2) The minutes of each general meeting must be available for inspection by members.
  - (3) The rules may provide that the minutes of board meetings and subcommittee meetings be available for inspection by members.
  - (4) The minutes must be written in English.

## **Part 9 Management and administration of cooperatives**

### **Division 9.1 Board**

#### **211 Board of directors**

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

#### **212 Election of directors**

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



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

## **213 Qualification of directors etc**

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

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

## 214 Disqualified people

- (1) A person must not act as a director of a cooperative, or directly or indirectly take part in or be concerned with the management of a cooperative, if the person is the auditor of the cooperative or a partner, employee or employer of the auditor.

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

- (2) A person must not, except with the Supreme Court's leave, act as a director of a cooperative, or indirectly take part in or be concerned with the management of a cooperative, within 5 years after the day of the person's conviction for a disqualifying offence or, if the person was sentenced to imprisonment for the offence, after the day of the person's release from prison.

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

- (3) For subsection (2), a *disqualifying offence* is any of the following offences, whether committed before or after the commencement of this Act, and whether in or outside the ACT or Australia:

- (a) an offence, of which the person has been convicted on indictment, in relation to the promotion, formation or management of a corporation;
- (b) an offence involving fraud or dishonesty punishable by imprisonment for at least 3 months;
- (c) an offence against any of the following sections of the Corporations Act:
  - section 184 (Good faith, use of position and use of information—criminal offences)

- section 344 (Contravention of part 2M.2 or 2M.3)
  - section 590 (Offences by officers of certain companies)
  - section 592 (Incurring of certain debts; fraudulent conduct)
  - section 670A (Misstatements in, or omissions from, takeover and compulsory acquisition and buy-out documents)
  - section 728 (Misstatement in, or omission from, disclosure document);
- (d) an offence against a provision of a previous law of the Commonwealth or a State that corresponds to a section mentioned in paragraph (c).
- (4) A person must not act as a director of a cooperative, or directly or indirectly take part in or be concerned with the management of a cooperative, if the person—
- (a) has been convicted of an offence against this Act within the last 5 years, except with the Supreme Court’s leave; or
  - (b) is disqualified from managing corporations under the Corporations Act, part 2D.6 (Disqualification from managing corporations); or
  - (c) is an insolvent under administration (within the meaning of the Corporations Act).

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

- (5) In a proceeding for an offence against subsection (2), a certificate by an entity prescribed by regulation stating that a person was released from prison on a stated date is, in the absence of evidence to the contrary, proof that the person was released from prison on that date.

- (6) A person who intends to apply for leave of the Supreme Court under this section must give the registrar at least 21 days notice of the person's intention.
- (7) The Supreme Court may grant leave subject to any condition or limitation it considers appropriate.
- (8) A person must comply with any condition or limitation subject to which leave is granted.  
Maximum penalty: 50 penalty units, imprisonment for 6 months or both.
- (9) On the application of the registrar, the Supreme Court may revoke its leave.

## **215 Meetings of board of directors**

- (1) Meetings of the board of directors are to be held at least once every 3 months and may be held as often as may be necessary.
- (2) A meeting of the board may be called by a director giving notice individually to every other director.
- (3) A meeting of the board may be called or held using any technology consented to by the board.
- (4) The consent may be a standing consent.
- (5) A quorum of a meeting of the board is 50% of the number of directors or, if a higher number is provided under the rules of the cooperative, the higher number.
- (6) However, for a quorum the member directors must be greater than the other directors by at least 1 or, if a higher number is specified by the rules of the cooperative, the higher number.
- (7) The chairperson of the board may be elected either by the board or at a general meeting of the cooperative, and must be elected, hold office, and retire, and may be removed from office, as provided by the rules of the cooperative.

**216 Transaction of business outside meetings**

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

**217 Deputy directors**

- (1) The rules of a cooperative may authorise the board of the cooperative to appoint deputies of directors.
- (2) The deputy of a director may attend, and speak and vote at, any meeting of the board from which the director is absent.
- (3) The rules of the cooperative may also include provisions regulating, or authorising the board to regulate, the term of office, vacation of or removal from office, and remuneration, of a deputy.

## **218 Delegation by board**

- (1) If the rules of a cooperative so provide, the board may by resolution delegate its functions to—
  - (a) a director; or
  - (b) a committee of 2 or more directors; or
  - (c) a committee of members of the cooperative; or
  - (d) a committee of members of the cooperative and other people if members are the majority of the committee members.

*Note* For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

- (2) To remove any doubt, if the rules of a cooperative so provide, the board may delegate its functions under section 75.
- (3) Subsection (2) does not limit subsection (1).

## **219 Removal etc of directors**

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

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

## **Division 9.2            Secretary**

### **220            Cooperative to have secretary**

- (1) A cooperative must have a secretary.
- (2) The board of the cooperative must appoint the secretary.

*Note* For the making of appointments (including acting appointments), see the Legislation Act, div 19.3.

- (3) A secretary (including an acting secretary) must be an individual at least 18 years old and resident in Australia.

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

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

In this division:

*officer*, of a cooperative, means—

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

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

## **222 Officers to act honestly**

- (1) An officer of a cooperative must at all times act honestly, in the ACT and elsewhere (whether in or outside Australia), in the exercise of the officer's functions.
- (2) A person who intentionally or recklessly contravenes subsection (1) commits an offence.

Maximum penalty: 50 penalty units.

- (3) A person who contravenes subsection (1) with intent to deceive or defraud the cooperative, members or creditors of the cooperative or creditors of anyone else or for any other fraudulent purpose commits an offence.

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

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

- (1) An officer of a cooperative must, in the exercise of the officer's functions, exercise the degree of care and diligence that a reasonable person in a like position in a cooperative would exercise in the cooperative's circumstances.



- (2) A person who intentionally or recklessly contravenes subsection (1) commits an offence.

Maximum penalty: 20 penalty units.

- (3) An officer is not liable to be convicted of a contravention of subsection (1) if the cooperative has resolved by ordinary resolution to excuse the contravention.

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

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

Maximum penalty:

- (a) if the contravention was committed with intent to deceive or defraud the cooperative, members or creditors of the cooperative or creditors of anyone else or for any other fraudulent purpose—200 penalty units, imprisonment for 2 years or both; and
- (b) in any other case—50 penalty units.
- (2) An officer or employee of a cooperative, or a member of a committee mentioned in section 218, must not make improper use of his or her position as an officer or employee or member, to gain, directly or indirectly, an advantage for himself or herself or for anyone else or to cause detriment to the cooperative.

Maximum penalty:

- (a) if the contravention was committed with intent to deceive or defraud the cooperative, members or creditors of the cooperative or creditors of anyone else or for any other

fraudulent purpose—200 penalty units, imprisonment for 2 years or both; and

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

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

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

### **226 Recovery of damages by cooperative**

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

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

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

## **228 Indemnification of officers and auditors**

- (1) A provision exempting an officer or auditor of a cooperative from, or indemnifying the officer or auditor against, any liability that by law would otherwise attach to the person in relation to any negligence, default, breach of duty or breach of trust of which the person may be guilty in relation to the cooperative is void.

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

- (2) However, a cooperative may, under its rules or otherwise, indemnify an officer or auditor of the cooperative against any liability incurred by the person in defending any proceeding, whether civil or criminal—
- (a) in which judgment is given in the person's favour or the person is acquitted; or
  - (b) in relation to a liability for which relief is granted under this section to the person.
- (3) A court may relieve an officer or auditor of a cooperative, either completely or partly, from a relevant liability in relation to a matter relating to the cooperative, if—
- (a) the matter is before the court; and
  - (b) the court is satisfied that the person—
    - (i) acted honestly and reasonably; and
    - (ii) having regard to all the circumstances of the case (including circumstances in relation to the person's appointment), the person ought fairly to be relieved in relation to the relevant liability

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

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

- (5) The Supreme Court may exercise the powers mentioned in subsections (3) and (4) in relation to an officer or auditor of a cooperative who applies to the court for relief because—
- (a) a claim in a matter relating to the cooperative has been made against the person; or
  - (b) the person has reason to believe that a claim of that kind will be made against the person.

- (6) In this section:

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

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

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

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

- (1) The following provisions of the Corporations Act apply in relation to a cooperative and its officers:
- part 5.8 (Offences)
  - part 5.9 (Miscellaneous), division 1 (Examining a person about a corporation) and division 2 (Orders against a person in relation to a corporation)
  - section 1307 (Falsification of books).
- (2) The provisions apply subject to the change mentioned in subsection (3).

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

## **Division 9.4 Employee entitlements**

### **230 Application of Corporations Act—entitlements of cooperative employees**

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

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

### **231 Directors remuneration and financial accommodation to officers**

- (1) A director of a cooperative must not be paid any remuneration for the director’s services as a director other than fees, concessions and other benefits approved at a general meeting of the cooperative.
- (2) An officer of a cooperative who is not a director of the cooperative must not obtain financial accommodation from the cooperative other than—
- (a) with the approval of a majority of the directors; or
  - (b) under a scheme about providing financial accommodation to officers that has been approved by a majority of the directors.

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

- (3) For subsection (2), financial accommodation is taken to be obtained by an officer of a cooperative if it is obtained by—
- (a) a proprietary company in which the officer is a shareholder or director; or
  - (b) a trust of which the officer is a trustee or beneficiary; or

- (c) a trust of which a corporation is trustee if the officer is a director or other officer of the corporation.
- (4) A cooperative must not give financial accommodation to an officer of the cooperative if—
  - (a) by giving the financial accommodation, the officer would contravene subsection (2); and
  - (b) the cooperative knows or should reasonably know of the contravention.

Maximum penalty: 500 penalty units.

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

- (1) In this section:

*associate*, of a director, means a person, other than a director, who is—

- (a) the domestic partner of the director; or
  - (b) acting in the capacity of a trustee of a trust under which—
    - (i) the director or the domestic partner of the director has a beneficial interest; or
    - (ii) a corporation mentioned in paragraph (c) has a beneficial interest; or
  - (c) a corporation if—
    - (i) the director or the domestic partner of the director has a material interest in shares in the corporation; and
    - (ii) the nominal value of the shares is not less than 10% of the nominal value of the issued share capital of the corporation.
- (2) For the definition of *associate* in subsection (1), a person has a *material interest* in a share in a corporation if—

- (a) the person has power to withdraw the share capital subscribed for the share or to exercise control over the withdrawal of the share capital; or
  - (b) the person has power to dispose of or to exercise control over the disposal of the share; or
  - (c) the person has power to exercise or to control the exercise of any right to vote given to the holder of the share.
- (3) A cooperative must not provide financial accommodation to a director, or to a person the cooperative knows or should reasonably know is an associate of a director, unless—
- (a) the accommodation is—
    - (i) approved under subsection (4); or
    - (ii) given under a scheme approved under subsection (4); or
    - (iii) provided on conditions no more favourable to the director or the associate of a director than the conditions on which it is reasonable to expect the cooperative would give if dealing with the director or associate at arm's length in the same circumstances; and
  - (b) the directors have approved the accommodation, at a meeting of the board at which a quorum was present, by a majority of at least  $\frac{2}{3}$  of the directors present and voting on the matter.

Maximum penalty: 500 penalty units.

- (4) For subsection (3) (a) (i) and (ii), financial accommodation or a scheme is approved if—
- (a) it is approved by a resolution passed at a general meeting; and
  - (b) the full details of the accommodation or scheme were made available to members at least 21 days before the day of the meeting.

- (5) A director, or an associate of a director, must not obtain financial accommodation given in contravention of subsection (3).

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

- (6) For this section, a concessional rate of interest for a borrower from a cooperative is a normal condition only if the borrower is entitled to the concession by being a member of a class of borrowers from the cooperative specified in its rules as being entitled to the concession.
- (7) If a director, or an associate of a director, of a cooperative accepts, in payment of a debt owed by a member of the cooperative to the director or associate, any proceeds of financial accommodation provided to the member by the cooperative, this section has effect as if the financial accommodation has been provided to the director or associate.
- (8) In this section—
- (a) a reference to providing financial accommodation to, or the obtaining of financial accommodation by, a director or an associate of a director includes a reference to providing financial accommodation to, or the obtaining of financial accommodation by, the director or associate jointly with someone else; or
- (b) a reference to a debt owed to a director or an associate of a director includes a reference to a debt owed to the director or associate jointly with someone else.

### **233 Restriction on directors of certain cooperatives selling land to cooperative**

A director of a cooperative the primary activity of which is or includes the acquisition of land to settle or keep people on the land, and of providing any community service or benefit, must not sell land to the cooperative except in accordance with a special resolution of the cooperative.



## **234 Management contracts**

- (1) In this section:

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

- (a) a person who is not an officer of the cooperative agrees to exercise all, or a substantial part, of the functions of the cooperative, whether or not under the control of the cooperative; or
  - (b) a cooperative agrees to exercise all, or a substantial part, of its functions—
    - (i) in a particular way; or
    - (ii) in accordance with the directions of anyone; or
    - (iii) subject to restrictions or conditions.
- (2) A cooperative may enter into a management contract only if the contract has first been approved by special resolution.
- (3) A management contract entered into in contravention of subsection (2) is void.

## **Division 9.6 Declaration of interests**

### **235 Declaration of interest**

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

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

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

- (a) at the meeting of the board when the question of entering into the contract is first considered; or
  - (b) if the director was not at that time interested in the proposed contract—at the next meeting of the board held after the director becomes interested in the proposed contract.
- (3) If a director becomes interested in a contract with the cooperative after it is made, the declaration must be made at the next meeting of the board held after the director becomes interested in the contract.
- (4) For this section, a general notice given to the board by a director is a sufficient declaration if it is to the effect that the director—
- (a) is a member of an entity stated in the notice; and
  - (b) is taken to be interested in any contract that may be made with the entity after the giving of the notice.
- (5) A director of a cooperative who holds an office or has an interest in property under which, whether directly or indirectly, duties or interests might be created that could conflict with the director's duties or interests as director must, in accordance with subsection (6), declare at a meeting of the board the fact and the nature, character and extent of the conflict.

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

- (6) A declaration required by subsection (5) in relation to holding an office, or having an interest, must be made by a person—
- (a) if the person holds the office or has the interest when the person becomes a director—at the first meeting of the board held after the later of the following happens:
    - (i) the person becomes a director;
    - (ii) the relevant facts about holding the office or having the interest come to the person's knowledge; and

- (b) if the person begins to hold the office or acquires the interest after the person becomes a director—at the first meeting of the board held after the relevant facts about holding the office or having the interest come to the person’s knowledge.
- (7) If a director has made a declaration under this section, then, unless the board otherwise decides, the director must not—
  - (a) be present during any deliberation of the board in relation to the matter; or
  - (b) take part in any decision of the board in relation to the matter.
- (8) For the making of a decision of the board under subsection (7) in relation to a director who has made a declaration under this section, the director must not—
  - (a) be present during any deliberation of the board for the purpose of making the decision; or
  - (b) take part in the making by the board of the decision.

**236      Declarations must be recorded in minutes**

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

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

This division is additional to any rule of law or any provision of the rules of the cooperative restricting a director from having any interest in contracts with the cooperative or from holding offices or having properties involving duties or interests in conflict with the director’s duties or interests as director.

## 238 Certain interests need not be declared

- (1) A director of a cooperative is not required to declare, under this division or the rules of the cooperative, an interest in—
  - (a) a contract or proposed contract for a purchase of goods and services by the director from the cooperative; or
  - (b) a lease of land to the director by the cooperative; or
  - (c) a contract or proposed contract for the sale of agricultural products or livestock by the director to the cooperative; or
  - (d) a contract or proposed contract that, under the rules of the cooperative, may be made between the cooperative and a member; or
  - (e) a contract or proposed contract of a class of contracts prescribed by regulation.
- (2) This section applies only if the contract is made honestly, in the ordinary course of the business of the cooperative, and on the conditions that are usual and proper in similar dealings between the cooperative and its members.

## Division 9.7 Financial statements, reports and audit

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

- (1) In this division:

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

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

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

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

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

- (1) The following provisions of the Corporations Act apply in relation to a cooperative:
- part 2F.3 (Inspection of books)
  - section 249K (Auditor entitled to notice and other communications)
  - section 249V (Auditor's right to be heard at general meetings)
  - chapter 2M (Financial reports and audit).
- (2) The provisions apply subject to the following changes:
- (a) a reference in the provisions to a company or public company is taken to be a reference to a cooperative;
  - (b) a reference in the provisions to the Court is taken to be a reference to the Supreme Court;
  - (c) a reference in the provisions to prescribed is taken to be a reference to approved by the registrar;
  - (d) a reference in the provisions to securities is taken to be a reference to debentures;
  - (e) any offence created in relation to the provisions is taken to be the offence set out in subsection (3);
  - (f) any penalty for an offence mentioned in paragraph (e) is taken to be the penalty set out in subsection (3);
  - (g) the provisions apply as if the following provisions were omitted:
    - section 293 (Small proprietary company—shareholder direction)
    - section 294 (Small proprietary company—ASIC direction)
    - section 300 (8) and (9) (Annual directors' report—specific information)

- section 301 (2) (Audit of annual financial report)
  - section 340 (ASIC's power to make specific exemption orders)
  - section 341 (ASIC's power to make class orders)
  - section 342 (Criteria for specific exemption orders and class orders).
- (3) A cooperative must—
- (a) keep financial records and prepare financial statements and financial reports as required by this Act (including the Corporations Act as applied by this Act); and
  - (b) ensure that the financial statements and financial reports are audited in accordance with this Act (including the Corporations Act as applied by this Act).

Maximum penalty: 20 penalty units.

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

- (4) The regulations may make provision in relation to the following:
- (a) requiring the submission of financial statements and financial reports to the Australian Accounting Standards Board;
  - (b) requiring the adoption by a cooperative of the same financial year for each entity that the cooperative controls.

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

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

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

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

- (2) An exemption may be—
- (a) unconditional or subject to conditions; and
  - (b) limited in time.
- (3) An exemption may be suspended by the registrar.
- (4) An exemption is a notifiable instrument.

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

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

**242 Disclosure by directors**

- (1) The directors of a cooperative must make the disclosures in relation to the affairs of the cooperative, and of any entity that the cooperative controls, that are prescribed by regulation.

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

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

### **243 Protection of auditors etc**

- (1) An auditor of a cooperative has qualified privilege in relation to—
- (a) any statement that the auditor makes, orally or in writing, in the course of the auditor's duties as auditor; or
  - (b) the giving of any notice, or the sending of any copy of financial statements, financial reports or another report, to the registrar under this Act.
- (2) A person has qualified privilege—
- (a) in relation to the publishing of any document prepared by an auditor in the course of the auditor's duties and required by this Act to be filed with the registrar, whether or not the document has been filed; or
  - (b) in relation to the publishing of any statement made by an auditor as mentioned in subsection (1).
- (3) This section does not limit or affect any right, privilege or immunity that an auditor or anyone else has, apart from this section, as defendant in a proceeding for defamation.

### **244 Financial year of cooperative**

- (1) The financial year of a cooperative ends on the day in each calendar year provided under the rules of the cooperative.
- (2) The first financial year of a cooperative may extend from the date of its registration to a date not later than 18 months after the date of registration.
- (3) If the rules of a cooperative are altered to change its financial year, the alteration may provide either—



- (a) that the financial year current when the alteration takes effect is extended for not longer than 6 months; or
- (b) that the next financial year is to be a period longer than 1 year but not longer than 18 months.

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

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

- (1) A cooperative must keep the following registers in accordance with this section:
  - (a) a register of members, directors and shares (if any);
  - (b) a register of any loans to, securities given by, debentures issued by and deposits received by the cooperative;
  - (c) a register of names of people who have given loans or deposits to or hold securities or debentures given or issued by the cooperative;
  - (d) a register of any loans made by or guaranteed by the cooperative and of any securities taken by the cooperative;
  - (e) a register of memberships cancelled under part 6 (Active membership);
  - (f) a register of notifiable interests under section 285;
  - (g) any other registers that a regulation requires.

Maximum penalty: 20 penalty units.

- (2) The registers must be kept in the way, and contain the particulars, required under this Act.

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

## **246 Location of registers**

- (1) A register kept under this division must be kept, in accordance with subsection (2), at—
  - (a) the cooperative's registered office; or
  - (b) an office at the cooperative's principal place of business; or
  - (c) an office (whether of the cooperative or of someone else) where the work involved in maintaining the register is done; or
  - (d) another office approved in writing by the registrar.
- (2) The office where the register is kept must be in the ACT.
- (3) The cooperative must file with the registrar a notice of the address where the register is kept within 28 days after the day the register is—
  - (a) established at an office that is not the cooperative's registered office; or
  - (b) moved from an office to another office.
- (4) For this section, a document kept on a computer is taken to be kept at an office if—
  - (a) the document can be accessed using a computer kept at the office; and
  - (b) a hard copy of the document can be printed out at the office.

## **247 Inspection of registers etc**

- (1) A cooperative must have the following documents available for inspection during all reasonable hours by any member free of charge at the office where the registers are kept:
  - (a) a copy of this Act and the regulations;
  - (b) a copy of the rules of the cooperative;

- (c) a copy of the minutes of each general meeting of the cooperative;
  - (d) a copy of the last annual report (if any) of the cooperative filed under section 250;
  - (e) the register of directors, members and shares;
  - (f) the register of names of people who have given loans or deposits to or hold securities or debentures given or issued by the cooperative;
  - (g) any other register that the regulations provide must be open for inspection under this section.
- (2) If a register is not kept on a computer, the person may inspect the register itself.
- (3) If the register is kept on a computer, the person may inspect a hard copy of the information on the register unless the person and the cooperative agree that the person may access the information by computer.
- (4) A member is entitled to make a copy of entries in a register mentioned in subsection (1), and to do so free of charge, unless the rules of the cooperative require a fee to be paid, in which case on payment of the required fee.
- (5) The fee required by the rules must not exceed the amount (if any) prescribed by regulation.
- (6) A cooperative must—
- (a) allow a member to inspect a document or make a copy of a document that the member is entitled to inspect or make under this section; and
  - (b) give the member reasonable assistance to inspect the document or make the copy.

Maximum penalty: 20 penalty units.

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

Maximum penalty: 20 penalty units.

#### **248 Use of information on registers**

- (1) A person must not—
- (a) use information about a person obtained from a register kept under this division to contact or send material to the person; or
  - (b) disclose information of that kind knowing that the information is likely to be used to contact or send material to the person.
- (2) However, subsection (1) does not apply to the use or disclosure of information—
- (a) relevant to the holding of the directorship, membership, shares, loans, securities, debentures or deposits concerned or the exercise of the rights attaching to them; or
  - (b) approved by the board; or
  - (c) necessary to comply with a requirement of this Act.
- (3) A person who contravenes this section is liable to compensate anyone who suffers loss or damage because of the contravention.
- (4) A person who makes a profit from a contravention of this section owes a debt to the cooperative equal to the amount of the profit.

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

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

Maximum penalty: 20 penalty units.

- (2) The notice must—
- (a) be given within 28 days after the day of the appointment or cessation of appointment; and
  - (b) state the particulars prescribed by regulation of the appointment or cessation of appointment.

*Note* If a form is approved under s 466 for a notice, the form must be used.

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

- (1) A cooperative must file with the registrar within the required period in each year an annual report containing each of the following:
- (a) a list stating the secretary, directors and the principal executive officers of the cooperative and each of its subsidiaries, as at the date the annual report is filed with the registrar;
  - (b) if the cooperative is required under the provisions of the Corporations Act applied by section 240 (the *applied provisions*) to prepare financial statements for its most recently ended financial year—a copy of the financial statements;
  - (c) a copy of the financial statements of each subsidiary of the cooperative for the most recently ended financial year;
  - (d) a copy of any report by the auditor of the cooperative or subsidiary—
    - (i) prepared under the applied provisions in relation to the cooperative or subsidiary; or
    - (ii) on any financial statements mentioned in paragraph (b) or (c);
  - (e) any particulars prescribed by regulation.

Maximum penalty: 20 penalty units.

*Note* If a form is approved under s 466 for a list, the form must be used.

(2) In subsection (1):

*required period*, for a year, means—

- (a) if the annual general meeting of the cooperative is not held within 5 months after the relevant financial year of the cooperative—28 days after the end of that period; or
- (b) in any other case—28 days after the day of the annual general meeting of the cooperative.

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

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

Maximum penalty: 20 penalty units.

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

- (1) The registrar may, in writing, require a cooperative to provide to the registrar a special return in the form, within the time, and relating to the subject matter, stated by the registrar.
- (2) The cooperative must comply with a requirement under subsection (1).

Maximum penalty: 20 penalty units.

**Division 9.9 Name and registered office**

**253 Name to include certain matter**

- (1) The name of a cooperative may consist of words, numbers or a combination of both.
- (2) The name of the cooperative must include the word ‘Cooperative’ or ‘Co-operative’ or the abbreviation ‘Co-op’ or ‘Co-op.’.

- (3) The word 'Limited' or the abbreviation 'Ltd' must be the last word of the name.
  - (4) A corporation formed or incorporated under a law other than this Act must not register under the other law by any name that includes the word 'Cooperative' or 'Co-operative' or the abbreviation 'Co-op' or 'Co-op.'
- Maximum penalty: 20 penalty units.
- (5) Subsection (4) does not apply to a credit union.

#### **254 Use of abbreviations**

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

- (a) the abbreviation 'Co-op' or 'Co-op.' instead of the word 'Cooperative' or 'Co-operative' in the cooperative's name;
- (b) the abbreviation 'Ltd' instead of the word 'Limited' in the cooperative's name;
- (c) an ampersand (the symbol '&') instead of the word 'and' in the cooperative's name;
- (d) any of those words instead of the corresponding abbreviation or symbol in the cooperative's name;
- (e) any abbreviation or elaboration of the name of the cooperative approved, in writing, by the registrar in a particular case or for a particular purpose.

#### **255 Name to appear on business documents etc**

- (1) A cooperative must ensure that the name of the cooperative appears in legible characters—
  - (a) on its seal; and

(b) in all notices, advertisements and other official publications of the cooperative; and

(c) in all its business documents.

Maximum penalty: 20 penalty units.

(2) An officer of a cooperative, or a person acting on its behalf, must not—

(a) use a seal of the cooperative; or

(b) issue, or authorise the issue of, any notice, advertisement or other official publication of the cooperative; or

(c) sign, or authorise to be signed, on behalf of the cooperative any business document of the cooperative;

in or on which the cooperative's name does not appear in legible characters.

Maximum penalty: 20 penalty units.

(3) A director of a cooperative must not knowingly authorise or permit a contravention of subsection (1) or (2).

Maximum penalty: 20 penalty units.

(4) In this section:

***business document***, of a cooperative, means a document issued, signed or endorsed by or on behalf of the cooperative that is—

(a) a business letter, statement of account, invoice or order for goods or services; or

(b) a bill of exchange, promissory note, cheque or other negotiable instrument; or

(c) a receipt or letter of credit issued by the cooperative; or

(d) a document prescribed by regulation.



**256 Change of name of cooperative**

- (1) A cooperative may by special resolution change its name to a name approved in writing by the registrar.
- (2) A change of name must be advertised in the way prescribed by regulation.
- (3) A change of name does not take effect until—
  - (a) the registrar has noted the change on the certificate of registration of the cooperative; or
  - (b) the certificate of registration is surrendered to the registrar and a replacement certificate of registration is issued in the new name.
- (4) A change of name by a cooperative does not affect—
  - (a) the identity of the cooperative; or
  - (b) the exercise of any rights, or the enforcement of any obligations, by or against the cooperative or anyone else; or
  - (c) the continuation of a legal proceeding by or against the cooperative.
- (5) A legal proceeding that might have been continued or begun by or against the cooperative in its former name may be continued or begun by or against the cooperative in its new name.
- (6) The registrar must refuse to approve a change of name if the registrar considers that the new name contravenes this Act or is undesirable.
- (7) The registrar may order a cooperative to change its name if the registrar is of the opinion that the name is likely to be confused with the name of a corporation or a registered business name.

**257 Registered office of cooperative**

- (1) A cooperative must have a registered office.  
Maximum penalty: 20 penalty units.
- (2) A cooperative must, at the premises of its registered office, publicly and conspicuously display a notice stating the name of the cooperative and identifying the premises as its registered office.  
Maximum penalty: 20 penalty units.
- (3) A cooperative must give the registrar notice of its registered office not later than 28 days after the day it is registered.  
Maximum penalty: 20 penalty units.
- (4) If the address of a cooperative's registered office changes, the cooperative must give the registrar notice of the new address not later than 28 days after the day the change happens.  
Maximum penalty: 20 penalty units.

## **Part 10 Funds and property**

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

#### **258 Meaning of *obtaining* financial accommodation in div 10.1**

In this division:

*obtaining*, in relation to financial accommodation, includes obtaining credit and borrowing or raising money by any means.

#### **259 Fundraising to be in accordance with regulations**

A regulation may impose requirements and restrictions on the obtaining of financial accommodation and the giving of security in relation to the obtaining of financial accommodation by a cooperative.

#### **260 Limits on deposit taking**

- (1) A cooperative may accept money on deposit only as permitted by subsection (2).
- (2) A cooperative may accept money on deposit if—
  - (a) the cooperative—
    - (i) was authorised by its rules immediately before the commencement of this Act to accept money on deposit; and
    - (ii) remains so authorised; or
  - (b) the cooperative was a deposit-taking corporation immediately before it became a cooperative and it is authorised by its rules to accept money on deposit; or
  - (c) for a merged cooperative—1 or more of the cooperatives involved in the merger was a deposit-taking cooperative

immediately before the registration of the merged cooperative and the merged cooperative is authorised by its rules to accept money on deposit.

**261 Members etc not required to see to application of financial accommodation**

A member or anyone else from whom a cooperative obtains financial accommodation is not required to see how it is applied and is not affected if the cooperative applies it in a way that contravenes this Act or the rules of the cooperative.

**262 Registrar's directions about fundraising**

- (1) The registrar may, by notice served on a cooperative, give a direction to the cooperative about how it must exercise its functions in relation to the activities of the cooperative in obtaining financial accommodation.
- (2) A direction under subsection (1) may make provision for any 1 or more of the following matters:
  - (a) requiring the cooperative to cease obtaining financial accommodation or to cease obtaining financial accommodation in a particular way;
  - (b) requiring the cooperative to repay in accordance with the direction all or part of financial accommodation obtained;
  - (c) requiring the cooperative to refinance in a stated way financial accommodation repaid in accordance with the registrar's direction;
  - (d) how the cooperative is permitted to invest or use the proceeds of financial accommodation it obtains.

**263 Subordinated debt**

- (1) A cooperative may incur subordinated debt.
- (2) 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—
  - (a) equally with the claim of any other creditor who is a party to a similar agreement; and
  - (b) except as provided under paragraph (a), after the claims of any other creditor of the cooperative and before the claims of members to repayment of any share capital in the cooperative.
- (3) An agreement mentioned in subsection (2) has effect despite the provisions of the Corporations Act, part 5.6 (Winding up generally), division 6 (Proof and ranking of claims) that are applied by division 12.3 (Winding-up and deregistration).

**264 Application of Corporations Act—issue of debentures**

- (1) The following provisions of the Corporations Act apply to debentures of a cooperative:
  - part 1.2A (Disclosing entities)
  - chapter 2L (Debentures)
  - chapter 6D (Fundraising)
  - part 7.10 (Market misconduct and other prohibited conduct relating to financial products and financial services).
- (2) The provisions of the Corporations Act applied by this section do not apply to a loan to which section 268 (Compulsory loan by member to cooperative) applies.
- (3) The provisions of the Corporations Act applied by this section do not apply to an issue of debentures of a cooperative made—
  - (a) solely to members; or

- (b) solely to members and employees of the cooperative; or
  - (c) to a person who has had the person's share capital converted to debt on becoming an inactive member of the cooperative.
- (4) The registrar may, in writing, exempt a cooperative from the provisions of the Corporations Act applied by this section or any of them.

**265 Disclosure statement for debentures issue**

- (1) This section applies to the issue of debentures of a cooperative where the issue is made—
- (a) solely to members; or
  - (b) solely to members and employees of the cooperative.
- (2) Before issuing to the person debentures to which this section applies, a cooperative must provide a person with a disclosure statement, approved in writing by the registrar, and containing the information that is reasonably necessary to allow a person to make an informed assessment of the financial prospects of the cooperative, including—
- (a) the purpose for which the money raised by the cooperative by the issue of debentures is to be used; and
  - (b) the rights and liabilities attaching to the debentures; and
  - (c) the financial position of the cooperative; and
  - (d) the interests of the directors of the cooperative in the issue of the debentures; and
  - (e) any compensation or consideration to be paid to officers or members of the cooperative in relation to the issue of debentures; and
  - (f) anything else that the registrar directs.

- (3) Section 20 (except subsections (2), (4) and (9)) applies to the approval of a disclosure statement under this section with any necessary changes and, in particular, as if any reference in the section to a formation meeting were a reference to the issue of debentures.

**266 Approval of board for transfer of debentures**

A debenture of a cooperative may be sold or transferred only with the approval of the board and in accordance with the rules of the cooperative.

**267 Application of Corporations Act—reissue of redeemed debentures**

The Corporations Act, section 124 (1) (b) (Legal capacity and powers of a company) and section 563AAA (Redemption of debentures) apply to debentures issued by a cooperative to any of its members or employees.

**268 Compulsory loan by member to cooperative**

- (1) A cooperative may, if authorised by its rules, require its members to lend, with or without security, to the cooperative in accordance with a proposal approved by special resolution of the cooperative.
- (2) The proposal must not require a loan to be for longer than 7 years or, if another term is prescribed by regulation, that term.
- (3) The proposal must—
- (a) be accompanied by a disclosure statement, approved in writing by the registrar, that explains the purpose for which the loan raised by the cooperative in accordance with the proposal is to be used and includes any other information that the registrar directs; and

- (b) clearly show the total amount of the loan to be raised by the cooperative and the basis on which the amount required to be lent by each member is to be worked out; and
  - (c) be accompanied by a statement telling the member that the member may tell the board, by notice given to the board on or before the date stated in the statement, that the member resigns on the passing of the special resolution.
- (4) The date stated in the statement must be a date before the passing of the special resolution.
- (5) If the proposal allows, the board of the cooperative may, in accordance with the terms of the proposal, deduct the amount required to be lent by a member to the cooperative from any amount owing by the cooperative to the member in relation to the member's dealings with the cooperative.
- (6) A proposal to deduct an amount mentioned in subsection (5) must, in addition, clearly show—
  - (a) the basis on which the amount is to be deducted; and
  - (b) when and how the deduction is to be made.
- (7) If the proposal is approved, it is binding on—
  - (a) all members of the cooperative on the day of the passing of the special resolution, other than a member who has given a notice of resignation in accordance with subsection (3) (c); and
  - (b) everyone who becomes a member of the cooperative after that day and before the total amount of the loan to be raised in accordance with the proposal has been raised.
- (8) Section 20 (except subsections (2), (4) and (9)) applies to the approval of a disclosure statement under this section with any necessary changes and, in particular, as if any reference in the section to a formation meeting were a reference to the special resolution.



**269 Interest payable on compulsory loan**

- (1) The rate of interest payable by a cooperative in relation to a loan under section 268 during any period is—
  - (a) for a cooperative with share capital—
    - (i) the rate (or, if there is more than 1 rate, the higher or highest rate) of dividend payable in relation to the period on the share capital of the cooperative; or
    - (ii) if the rate of dividend payable in relation to the period has not been decided—the rate (or the higher or highest rate) payable in relation to the last period for which a rate has been decided; or
    - (iii) if a rate of dividend has never been decided in relation to the share capital of the cooperative—the rate that the board of the cooperative considers reasonable; or
  - (b) for a cooperative without share capital—the rate that the board of the cooperative considers reasonable; or
  - (c) if the rules provide for a rate to be payable that is higher than the rate applying under paragraph (a) or (b)—the higher rate.
- (2) A member may agree to a lesser rate of interest than the rate that would otherwise be payable under this section and may agree to no interest being paid.

**Division 10.2 Charges**

**270 Registration of charges**

- (1) Schedule 3 has effect.
- (2) However, schedule 3 does not apply to—
  - (a) a mortgage, charge or encumbrance that is over particular land and is registered under a territory law; or

- (b) a memorandum of such a mortgage, charge or encumbrance that is registered under a territory law; or
- (c) a mortgage, charge or encumbrance over a particular licence under laws about mining.

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

#### **271 Receivers and other controllers of property of cooperatives**

Schedule 4 has effect.

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

#### **272 Keeping of surplus for benefit of cooperative**

The board of a cooperative may resolve to keep all or any part of the surplus arising in any year from the business of the cooperative to be applied for the benefit of the cooperative.

#### **273 Application for charitable purposes or members purposes**

- (1) The rules of a cooperative may authorise the cooperative to apply a part of the surplus arising in any year from the business of the cooperative for any charitable purpose.
- (2) The rules of a trading cooperative may authorise the cooperative to apply a part of the surplus arising in any year from the business of the cooperative for supporting any activity approved by the cooperative.
- (3) The rules must limit the amount that may be applied under subsection (1) or (2) to a specified proportion of the surplus.
- (4) A cooperative may apply part of the surplus for a purpose and to the extent authorised by rules mentioned in subsection (1) or (2).

## **274 Distribution of surplus or reserves to members**

- (1) The rules of a trading cooperative may authorise the cooperative to apply a part of the surplus arising in any year from the business of the cooperative or a part of the reserves of the cooperative by—
  - (a) distribution to members as a rebate on the basis of business done with the cooperative; or
  - (b) the issue of bonus shares to members on the basis of business done with the cooperative or on the basis of shares held by members; or
  - (c) the issue to members of a limited dividend for shares held by the members.
- (2) The amount of any rebate or dividend payable to a member under subsection (1) may, with the member's consent, be applied—
  - (a) in payment for the issue to the member of bonus shares; or
  - (b) as a loan to the cooperative.
- (3) In this section:

*limited dividend* means a dividend that does not exceed the amount prescribed by regulation.

## **275 Application of surplus to other people**

- (1) If authorised by the rules of a trading cooperative, any part of the surplus arising in any year from the business of the cooperative may be credited to anyone who is not a member, but is qualified to be a member, by way of rebate in proportion to the business done by the person with the cooperative, if—
  - (a) the person was a member at the time the business was done and the membership has lapsed; or
  - (b) the person has applied for membership after the business was done.

- (2) This section does not prevent the payment of a bonus to an employee in accordance with the conditions of the employee's employment.

## **Division 10.5 Acquisition and disposal of assets**

### **276 Acquisition and disposal of assets**

- (1) A cooperative may do any of the following things only if approved by special resolution of the cooperative passed by a special postal ballot:
- (a) sell or lease, as a going concern—
    - (i) the undertaking of the cooperative; or
    - (ii) a part of the undertaking of the cooperative if—
      - (A) the part relates to the primary activities of the cooperative; and
      - (B) the value of the part represents at least 5% of the total value of the undertaking;
  - (b) acquire from or dispose of to a director or employee of the cooperative, or a relative (within the meaning of the Corporations Act) or domestic partner of a director or employee of the cooperative, property if the value of the property represents at least 5% of the total value of all the assets of the cooperative that relate to its primary activities;
  - (c) acquire an asset if the value of the asset represents at least 5% of the total assets of the cooperative and the acquisition would result in the cooperative beginning to carry on an activity that is not a primary activity of the cooperative;
  - (d) dispose of an asset if the disposal would result in—
    - (i) the cooperative ceasing to carry on a primary activity of the cooperative; or

- (ii) the ability of the cooperative to carry on a primary activity of the cooperative being substantially impaired either generally or in a particular locality.
- (2) The registrar may, in writing, exempt a cooperative from some or all of the provisions of—
- (a) this section; or
- (b) section 200 (Special postal ballots) in relation to anything to which this section applies.
- (3) An exemption may be unconditional or subject to conditions.
- (4) An exemption is a notifiable instrument.
- Note* A notifiable instrument must be notified under the Legislation Act.
- (5) If a cooperative contravenes this section, each person who is a member of the board of the cooperative commits an offence.
- Maximum penalty: 50 penalty units.
- (6) It is a defence to a prosecution of a person for an offence against subsection (5) if the person satisfies the court that the person used all due diligence to prevent the contravention by the cooperative.

## **Part 11** Restrictions on acquisition of interests in trading cooperatives

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

#### **277** Notice required to be given of voting interest

- (1) A person (whether or not a member of the cooperative) must give notice to a trading cooperative within 5 business days after the day the person becomes aware that the person has a relevant interest in the right to vote of a member of the cooperative.

Maximum penalty: 20 penalty units.

- (2) A person (whether or not a member of the cooperative) who has ceased to have a relevant interest in the right to vote of a member of a trading cooperative must give notice to the cooperative within 5 business days after the day the person becomes aware of that fact.

Maximum penalty: 20 penalty units.

*Note* Section 184 deals with the effect of a person having a relevant interest on the right to vote of a member of a cooperative.

#### **278** Notice required to be given of substantial share interest

- (1) A person must give notice to a trading cooperative within 5 business days after the day the person becomes aware that the person has a substantial share interest in the cooperative.

Maximum penalty: 20 penalty units.

- (2) A person who has a substantial share interest in a trading cooperative must give notice to the cooperative within 5 business days after the day the person becomes aware that a substantial change has happened in that share interest.

Maximum penalty: 20 penalty units.

- (3) A person who has ceased to have a substantial share interest in a trading cooperative must give notice to the cooperative within 5 business days after the day the person becomes aware that the person has ceased to have the interest.

Maximum penalty: 20 penalty units.

- (4) A person has a *substantial share interest* in a trading cooperative if the nominal value of the shares in the cooperative in which the person has a relevant interest represents 5% or more of the nominal value of the issued share capital of the cooperative.
- (5) A *substantial change* takes place in a person's share interest in a trading cooperative if there is an increase or decrease in the number of shares in the cooperative in which the person has a relevant interest and the increase or decrease represents at least 1% of the nominal value of the issued share capital of the cooperative.

## **279 Requirements for notices under div 11.1**

A notice required under this division must state the particulars, prescribed by regulation, of the interest or change being notified.

*Note* If a form is approved under s 466 for a notice, the form must be used.

## **280 Maximum permissible level of share interest**

- (1) A person must not have a relevant interest in shares of a trading cooperative if the nominal value of the shares is more than 20% of the nominal value of the issued share capital of the cooperative.
- (2) The registrar may, in writing, determine a higher percentage for subsection (1) in relation to a cooperative.

- (3) A determination under subsection (2) is a notifiable instrument.
- Note* A notifiable instrument must be notified under the Legislation Act.
- (4) The percentage applying under subsection (1) or (2) in relation to a cooperative may be increased for a particular person by special resolution of the cooperative passed by a special postal ballot.
- (5) A resolution under subsection (4) for a person has effect only if—
- (a) it is approved in writing by the registrar; or
  - (b) the person is another cooperative.
- (6) The registrar's approval may be given on conditions.

**281 Shares to be forfeited to remedy contravention**

- (1) If a person has a relevant interest in a share of a trading cooperative in contravention of this division, the board of the cooperative must declare to be forfeited sufficient of the shares in which the person has a relevant interest to remedy the contravention.
- (2) The shares to be forfeited are—
- (a) the shares nominated by the person for the purpose; or
  - (b) in the absence of such a nomination, the shares in which the person has had a relevant interest for the shortest time.
- (3) A declaration of the board that shares are forfeited operates to forfeit the shares.
- (4) Sections 133 to 135 apply to shares forfeited under this section as if the shares had been forfeited under part 6.

**282 Powers of board in relation to suspected contravention**

- (1) If the board of a trading cooperative is satisfied on reasonable grounds that a person has contravened section 277 in relation to the cooperative, the board may do either or both of the following:
- (a) refuse to register any share transfer involving the person;



- (b) suspend any specified rights or entitlements that a person has as a member of the cooperative or attaching to any shares of the cooperative in which the person has a relevant interest.
- (2) The board may ask a person who it suspects has a relevant interest in any shares of the cooperative to provide information to the board about the interest.
- (3) A failure by a person to comply with a request under subsection (2) is reasonable grounds for the board being satisfied that the person has contravened section 277.

### **283 Powers of Supreme Court in relation to contravention**

- (1) If the Supreme Court is satisfied that a person has contravened section 277 in relation to a trading cooperative, the court may, on the application of the cooperative or the registrar, make any orders it considers just.
- (2) The orders that may be made under subsection (1) include—
  - (a) a remedial order; and
  - (b) an order directing the cooperative or anyone else to do or not do anything to secure compliance with any other order under the subsection.
- (3) An order may be made whether or not the contravention continues.
- (4) Proof to the satisfaction of the Supreme Court at the hearing of an application that—
  - (a) a person has a relevant interest in a share of a trading cooperative because an associate of the person has a relevant interest in a share; and
  - (b) the associate became entitled to that relevant interest within 6 months before the day the application was filed in the court;

is evidence that the associate was an associate of the person from the time the person first had the relevant interest until the date of the hearing.

**284 Cooperative to tell registrar about certain high share holdings**

- (1) A trading cooperative must tell the registrar in writing within 14 days after the day the board becomes aware that—
  - (a) a person has a relevant interest in shares of the cooperative and the nominal value of the shares exceeds the permitted percentage of the nominal value of the issued share capital of the cooperative; or
  - (b) there has been a change in the number of shares in which a person mentioned in paragraph (a) holds a relevant interest.
- (2) The trading cooperative must also give the registrar details of the relevant interest or the change.
- (3) In this section:

*permitted percentage*, in relation to a relevant interest in shares of a cooperative held by a person, means—

  - (a) 20%; or
  - (b) if a higher percentage applies under section 280 (2) or (4)—the higher percentage.

**285 Cooperative to keep register of notifiable interests**

- (1) A trading cooperative must keep a register of interests that are notifiable under this division.
- (2) The cooperative must enter in the register, in alphabetical order, the names of people from whom the cooperative has received a notice under this division together with the information contained in the notice.

- (3) The register must be open for inspection—
  - (a) by any member of the cooperative free of charge; and
  - (b) by anyone else on payment of the fee (if any) that the cooperative may require.
- (4) The fee required by the cooperative must not exceed the amount (if any) prescribed by regulation.

**286 Unlisted companies to provide list of shareholders etc**

- (1) This section applies to a company that is not a listed corporation.
- (2) A company to which this section applies that is a member of a trading cooperative must provide to the cooperative a list showing—
  - (a) the name of each member of the company as at the end of the financial year of the company and the number of shares in the company held by each member; and
  - (b) the name of each person who has a relevant interest (within the meaning of the Corporations Act) in any share of the company together with details of that interest; and
  - (c) the name of each person who is an associate (within the meaning of the Corporations Act) of the company.
- (3) A list under subsection (2) must be provided within 28 days after the end of each financial year of the company and within 28 days after the day a request for the list is made in writing to the company by the registrar.
- (4) The details to be shown on the list are those details as at the end of the financial year concerned or, if the list is provided at the request of the registrar, as at the date stated in the request.
- (5) The registrar may make a request under subsection (3) at any time, but only if the registrar is of the opinion that the company is or may be involved in a suspected contravention of a provision of this division.

**287 Excess share interest not to affect loan liability**

- (1) This section applies if a trading cooperative has made a loan to a member and the member had or has a relevant interest in shares of the cooperative in contravention of this division.
- (2) Until the amount lent to the member has been repaid to the cooperative (with any interest payable), the member is liable to make to the cooperative the payments that the member would be liable to make if all the shares concerned were lawfully held by the member.
- (3) Any security for the repayment of the loan is not affected by a contravention of this division.

**288 Extent of operation of div 11.1**

This division—

- (a) applies to all individuals, whether resident in the ACT or elsewhere in Australia or not and whether Australian citizens or not, and to all corporations or unincorporated bodies, whether incorporated or carrying on business in the ACT or elsewhere in Australia or not; and
- (b) extends to acts done or omitted to be done outside the ACT, whether in Australia or not.

**289 Registrar may give exemptions for div 11.1**

- (1) The registrar may, in writing, exempt a person from this division or a provision of this division.
- (2) An exemption may be unconditional or subject to conditions.
- (3) An exemption is a notifiable instrument.

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

## Division 11.2      Restrictions on certain share offers

### 290      Share offers to which div 11.2 applies

- (1) This division applies to the following offers to purchase shares in a trading cooperative:
  - (a) an offer made as part of a proposal for, or that is conditional on, the sale of the undertaking or any part of the undertaking, as a going concern, of the cooperative;
  - (b) an offer made as part of a proposal for, or that is conditional on, the registration of the cooperative as a company under the Corporations Act;
  - (c) an offer made as part of a proposal for, or that is conditional on, the winding-up of the cooperative;
  - (d) an offer that would result in a contravention of section 280 (Maximum permissible level of share interest) were the offeror to be registered (immediately after the offer is made) as the holder of the shares that are the subject of the offer;
  - (e) an offer that would lead to the offeror having a substantial share interest in the cooperative, or to a substantial change taking place in a substantial share interest that the offeror has in the cooperative, were the offeror to be registered (immediately after the offer is made) as the holder of the shares that are the subject of the offer.
- (2) In this section:

*substantial change*—see section 278 (5).

*substantial share interest*—see section 278 (4).

**291 Requirements to be satisfied before share offer may be made**

- (1) A person may make an offer to which this division applies only if the making of the offer has been approved—
  - (a) by special resolution passed by a special postal ballot; and
  - (b) by the registrar.
- (2) However, an offer mentioned in section 290 (1) (e) that is made in accordance with the regulations may be made even if it has not been approved as mentioned in subsection (1) of this section.

**292 Some offers totally prohibited if they discriminate**

An offer mentioned in section 290 (1) (a) to (d) must not be made at all if it operates or would operate to discriminate between members who are active members and members who are not active members.

**293 Offers to be submitted to board first**

- (1) Any proposal to make an offer to which this division applies must in the first instance be submitted to the board of the cooperative.
- (2) The board may decline to put a proposed offer to a special postal ballot unless arrangements satisfactory to the board have been made for payment to the cooperative of the expenses involved in holding the ballot.
- (3) The board may require payment in advance under subsection (2).
- (4) A requisition for a special postal ballot for this division must not be served until the board has had a reasonable opportunity to consider the proposed offer.
- (5) A period of 28 days is taken to be a reasonable opportunity for considering a proposed offer but the registrar may extend that period in a particular case by notice to the cooperative.

**294 Announcements of proposed takeovers affecting proposed company**

- (1) This section applies to an offer to buy shares in a trading cooperative made as part of a proposal for, or that is conditional on, the registration of the cooperative as a company (the *proposed company*) under the Corporations Act.
- (2) A person must not make a public announcement to the effect that the person proposes, or that the person and someone else together propose, to make takeover offers, or to cause a takeover announcement to be made, in relation to the proposed company if—
  - (a) the person knows that the announcement is false or is recklessly indifferent about whether it is true or false; or
  - (b) the person has no reasonable grounds for believing that the person, or the person and the other person, will be able to perform obligations arising under the scheme or announcement under the Corporations Act in relation to the scheme or announcement if a substantial proportion of the offers or the offers made under the announcement are accepted.

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

- (3) If a person makes a public announcement to the effect that the person proposes, or that the person and someone else together propose, to make a takeover bid in relation to the proposed company, the person must proceed to make a takeover bid in relation to shares in the company in accordance with the public announcement within 2 months after the day the company is incorporated.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (4) A person is not liable to be convicted of more than 1 offence against subsection (3) in relation to a single public announcement.

- (5) A person who contravenes this section (whether or not the person is found guilty of an offence for the contravention) is liable to pay compensation to anyone else who suffered loss because of entering into a transaction in relation to shares in reliance on the public announcement concerned.
- (6) The amount of that compensation is the difference between the price of the shares at which the transaction was entered into and the price of the shares at which the transaction would have been likely to have been entered into if the person had not made the public announcement.
- (7) A person does not commit an offence for a contravention of subsection (3), and is not liable to pay compensation in relation to the contravention, if it is proved that the person could not reasonably have been expected to make the takeover bid concerned—
  - (a) because of circumstances that existed at the time of the making of the public announcement but of which the person had no knowledge and could not reasonably have been expected to have knowledge; or
  - (b) because of a change in circumstances after the making of the announcement, other than a change in circumstances caused directly or indirectly by the person.
- (8) Words and expressions used in this section have the same meanings as in the Corporations Law, section 746 as in force on 12 March 2000.



**295 Additional disclosure requirements for offers involving conversion to company**

If an offer to which this division applies is part of a proposal for, or is conditional on, the registration of the cooperative as a company under the Corporations Act, the disclosure statement required to be sent to members for the special postal ballot must contain the following additional information:

- (a) full particulars of any proposal under which any of the directors will acquire a relevant interest in any share of the company to be formed;
- (b) any other information that is—
  - (i) material to the making of a decision by a member whether or not to agree to the making of the offer; and
  - (ii) within the knowledge of the directors and has not previously been disclosed to the members;
- (c) any other information the registrar, by notice, directs.

**296 Consequences of prohibited offer**

- (1) If a person makes an offer to buy shares in a trading cooperative in contravention of this division—
  - (a) the person is not entitled to be registered as the holder of the shares; and
  - (b) if the transfer of the shares is registered—the person is not entitled to vote at any meeting of the cooperative.
- (2) Any vote cast by or on behalf of a member who is not entitled to vote because of this section must be disregarded.

**297 Registrar may give exemptions for div 11.2**

- (1) The registrar may, in writing, exempt a trading cooperative from some or all of the provisions of—
  - (a) this division; or
  - (b) section 200 (Special postal ballots) in relation to anything to which this division applies.
- (2) An exemption may be unconditional or subject to conditions.
- (3) An exemption is a notifiable instrument.

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

## **Part 12**                      **Mergers, transfers of engagements and winding-up**

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

#### **298**            **Application of div 12.1**

This division does not apply to a merger or transfer of engagements to which part 14 (Foreign cooperatives) applies.

#### **299**            **Mergers and transfers of engagements of local cooperatives**

Any 2 or more cooperatives may consolidate all or any of their assets, liabilities and undertakings by way of merger or transfer of engagements approved under this division.

#### **300**            **Requirements before making application for merger etc approval**

- (1) Before cooperatives can apply for approval under this division of a merger or transfer of engagements, the proposed merger or transfer must have been approved by each of the cooperatives by—
  - (a) a special resolution passed by a special postal ballot; or
  - (b) if permitted by subsection (2)—a resolution of the board of the cooperative.
- (2) The proposed merger or transfer of engagements may be approved by resolution of the board of a cooperative if the registrar consents to the procedure applying in the particular case.

**301 Disclosure statement required for div 12.1**

- (1) A resolution of a cooperative is effective for this division only if this section has been complied with.
- (2) Each cooperative must send to each of its members a disclosure statement, approved in writing by the registrar, that specifies—
  - (a) the financial position of each cooperative, as shown in financial statements that have been prepared at a date not earlier than 6 months before the date of the statement; and
  - (b) any interest that any officer of each cooperative has in the proposed merger or transfer of engagements; and
  - (c) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to any officer or member of each cooperative in relation to the proposed merger or transfer of engagements; and
  - (d) whether the proposal is a merger or transfer of engagements and the reason for the merger or transfer of engagements; and
  - (e) for a transfer of engagements—whether it is a total or partial transfer of engagements; and
  - (f) any other information that the registrar directs.
- (3) The disclosure statement must be sent to the members of each cooperative so that it will in the ordinary course of post reach each member who is entitled to vote on the special resolution not later than 21 days before the day on or before which the ballot papers must be returned by members voting in the special postal ballot.
- (4) The registrar may, in writing, exempt a cooperative from this section or any provision of this section.
- (5) The registrar may, in writing, approve a disclosure statement.
- (6) An exemption or approval may be unconditional or subject to conditions.

- (7) An exemption is a notifiable instrument.

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

### **302 Making application for merger approval etc**

- (1) An application for approval of a merger or transfer of engagements under this division must be made to the registrar.

*Note* If a form is approved under s 466 for an application, the form must be used.

- (2) An application for approval of a merger must be accompanied by 2 copies of the proposed rules of the merged cooperative and any other particulars required by the registrar.

### **303 Approval of merger**

- (1) The registrar must approve a merger under this division if satisfied that—

- (a) this division has been complied with in relation to the application for the merger; and
- (b) the proposed rules of the merged cooperative are consistent with this Act and may reasonably be approved under this Act; and
- (c) the certificates of registration of the cooperatives have been surrendered to the registrar; and
- (d) there is no good reason why the merged cooperative and its rules should not be registered.

- (2) On approving an application for merger, the registrar must—

- (a) cancel the registration of the cooperatives involved in the merger; and
- (b) register the merged cooperative and its rules; and

- (c) issue to the merged cooperative a certificate of registration under this Act.
- (3) A merger takes effect on the issue of the certificate of registration for the merged cooperative.

### **304 Approval of transfer of engagements**

- (1) The registrar must approve a transfer of engagements under this division if satisfied that—
  - (a) this division has been complied with in relation to the application for the approval; and
  - (b) the rules or proposed rules of the transferee cooperative are adequate; and
  - (c) for a total transfer of engagements from a cooperative—the certificate of registration of the cooperative has been surrendered to the registrar; and
  - (d) there is no good reason why the transfer of engagements should not take effect.
- (2) A transfer of engagements takes effect on the day stated in the approval of the registrar.

### **305 Transfer of engagements by direction of registrar**

- (1) The registrar may, by notice, direct a cooperative—
  - (a) to transfer its engagements to a cooperative approved in writing by the registrar; and
  - (b) within the period stated in the direction (or, if the registrar allows a further period, the further period), to enter into an agreement approved in writing by the registrar to give effect to the transfer of engagements directed.

- (2) The registrar may give the direction only if—
  - (a) the necessary grounds exist, under section 338A, for giving the direction; and
  - (b) the grounds are stated, fully or in summary form, in the notice.
- (3) The transfer of engagements must make provision, in a way approved in writing by the registrar, for members of the transferor cooperative to become members of the transferee cooperative if they wish to do so.
- (4) If a cooperative fails to comply with a direction under this section, the registrar may elect to treat the failure as the necessary grounds—
  - (a) for the winding-up of the cooperative on a certificate of the registrar; or
  - (b) for the appointing of an administrator of the cooperative.
- (5) The registrar must give notice to the cooperative of the registrar's decision under subsection (4).
- (6) The registrar may revoke a direction under this section at any time up until the cooperative has agreed to transfer its engagements in accordance with the direction.
- (7) The registrar must, in writing, fix the date the transfer of engagements directed under this section takes effect.
- (8) An instrument under subsection (7) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.
- (9) An officer of a cooperative must take all reasonable steps to ensure that the cooperative complies with a direction given to it under this section.

Maximum penalty: 20 penalty units.

- (10) An officer of a cooperative must not, by wilful act or omission, cause the cooperative to fail to comply with a direction given to it under this section.

Maximum penalty: 20 penalty units.

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

### **306            Meaning of *new body* and *transfer* in div 12.2**

In this division:

*new body* means a body the registration or incorporation of which has been transferred.

*transfer* means the transfer of the registration or incorporation of a cooperative because of an application under this division.

### **307            Application for transfer of registration etc**

- (1) A cooperative may apply to become registered or incorporated as 1 of the following bodies:
- (a) a company under the Corporations Act;
  - (b) an association incorporated, or taken to be incorporated, under the *Associations Incorporation Act 1991*;
  - (c) a building society;
  - (d) a credit union;
  - (e) a corporation incorporated, registered or otherwise established under a law of the Commonwealth, or a State, Territory or foreign country, that is prescribed by regulation for this section.
- (2) An application must be made in accordance with, and is subject to, the law applying to the relevant kind of body.



- (3) An application must be accompanied by—
- (a) the amount of any fee payable under that law on application for registration or incorporation as a body of the relevant kind; and
  - (b) either—
    - (i) the certificate of registration of the cooperative under this Act; or
    - (ii) if the certificate of registration is not available—an affidavit by a director or the secretary of the cooperative stating why it is not available and, if it cannot be found, the searches and inquiries that have been made for it.

**308 Requirements before making application for transfer of registration etc**

- (1) Before an application is made under section 307, the cooperative must by special resolution passed by a special postal ballot—
- (a) approve the proposed application; and
  - (b) decide under what name the cooperative is to apply to be incorporated or registered; and
  - (c) adopt any memorandum or articles of association, constitution, replaceable rules or other rules, as may be necessary or considered desirable.
- (2) The name applied for need not be the same as that of the cooperative and must not include the word ‘cooperative’ or any other word with a similar meaning.
- (3) The registrar may, in writing, exempt a cooperative from some or all of the provisions of—
- (a) this section; or
  - (b) section 200 (Special postal ballots) in relation to anything to which this section applies.

- (4) An exemption may be unconditional or subject to conditions.

**309 Transfer of registration not to impose greater liability etc**

- (1) A memorandum or articles of association, constitution, replaceable rules or other rules adopted for the transfer must not—
- (a) impose on the members of the new body who were members of the cooperative at the date of transfer any greater or different liability to contribute to the assets of the new body than the liability to which they were subject as members of the cooperative; or
  - (b) deprive any member of the new body of any preferential rights in relation to dividend or capital to which the member was entitled as a member of the cooperative at the date of transfer.
- (2) The transfer must result in every member of the cooperative at the date of transfer becoming a member of the new body.
- (3) For a transfer of a cooperative that has a share capital to a new body that has a share capital, the transfer must result in every member of the cooperative at the date of transfer who held shares in the cooperative becoming the holder of shares in the capital of the new body equal in number and nominal value to the shares held by the member as a member of the cooperative.

**310 Effect of new certificate of registration etc**

- (1) A certificate of registration or incorporation as the new body issued under the law applying to the new body is conclusive evidence of compliance with all the requirements of this division in relation to the registration or incorporation.
- (2) If the new body receives a certificate of that kind in relation to its registration or incorporation, it must immediately file a copy of the certificate with the registrar.

Maximum penalty: 10 penalty units.

**311 New body ceases to be registered as cooperative**

A cooperative that transfers to a new body ceases to be registered as a cooperative under this Act when the certificate of registration or incorporation of the new body is issued.

**312 New body is continuation of cooperative**

- (1) If a cooperative transfers to a new body, the new body is taken to be the same entity as the cooperative.
- (2) Without limiting subsection (1), division 12.6 applies to a transfer under this division.

**313 Stamp duty on transfer of registration etc**

- (1) This section applies if—
  - (a) a cooperative that transfers under this division was before its registration as a cooperative under this Act a company under the Corporations Act; and
  - (b) stamp duty had been paid on its incorporation as a company in relation to the amount of the nominal capital of the company (or, if the nominal capital was subsequently increased, on the amount of its nominal capital as increased).
- (2) Any stamp duty paid must be taken into account and included in assessing the stamp duty payable on its incorporation or registration in accordance with the transfer.

**Division 12.3 Winding-up and deregistration**

**314 Methods of winding-up**

- (1) A cooperative may be wound up voluntarily or by the Supreme Court or on a certificate of the registrar.

- (2) For a winding-up voluntarily or by the Supreme Court, the cooperative may be wound up in the same way and in the same circumstances as a company under the Corporations Act may be so wound up.

### **315 Winding-up on registrar's certificate**

- (1) A cooperative may be wound up on a certificate of the registrar only if, under section 338A, the necessary grounds exist for taking that action.
- (2) A winding-up on a certificate of the registrar begins when the certificate is given.
- (3) On the giving of a certificate, the registrar may appoint a person to be the liquidator of the cooperative.
- (4) The liquidator need not be a registered liquidator under the Corporations Act.
- (5) The registrar must prepare written notice of the liquidator's appointment.
- (6) The notice is a notifiable instrument.  
*Note* A notifiable instrument must be notified under the Legislation Act.
- (7) The liquidator must give the security (if any) for the exercise of the liquidator's functions that the registrar directs.
- (8) The liquidator is entitled to receive the fees decided by the registrar.
- (9) Any vacancy in the office of liquidator must be filled by a person appointed by the registrar.

### **316 Method of deregistration**

A cooperative may be deregistered in the same way and in the same circumstances as a company may be deregistered under the Corporations Act.

**317 Application of Corporations Act—winding-up and deregistration of cooperatives**

- (1) The following provisions of the Corporations Act apply to the winding-up or deregistration of a cooperative, and a deregistered cooperative:
- part 5.4 (Winding up in insolvency)
  - part 5.4A (Winding up by the Court on other grounds)
  - part 5.4B (Winding up in insolvency or by the Court)
  - part 5.5 (Voluntary winding up)
  - part 5.6 (Winding up generally)
  - part 5.7 (Winding up bodies other than companies)
  - chapter 5A (Deregistration, and transfer of registration, of companies).
- (2) The provisions apply subject to the following changes:
- (a) a reference in the provisions to a special or extraordinary resolution is taken to be a reference to a special resolution within the meaning of this Act;
- (b) section 513B (Voluntary winding up) is taken to be amended by inserting the following paragraph after paragraph (d):
- (i) if the winding up is on the certificate of the registrar—on the date the certificate is given; or’;
- (c) section 461 (1) (h) (General grounds on which company may be wound up by Court) is taken to be amended by omitting ‘ASIC has stated in a report prepared under division 1 of part 3 of the ASIC Act that, in its opinion:’, and substituting ‘the registrar has, because of an inquiry conducted under the *Cooperatives Act 2002*, division 15.2 (Inquiries) or division 15.4 (Miscellaneous powers of registrar), stated that—’;

- (d) section 464 (1) (Application for winding up in connection with investigation under ASIC Act) is taken to be amended by omitting ‘Where ASIC is investigating, or has investigated, under division 1 of part 3 of the ASIC Act:’, and substituting ‘If the registrar is holding or has held an inquiry under the *Cooperatives Act 2002*, division 15.2 (Inquiries) or division 15.4 (Miscellaneous powers of registrar)—’;
- (e) section 516 (Company limited by shares) is taken to be amended by inserting after the words ‘past member’ the words ‘together with any charges payable by the member to the cooperative in accordance with the rules’;
- (f) a reference in the provisions to a registered liquidator is taken to include a reference to a person approved by the registrar as a liquidator of a cooperative;
- (g) a reference in the provisions to a part 2F.1 (Oppressive conduct of affairs) is taken to be a reference to division 4.5 (Oppressive conduct of affairs) of this Act;
- (h) for the application of the provisions to a winding-up on a certificate of the registrar, the winding-up is taken to be a voluntary winding-up (but the Corporations Act, section 490 (When company cannot wind up voluntarily) does not apply);
- (i) section 542 (3) (Books of company) is taken to be amended by inserting the following word and paragraph after paragraph (c):
  - (i) ‘; and
  - (ii) for a winding up on a certificate of the registrar under the *Cooperatives Act 2002*, section 314 (Methods of winding-up)—with the registrar’s consent.’;

- (j) for the application of the provisions to decide the liability of members and former members to contribute on a winding-up of a cooperative, the provisions are taken to be subject to section 72 (Liability of members to cooperative) and section 323 (Liability of member to contribute in winding-up where shares forfeited etc).

### **318 Restrictions on voluntary winding-up**

- (1) A cooperative may be wound up voluntarily only—
  - (a) by a creditors' voluntary winding-up; or
  - (b) if a special resolution is passed by a special postal ballot in favour of voluntary winding-up.
- (2) The registrar may, in writing, exempt a cooperative from some or all of the provisions of—
  - (a) this section; or
  - (b) section 200 (Special postal ballots) in relation to anything to which this section applies.
- (3) An exemption may be unconditional or subject to conditions.
- (4) An exemption is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.
- (5) If a special postal ballot is held, the members may, by the same ballot, by simple majority—
  - (a) appoint 1 or more liquidators for the purpose of winding up the affairs and distributing the assets of the cooperative; and
  - (b) fix the remuneration to be paid to the liquidator.

**319 Beginning of members' voluntary winding-up**

A members' voluntary winding-up of a cooperative begins when the result of the special postal ballot is noted in the minute book by the secretary of the cooperative.

**320 Distribution of surplus—non-trading cooperatives**

- (1) On a winding-up of a non-trading cooperative, the surplus property of the cooperative must be distributed as required by the rules of the cooperative.
- (2) The rules of a non-trading cooperative must make provision about the distribution of the surplus property of the cooperative in a winding-up.
- (3) In this section:

*surplus property* means the property of the cooperative that remains after satisfaction of the debts and liabilities of the cooperative and the costs, charges and expenses of the winding-up.

**321 Liquidator—vacancy may be filled by registrar**

If a cooperative is being wound up voluntarily and a vacancy happens in the office of liquidator that in the registrar's opinion is unlikely to be filled in the way provided by the Corporations Act, the registrar may appoint a person to be liquidator.

**322 Review of liquidator's remuneration**

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



**323 Liability of member to contribute in winding-up where shares forfeited etc**

- (1) If a person's membership of a cooperative is cancelled under part 6 (Active membership) within 2 years before the beginning of the winding-up of the cooperative, the person is liable on the winding-up to contribute to the property of the cooperative the nominal value, immediately before the cancellation, of any shares forfeited in relation to the cancellation.
- (2) If under section 173 (Purchase and repayment of shares) a cooperative—
  - (a) buys any share of a member in the cooperative; or
  - (b) repays to a member all or any part of the amount paid up on any share held by a member;

within 2 years before the beginning of the winding-up of the cooperative, the member or former member is liable on the winding-up to contribute to the property of the cooperative the amount that was paid by the cooperative to the member or former member in relation to the purchase or repayment together with any amount unpaid on the shares immediately before the purchase or repayment.

- (3) If a person contributes to the property of a cooperative under a liability under this section, the amount contributed is, for the winding-up concerned, to be treated as having been paid up by the person on shares of the cooperative.
- (4) The liability of a member or former member of a cooperative under this section is in addition to any other liability of the member or former member to contribute to the property of the cooperative on a winding-up of the cooperative.

## Division 12.4 Administration of cooperatives

### 324 Application of Corporations Act—administration of cooperatives

- (1) The Corporations Act, part 5.3A (Administration of a company's affairs with a view to executing a deed of company arrangement) and part 5.9 (Miscellaneous), division 3 (Provisions applying to various kinds of external administration) apply in relation to a cooperative.
- (2) The provisions apply subject to the following changes:
  - (a) the provisions are taken to include the provisions of section 325 (Appointment of administrator) of this Act;
  - (b) a reference in the provisions to the Corporations Act, section 128 (Entitlement to make assumptions) and section 129 (Assumptions that can be made under section 128) is taken to be a reference to the following provisions of this Act:
    - section 43 (When assumptions may be made)
    - section 44 (The assumptions)
    - section 45 (Person who knows or ought to know is not entitled to make assumptions)
    - section 47 (Effect of fraud);
  - (c) a reference in the provisions to an administrator appointed under a provision of the Corporations Act, part 5.3A is taken to include a reference to an administrator appointed by the registrar under the provisions included by paragraph (a).

## Division 12.5 Appointment of administrator

### 325 Appointment of administrator

- (1) The registrar may, by notice, appoint an administrator to conduct the affairs of a cooperative.

- (2) A notice of appointment must state—
  - (a) the date of the appointment; and
  - (b) the appointee's name; and
  - (c) the appointee's business address.
- (3) If the appointee's name or business address changes, the appointee must immediately give notice of the change to the registrar.
- (4) The registrar may appoint an administrator only if the necessary grounds exist, under section 338A, for the taking of the action.

### **326 Effect of appointment of administrator**

- (1) On the appointment of an administrator of a cooperative—
  - (a) the directors of the cooperative cease to hold office; and
  - (b) all contracts of employment with the cooperative are terminated; and
  - (c) all contracts for the provision of secretarial or administrative services for the cooperative are terminated; and
  - (d) the administrator may terminate any contract for providing other services to the cooperative.
- (2) An administrator of a cooperative has the functions of the board of the cooperative (including the board's powers of delegation).
- (3) A director of a cooperative may be appointed or elected while the administrator is in office only as provided by this division.

### **327 Termination of appointment of administrator**

- (1) An administrator holds office until—
  - (a) the administrator—
    - (i) resigns by notice signed by the administrator and received by the registrar; or

- (ii) dies; or
  - (b) the administrator's appointment is revoked under subsection (2) or (3).
- (2) The registrar may, by notice, revoke the appointment of an administrator.
- (3) If a liquidator of a cooperative is appointed, the appointment of any administrator of the cooperative is automatically revoked.
- (4) Immediately on the revocation of an administrator's appointment, the administrator must prepare and give a report to the registrar showing how the administration was carried out and, for that purpose, an administrator has access to the cooperative's records and documents.
- (5) On providing the report and accounting fully in relation to the administration of the cooperative to the satisfaction of the registrar, the administrator is released from any further duty to account in relation to the administration of the cooperative other than on account of fraud, dishonesty, negligence or wilful failure to comply with this Act.
- (6) Before revoking the appointment of an administrator of a cooperative (otherwise than by appointing a liquidator), the registrar must—
  - (a) appoint another administrator of the cooperative; or
  - (b) ensure that directors of the cooperative have been elected in accordance with the rules of the cooperative at a meeting called by the administrator in accordance with the rules; or
  - (c) appoint directors of the cooperative.
- (7) Directors so elected or appointed—
  - (a) take office on revocation of the administrator's appointment; and

- (b) for directors appointed under subsection (6)—hold office until the next annual general meeting of the cooperative after the revocation of that appointment.

### **328 Expenses of administration**

- (1) The expenses of and incidental to the conduct of a cooperative's affairs by an administrator are payable from the cooperative's funds.
- (2) The expenses of conducting a cooperative's affairs include—
  - (a) if the administrator is not a public servant—remuneration of the administrator at a rate approved in writing by the registrar; or
  - (b) if the administrator is a public servant—the amount that the registrar certifies should be paid to the Territory as repayment of the administrator's remuneration.
- (3) An amount certified under subsection (2) (b) may be recovered in a court of competent jurisdiction as a debt to the Territory.
- (4) An administrator of a cooperative has, in relation to the expenses mentioned in this section, the same priority on the winding-up of the cooperative as a liquidator of the cooperative.

### **329 Liabilities arising from administration**

- (1) If a cooperative incurs any loss because of any fraud, dishonesty, negligence or wilful failure by an administrator to comply with this Act or the rules of the cooperative, the administrator is liable for the loss.
- (2) An administrator is not liable for any other loss but must account for the loss in a report given under section 327.

**330 Additional powers of registrar in relation to administration**

- (1) If the registrar appoints directors of a cooperative under section 327 (Termination of appointment of administrator), the registrar may, by notice given to the cooperative, specify—
  - (a) a time during which this section is to apply in relation to the cooperative; and
  - (b) the conditions on which all or any of the directors hold office; and
  - (c) the rules that are to be the cooperative's rules.
- (2) While this section applies to a cooperative, the registrar may, in writing—
  - (a) remove and appoint directors; and
  - (b) vary, revoke or specify new conditions in place of all or any of the conditions specified under subsection (1); and
  - (c) amend all or any of the rules specified under subsection (1).
- (3) The registrar may, by notice given to a cooperative, extend the time for which this section is to apply to the cooperative.
- (4) A rule specified by the registrar under this section as a rule of a cooperative—
  - (a) is not to be altered except in the way set out in this section; and
  - (b) if it is inconsistent with any other rule of the cooperative—prevails over the other rule, and the other rule is invalid to the extent of the inconsistency; and
  - (c) has the same evidentiary value as the cooperative's rules (and copies of them) have under this Act.

**331 Stay of proceedings on appointment of administrator**

- (1) If the registrar appoints an administrator to conduct a cooperative's affairs, a person must not, without the Supreme Court's leave, begin or continue any proceeding in a court against the cooperative until the administrator's appointment is revoked and, if the Supreme Court gives leave, in accordance with any conditions that the Supreme Court imposes.
- (2) A person intending to apply for leave of the Supreme Court under subsection (1) must give the registrar at least 10 days notice of intention to apply.
- (3) On the hearing of an application under subsection (1), the registrar may be represented and may oppose the granting of the application.

**332 Administrator to report to registrar**

If the registrar asks the administrator of the cooperative for a report about the administration, the administrator must, without delay, prepare and give the registrar a report about how the administration is being carried out.

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

**333 How div 12.6 applies to merger**

- (1) This division applies to a merger of cooperatives under this part.
- (2) In the application of this division to the merger, the following definitions apply:

*new body* means the cooperative that results from the merger.

*original body* means each cooperative that is a party to the merger.

*relevant day* means the day the merged cooperative is registered under this Act.

**334 How div 12.6 applies to transfer of engagements**

- (1) This division applies to a transfer of the engagements of a cooperative to another cooperative under division 12.1.
- (2) In the application of this division to the transfer of engagements, the following definitions apply:

*new body* means the cooperative to which the engagements are transferred.

*original body* means the cooperative that transfers its engagements.

*relevant day* means the day the transfer of engagements takes effect.

**335 How div 12.6 applies to transfer of incorporation**

- (1) This division applies to a transfer of incorporation under division 12.2.
- (2) In the application of this division to the transfer of incorporation, the following definitions apply:

*new body* means the corporation that results from the transfer.

*original body* means the cooperative that transfers its incorporation.

*relevant day* means the day the transfer takes effect.

**336 Effect of merger etc on assets, liabilities etc**

- (1) In this section:

*assets* includes contingent assets.

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



- (2) On and from the relevant day for an event to which this division applies—
- (a) the assets of the original body vest in the new body without the need for any conveyance, transfer, assignment or assurance; and
  - (b) the rights and liabilities of the original body become the rights and liabilities of the new body; and
  - (c) all proceedings by or against the original body that are pending immediately before the relevant day are taken to be proceedings pending by or against the new body; and
  - (d) anything done or omitted to be done by, to or in relation to the original body before the relevant day is (to the extent to which it has any force or effect) taken to have been done or omitted by, to or in relation to the new body; and
  - (e) a reference in an instrument or in any document of any kind to the original body is, or includes, a reference to the new body.
- (3) Any act or omission happening because of, or arising from, the operation of this section is not to be regarded—
- (a) as a breach of contract or confidence or otherwise as a civil wrong; or
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or
  - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.

**337 Certain instruments not liable to stamp duty etc**

An instrument executed or registered in relation to a transfer of property to give effect to section 336 is not liable to stamp duty or to any fee payable under any law for registration.

**Division 12.7 Miscellaneous**

**338 Application of Corporations Act—insolvent cooperatives**

The Corporations Act, part 5.7B (Recovering property or compensation for the benefit of creditors of insolvent company), other than section 588G (Director's duty to prevent insolvent trading by company), applies to a cooperative.

**338A Grounds for winding-up, transfer of engagements, appointment of administrator**

- (1) This section applies to the following actions:
  - (a) a direction by the registrar to a cooperative to transfer its engagements under section 305;
  - (b) the appointment of an administrator of a cooperative under division 12.5;
  - (c) the winding-up of a cooperative on a certificate of the registrar under section 315.
- (2) The necessary grounds for the taking of action to which this section applies exist if the registrar certifies—
  - (a) that the number of members is reduced to less than the minimum number of people allowed, as mentioned in section 69; or
  - (b) that the cooperative has not begun business within 1 year of registration or has suspended business for longer than 6 months; or

- (c) that the registration of the cooperative has been obtained by mistake or fraud; or
  - (d) that the cooperative exists for an illegal purpose; or
  - (e) that the cooperative has intentionally, and after notice from the registrar, breached a provision of this Act or the rules of the cooperative; or
  - (f) that the board of the cooperative has, after notice from the registrar, failed to ensure that the rules of the cooperative contain active membership provisions in accordance with part 6; or
  - (g) that there are, and have been for 1 month immediately before the date of the registrar's certificate, insufficient directors of the cooperative to form a quorum as provided under the rules of the cooperative; or
  - (h) following an inquiry under the provisions of this Act into the affairs of a cooperative or the working and financial condition of a cooperative, that in the interests of members or creditors of the cooperative or the public the action should be taken.
- (3) Alternatively, the necessary grounds for the winding-up of a cooperative on a certificate of the registrar exist if the registrar certifies—
- (a) that the period (if any) fixed under the cooperative's rules for its duration has ended; or
  - (b) that a winding-up event stated in the certificate has happened.
- (4) In this section:
- winding-up event** means an event on the happening of which the regulations or the cooperative's rules provide that the cooperative must be wound up.

## **Part 13 Arrangements and reconstructions**

### **Division 13.1 General requirements**

#### **339 Requirements for binding compromise or arrangement**

- (1) A compromise or arrangement is binding only if it is approved by order of the Supreme Court and it is agreed to—
  - (a) if the compromise or arrangement is between the cooperative and any of its creditors—at a court ordered meeting by a majority in number of those creditors who are present and voting (in person or by proxy) and whose debts or claims against the cooperative amount to at least 75% of the total of the debts and claims of all those creditors who are present and voting (in person or by proxy); or
  - (b) if the compromise or arrangement is between the cooperative and any of its members—by those members by special resolution passed by a special postal ballot.
- (2) The court ordered meeting mentioned in subsection (1) (a) is a meeting called in accordance with an order of the Supreme Court under this part.
- (3) The Supreme Court may approve a compromise or arrangement subject to any changes or conditions it considers just.
- (4) An order of the Supreme Court approving a compromise or arrangement does not have any effect until an office copy of the order is filed with the registrar.
- (5) On the office copy being filed, the order takes effect from the date of filing or, if an earlier date is stated in the order, the earlier date.

**340 Supreme Court ordered meeting of creditors**

- (1) If a compromise or arrangement is proposed between a cooperative and any of its creditors, the Supreme Court may on application by an appropriate person order a meeting or meetings of the creditors concerned.
- (2) An *appropriate person* to apply for an order is—
  - (a) the cooperative; or
  - (b) any member of the cooperative; or
  - (c) any of the creditors of the cooperative; or
  - (d) for a cooperative being wound up—the liquidator.
- (3) The meeting must be called in the way, and be held in the place or places (in the ACT or elsewhere), that the Supreme Court directs.
- (4) In considering whether to make an order for a meeting to be held outside the ACT, the Supreme Court may have regard to where creditors live.

**341 Registrar to be given notice and opportunity to make submissions**

- (1) The Supreme Court may make an order under this division if the Supreme Court is satisfied that—
  - (a) at least 14 days notice of the hearing of the application for the order, or any shorter period of notice that the Supreme Court or the registrar permits, has been given to the registrar; and
  - (b) the registrar has had a reasonable opportunity to examine the terms of and make submissions to the Supreme Court in relation to the proposed compromise or arrangement and the draft explanatory statement relating to it.

- (2) The draft explanatory statement must—
- (a) explain the effect of the proposed compromise or arrangement and, in particular, state—
    - (i) any material interests of the directors of the cooperative, whether as directors, members or creditors of the cooperative or otherwise; and
    - (ii) the effect on the interests of the proposed compromise or arrangement so far as the effect is different from the effect on the like interests of other people; and
  - (b) set out—
    - (i) any information prescribed by regulation; and
    - (ii) any other information that is—
      - (A) material to the making of a decision by a creditor or member of the cooperative whether or not to agree to the proposed compromise or arrangement; and
      - (B) within the knowledge of the directors of the cooperative and has not previously been disclosed to the creditors or members of the cooperative.

### **342 Results of 2 or more meetings**

If the Supreme Court orders 2 or more meetings of creditors to be held in relation to a proposed compromise or arrangement—

- (a) the meetings are taken to form a single meeting; and
- (b) the votes in favour of the proposed compromise or arrangement cast at each of the meetings are to be totalled; and
- (c) the votes against the proposed compromise or arrangement cast at each of the meetings are to be totalled.

**343 People disqualified from administering compromise etc**

- (1) This section applies to a person (a *designated person*) who—
  - (a) is a mortgagee of any property of a cooperative; or
  - (b) is an auditor or officer of a cooperative; or
  - (c) is an officer of a corporation that is a mortgagee of property of a cooperative; or
  - (d) is an officer of a corporation related to a cooperative; or
  - (e) unless the registrar directs in writing that this paragraph does not apply in relation to the person, has at any time within the last year been an officer or promoter of a cooperative or a related corporation of a cooperative.
- (2) A designated person may not be appointed to, and must not, administer a compromise or arrangement (a *relevant compromise or arrangement*), approved under this Act, between the cooperative and any of its creditors or members.
- (3) A person also may not be appointed to, and must not, administer a relevant compromise or arrangement unless—
  - (a) the person is a registered liquidator; or
  - (b) the person is authorised to administer the compromise or arrangement under another territory law.
- (4) However, despite subsection (2) or (3), the Supreme Court may give leave for a person to be appointed to administer, and administer, a relevant compromise or arrangement—
  - (a) on the application of the person; or
  - (b) with the person's agreement, on the application of someone else.

**344 Application of sch 4 and Corporations Act—person appointed to administer compromise etc**

- (1) Schedule 4, sections 4.16, 4.18, 4.19 (2), 4.23 and 4.25 apply to a person appointed to administer a compromise or arrangement as if—
  - (a) the appointment were an appointment of the person as a receiver and manager of property of the cooperative; and
  - (b) a reference in any of the provisions to a receiver, or to a controller, were a reference to the person.
- (2) The Corporations Act, section 536 (Supervision of liquidators) applies to a person appointed to administer a compromise or arrangement in relation to a cooperative.
- (3) The section applies subject to the following changes:
  - (a) the appointment is taken to be an appointment of the person as a liquidator of the cooperative;
  - (b) a reference in the section to a liquidator is taken to be a reference to the person appointed.

**345 Copy of order to be attached to rules**

- (1) A cooperative must ensure that a copy of an order of the Supreme Court approving a compromise or arrangement is attached to each copy of the rules of the cooperative issued after the order is made.

Maximum penalty: 20 penalty units.
- (2) The Supreme Court may, by order, exempt a cooperative from complying with this section or fix the period during which the cooperative must comply.



**346 Directors to arrange for reports in relation to compromise etc**

- (1) If a compromise or arrangement in relation to a cooperative has been proposed (whether or not in relation to a scheme for the reconstruction of the cooperative or the merger of the cooperative with another cooperative), the directors of the cooperative must—
  - (a) if a meeting of the members of the cooperative directs by resolution—instruct the accountants or solicitors named in the resolution to report on the proposal and give their report to the directors as soon as practicable; and
  - (b) make the report available at the registered office of the cooperative for inspection by the members and creditors of the cooperative at least 7 days before the day of the meeting ordered by the Supreme Court or the holding of the special postal ballot, as appropriate.
- (2) If this section is not complied with, each director of the cooperative commits an offence.

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

**347 Power of Supreme Court to restrain further proceedings**

- (1) If a proposed compromise or arrangement is between a cooperative and any of its creditors and no order has been made or resolution passed for the winding-up of the cooperative, the Supreme Court may restrain further proceedings in any action or other civil proceeding against the cooperative except by leave of the Supreme Court and subject to the conditions that the Supreme Court imposes.
- (2) The Supreme Court's power under this section is in addition to any of its other powers and may only be exercised on application by the cooperative or a creditor or member of the cooperative.

**348 Supreme Court need not approve compromise or arrangement takeovers**

- (1) The Supreme Court need not approve a compromise or arrangement unless—
  - (a) it is satisfied that the compromise or arrangement has not been proposed to avoid any of the provisions of division 11.2 (Restrictions on certain share offers); and
  - (b) there is produced to the Supreme Court a written statement by the registrar stating that the registrar has no objection to the compromise or arrangement.
- (2) The Supreme Court need not approve a compromise or arrangement only because a statement by the registrar stating that the registrar has no objection to the compromise or arrangement has been produced to the Supreme Court.

**Division 13.2 Explanatory statements**

**349 Explanatory statement required to accompany notice of meeting etc**

- (1) An explanatory statement must accompany every notice—
  - (a) sent to a creditor of a cooperative calling the court ordered meeting to obtain agreement to the compromise or arrangement; or
  - (b) sent to a member of a cooperative for the purpose of the conduct of the special postal ballot to obtain agreement to the compromise or arrangement.
- (2) In every notice of a meeting mentioned in subsection (1) that is given by advertisement there must be included either a copy of the explanatory statement or notification of where and how creditors entitled to attend the meeting may obtain copies of the explanatory statement.

- (3) The explanatory statement must—
- (a) explain the effect of the compromise or arrangement and, in particular, state—
    - (i) any material interests of the directors of the cooperative, whether as directors, as members or creditors of the cooperative or otherwise; and
    - (ii) the effect on the interests of the compromise or arrangement so far as the effect is different from the effect on the like interests of other people; and
  - (b) set out—
    - (i) any information prescribed by regulation; and
    - (ii) any other information that—
      - (A) is material to the making of a decision by a creditor or member whether or not to agree to the compromise or arrangement; and
      - (B) is within the knowledge of the directors and has not previously been disclosed to the creditors or members of the cooperative.
- (4) Subsection (1) (a) applies to a creditor whose debt is not more than \$200 only if the Supreme Court orders that it applies.
- (5) The notice calling the meeting that is sent to a creditor mentioned in subsection (1) (a) must state where a copy of the explanatory statement can be obtained on request.
- (6) The cooperative must comply with a request under subsection (5) as soon as practicable.

### **350 Requirements for explanatory statement**

- (1) An explanatory statement must be as approved in writing by the registrar.

- (2) If the compromise or arrangement affects the rights of debenture holders, the explanatory statement must state—
  - (a) any material interests of the trustees for the debenture holders, whether as trustees, members or creditors of the cooperative or otherwise; and
  - (b) the effect on the interests of the compromise or arrangement to the extent that the effect is different from the effect on the like interests of other people.
- (3) If a notice given by advertisement includes a notification that copies of the explanatory statement can be obtained in a particular way, the cooperative must provide a copy of the statement free of charge to each creditor or member entitled to attend the meeting or vote in the ballot who applies for it in the appropriate way.
- (4) Each person who is a director or trustee for debenture holders must give notice to the cooperative of the matters relating to the person that are required to be included in the explanatory statement.

**351 Contravention of div 13.2—offence by cooperative etc**

- (1) If a provision of this division is contravened, the cooperative concerned and anyone else involved in the contravention commits an offence.

Maximum penalty: 20 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant satisfies the court that the contravention was caused by the failure of someone else who is a director of the cooperative, or a trustee for debenture holders of the cooperative, to supply particulars of the person's interests for the explanatory statement.

## **352 Provisions for facilitating reconstructions and mergers**

(1) In this section:

*cooperative* includes a foreign cooperative registered, formed or incorporated under a law of a State or another Territory.

(2) This section applies if an application is made to the Supreme Court under this part for the approval of a compromise or arrangement and it is shown to the court that—

(a) the compromise or arrangement has been proposed in relation to a scheme for the reconstruction of a cooperative or the merger of a cooperative with another cooperative or with another corporation; and

(b) under the scheme all or any part of the undertaking or of the property of a cooperative concerned in the scheme (the *transferor*) is to be transferred to another corporation (the *transferee*) except a company.

(3) If this section applies, the Supreme Court may, either by the order approving the compromise or arrangement or by a later order, provide for any 1 or more of the following:

(a) the transfer to the transferee of all or part of the undertaking and of the property or liabilities of the transferor;

(b) the allotting or appropriation by the transferee of shares, debentures, policies or other interests in the transferee that, under the compromise or arrangement, are to be allotted or appropriated by the transferee to or for anyone else;

(c) the bringing by or against the transferee of any legal proceeding pending by or against the transferor;

(d) the deregistration, without winding-up, of the transferor;

(e) the provision to be made for anyone dissenting from the compromise or arrangement in the way and within the time directed by the court;

- (f) the transfer or allotment of any interest in property to anyone concerned in the compromise or arrangement;
  - (g) any incidental, consequential or supplemental matters necessary to ensure that the reconstruction or merger is fully and effectively carried out.
- (4) If an order under this section provides for the transfer of property, the property is transferred to and vests in the transferee because of the order and, if the order so directs, the property is transferred and vests free from any charge that is to cease to have effect because of the compromise or arrangement.
- (5) If an order under this section provides for the transfer of liabilities, the liabilities are transferred to and become liabilities of the transferee because of the order.
- (6) If an order is made under this section, each body to which the order relates must file an office copy of the order with the registrar within 14 days after the day the order is made.
- (7) In this section:
- liabilities* includes duties of any description (including duties that are of a personal character or cannot, under the general law, be assigned or performed vicariously).
- property* includes rights and powers of any description (including rights and powers that are of a personal character or cannot, under the general law, be assigned or performed vicariously).

## Division 13.3 Acquisition of shares of dissenting shareholders

### 353 Definitions for div 13.3

In this division:

*dissenting shareholder*, in relation to a scheme or contract, means a shareholder who has not agreed to the scheme or contract or who

has failed to transfer shares in accordance with the scheme or contract.

*excluded shares*, in relation to a scheme or contract involving a transfer to a person of shares in a class of shares in a cooperative, means shares in that class that, when the offer relating to the scheme or contract is made, are held by—

- (a) in any case—the person or a nominee of the person; or
- (b) if the person is a corporation—a subsidiary of the corporation.

### **354 Schemes and contracts to which div 13.3 applies**

- (1) This division applies to a scheme or contract involving a transfer of shares in a cooperative (the *transferor*) to a person (the *transferee*) that has, within 4 months after the making of the offer relating to the scheme or contract by the transferee, been approved by the holders of at least 90% of the nominal value of all the shares concerned (other than excluded shares).
- (2) This division does not apply to a scheme or contract arising out of the making of an offer to which division 11.2 applies.

### **355 Acquisition of shares under notice to dissenting shareholder**

- (1) The transferee under the scheme or contract may, within 2 months after the day the offer is approved, give written notice (a *compulsory acquisition notice*) to a dissenting shareholder that the transferee wishes to acquire the shares held by the shareholder.

*Note* If a form is approved under s 466 for a compulsory acquisition notice, the form must be used.

- (2) If a compulsory acquisition notice is given, the dissenting shareholder may, by notice given to the transferee within 1 month after the day the compulsory acquisition notice was received, ask for a written statement of the names and addresses of all other dissenting shareholders as shown in the register of members.

- (3) The transferee must give the requested statement to the dissenting shareholder.
- (4) Having given the compulsory acquisition notice, the transferee is, unless the Supreme Court otherwise orders, entitled and bound to acquire the dissenting shareholder's shares on the conditions on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee.
- (5) The Supreme Court may make an order to the contrary only on the application of the dissenting shareholder made within 28 days after the day the compulsory acquisition notice was received or within 14 days after the day any statement asked for under subsection (2) was received, whichever is the later.
- (6) If alternative conditions are offered to the approving shareholders—
  - (a) the dissenting shareholder is entitled to elect which of the conditions are preferred, but must make the election within the time allowed for making an application to the Supreme Court under subsection (5); and
  - (b) if the dissenting shareholder does not make the election within that time—the transferee may, unless the Supreme Court otherwise orders, decide which of the conditions is to apply to the acquisition of the shares of the dissenting shareholder.

### **356 Restrictions when excluded shares exceed 10%**

If the nominal value of excluded shares exceeds 10% of the aggregate nominal value of all the shares (including excluded shares) to be transferred under the scheme or contract, section 355 applies only if—

- (a) the transferee offers the same conditions to all holders of the shares (other than excluded shares) to be transferred under the scheme or contract; and



- (b) the holders who approve the scheme or contract together hold at least 90% of the nominal value of the shares (other than excluded shares) to be transferred under the scheme or contract and are also at least 75% in number of the holders of those shares (with joint owners of shares being counted as a single person).

### **357 Remaining shareholders may require acquisition**

- (1) If, under a scheme or contract to which this division applies, the transferee becomes beneficially entitled to shares in the transferor that, together with any other shares in the transferor to which the transferee or a corporation related to the transferee is beneficially entitled, consist of or include 90% of the nominal value of the shares—
  - (a) the transferee must, within 28 days after the day the transferee becomes beneficially entitled to the shares, give notice of the fact as prescribed by regulation to the holders of the remaining shares who, when the notice was given, had not agreed to the scheme or contract or been given a compulsory acquisition notice by the transferee under this division; and
  - (b) a holder of shares who is given notice by the transferee may, within 3 months after the day the holder is given the notice, by notice to the transferee require the transferee to acquire the holder's shares and, if alternative conditions were offered to the approving shareholders, elect which of the conditions the holder will accept.
- (2) If a shareholder gives notice under this section in relation to the shareholder's shares, the transferee is entitled and bound to acquire the shares—
  - (a) on the conditions on which, under the scheme or contract, the shares of the approving shareholders were transferred to the transferee and, if alternative conditions were offered to the shareholders, on the conditions for which the shareholder has

elected or, if no election is made, for whichever of the conditions the transferee decides; or

- (b) on the other conditions that are agreed or the Supreme Court orders on the application of the transferee or shareholder.

**358 Transfer of shares in accordance with compulsory acquisition**

- (1) A transferee who has given a compulsory acquisition notice must—
- (a) send a copy of the notice to the transferor together with an instrument of transfer of the shares that the transferee is entitled to acquire under this division and that is executed, on the shareholder's behalf, by a person appointed by the transferee and, on the transferee's own behalf, by the transferee; and
- (b) pay, allot or transfer to the transferor the consideration for the shares.
- (2) The transferee must comply with subsection (1) within 14 days after whichever of the following happens last:
- (a) the period of 28 days after the day the compulsory acquisition notice was given ends;
- (b) the period of 14 days after a statement of the names and addresses of dissenting shareholders is given under this division ends;
- (c) if an application has been made to the Supreme Court by a dissenting shareholder—the application is disposed of.
- (3) When the transferee has complied with this section, the transferor must register the transferee as the holder of the shares.
- (4) This section does not apply if the Supreme Court on the application of the dissenting shareholder otherwise orders.

**359 Disposal of consideration for shares compulsorily acquired**

- (1) All amounts received by the transferor under this division must be paid into a separate bank account and the amounts, and any other consideration received under this division, are to be held by the transferor in trust for the people entitled to the shares in relation to which they were respectively received.
- (2) If an amount or other consideration received by the transferor under this division has been held in trust by the transferor for a person for at least 2 years, the transferor must pay the amount or transfer the consideration to the registrar, together with any accretions to it and any property that has become substituted for it or part of it.
- (3) The Corporations Act, part 9.7 (Unclaimed property) applies to anything paid or transferred to the registrar under subsection (2).
- (4) The part applies subject to the change mentioned in subsection (5).
- (5) A reference in the part to *unclaimed property* is taken to be a reference to the thing paid or transferred to the registrar under subsection (2).
- (6) The transferor must comply with subsection (2) before the end of 10 years after the day the amount was paid, or the consideration was allotted or transferred, to the transferor.

**Division 13.4 Miscellaneous**

**360 Notice of appointment of scheme manager**

If a person is appointed to administer a compromise or arrangement approved under this part, the person must file a notice of the appointment with the registrar within 14 days after the appointment is made.

Maximum penalty: 10 penalty units.

**361 Power of Supreme Court to require reports in relation to proposed compromise etc**

If an application is made to the Supreme Court under this part in relation to a proposed compromise or arrangement, the Supreme Court may—

- (a) before making any order on the application, require the registrar or anyone else to give to the court a report about—
  - (i) the conditions of the compromise or arrangement or of the scheme for or in relation to which the compromise or arrangement has been proposed; and
  - (ii) the conduct of the officers of the entities concerned; and
  - (iii) anything else that, in the opinion of the registrar or the person, ought to be brought to the attention of the court; and
- (b) in deciding the application, have regard to anything contained in the report; and
- (c) make orders about the payment of the costs of preparing and giving the report.

**362 Effect of out-of-jurisdiction compromise or arrangement**

- (1) A compromise or arrangement that is binding on any creditors of a foreign cooperative because of a provision of the law of a State or another Territory that corresponds to this part is also binding on the creditors of the foreign cooperative whose debts are recoverable by proceeding in an ACT court.
- (2) If a court of a State or another Territory makes an order under a provision of the law of the State or other Territory that is prescribed by regulation as corresponding to a provision of this part, the order is taken to have been made by the Supreme Court of the ACT under the corresponding provision of this Act and has effect and may be enforced accordingly.

**363 Jurisdiction to be exercised in harmony with  
Corporations Act jurisdiction**

The jurisdiction of the Supreme Court under this part is intended to complement the Supreme Court's jurisdiction under the Corporations Act and to be exercisable in harmony with that jurisdiction.

**364 Registrar may appear in pt 13 proceedings**

In a proceeding in the Supreme Court under this part, the registrar is entitled to appear and be heard, either in person or by a lawyer or representative.

## Part 14 Foreign cooperatives

### Division 14.1 Introductory

#### 365 Definitions for pt 14

In this part:

*cooperatives law* means a law declared under section 366 to be a cooperatives law for this part.

*nonparticipating cooperative* means a foreign cooperative other than a participating cooperative.

*participating cooperative* means a foreign cooperative registered, incorporated or formed under, or subject to, a cooperatives law.

*participating State* means a State in which a cooperatives law is in force.

*State* includes another Territory.

#### 366 Declaration of cooperatives laws

- (1) The Minister may, in writing, declare that a law of a State is a cooperatives law for this part.
- (2) However, a declaration may be made under subsection (1) in relation to a law of a State only if the Minister is satisfied that the law—
  - (a) substantially corresponds to the provisions of this Act; and
  - (b) contains provisions that are mentioned in this part as provisions of a cooperatives law that correspond to stated provisions of this Act.
- (3) A declaration under this section is a notifiable instrument.

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

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

### **367            Operation of foreign cooperatives in ACT**

A foreign cooperative must not carry on business in the ACT unless it is registered under section 373 as a foreign cooperative.

Maximum penalty: 200 penalty units.

### **368            What constitutes carrying on business in ACT**

- (1) A foreign cooperative carries on business in the ACT if it—
  - (a) solicits for members in the ACT; or
  - (b) seeks share capital in the ACT; or
  - (c) provides any goods or services within the ACT.
- (2) A foreign cooperative is not to be regarded as carrying on business in the ACT only because in the ACT it—
  - (a) is or becomes a party to a proceeding or arbitration, settles a proceeding or settles a claim or dispute; or
  - (b) holds meetings of its directors or members or carries on other activities concerning its internal affairs; or
  - (c) maintains any bank account; or
  - (d) effects any sale through an independent contractor; or
  - (e) solicits or procures any offer that becomes a binding contract only if the offer is accepted outside the ACT; or
  - (f) creates evidence of any debt or creates a charge on real and personal property; or
  - (g) secures or collects any of its debts or enforces its rights in relation to any securities relating to the debts; or

- (h) conducts an isolated transaction that is completed within 31 days, other than a transaction that is one of a number of similar transactions repeated from time to time.

### **369 Application for registration of participating cooperative**

- (1) A participating cooperative that proposes to carry on business as a cooperative in the ACT may apply to the registrar to be registered as a foreign cooperative.

*Note 1* A fee may be determined under s 465 for this section.

*Note 2* If a form is approved under s 466 for an application under this section, the form must be used.

- (2) An application by a participating cooperative must be accompanied by—
  - (a) a certificate, not more than 2 months old, from the registrar of the participating State, where the participating cooperative is registered, incorporated or formed, stating that the cooperative is complying with the provisions of the cooperatives law of that State prescribed by regulation for the provision of that law that corresponds with section 378; and
  - (b) the documents prescribed by regulation for the provision of the cooperatives law of that State that corresponds with section 378; and
  - (c) a copy of the current rules of the cooperative; and
  - (d) a statement, verified as prescribed, setting out—
    - (i) the full name and address of each person who will act as agent of the cooperative in the ACT; and
    - (ii) the address of the proposed registered office of the cooperative in the ACT; and



- (iii) a copy of an instrument appointing a person resident in the ACT (other than a corporation incorporated outside the ACT) as a person on whom all notices and legal process may be served on behalf of the cooperative; and
- (e) any other documents or information prescribed by regulation.

**370 Application for registration of nonparticipating cooperative**

- (1) A nonparticipating cooperative that proposes to carry on business as a cooperative in the ACT may apply to the registrar to be registered as a foreign cooperative.

*Note 1* A fee may be determined under s 465 for this section.

*Note 2* If a form is approved under s 466 for an application under this section, the form must be used.

- (2) An application by a nonparticipating cooperative must be accompanied by—
  - (a) a copy of the current rules of the cooperative; and
  - (b) a statement, verified as prescribed by regulation, setting out—
    - (i) the full name and address of each person who will act as agent of the cooperative in the ACT; and
    - (ii) the address of the proposed registered office of the cooperative in the ACT; and
    - (iii) a copy of an instrument appointing a person resident in the ACT (other than a corporation incorporated outside the ACT) as a person on whom all notices and legal process may be served on behalf of the cooperative; and
  - (c) any other documents or information prescribed by regulation.

**371 Registrar to approve rules of nonparticipating cooperative**

A nonparticipating cooperative is eligible for registration only if the registrar is satisfied that the rules of the cooperative—

- (a) comply with cooperative principles; and
- (b) include acceptable active membership provisions; and
- (c) provide procedures acceptable to the registrar for disclosure of information; and
- (d) provide that a member has 1 vote only; and
- (e) make adequate provision for the duties of directors; and
- (f) provide for acceptable accounting standards for the cooperative.

**372 Name of foreign cooperative**

- (1) A foreign cooperative is eligible for registration under section 373 if the name under which it proposes to carry on business in the ACT is not likely to be confused with the name of a corporation or a registered business name.
- (2) If the registrar tells the foreign cooperative that the name under which it proposes to carry on business in the ACT is likely to be confused with the name of a corporation or registered business name, the cooperative may amend its application by substituting another name.

**373 Registration of foreign cooperative**

- (1) If, on application under this division, the registrar is satisfied that a foreign cooperative is eligible for registration, the registrar must register the foreign cooperative as a foreign cooperative and issue a certificate of registration in accordance with the requirements (if any) of the regulations.

- (2) If—
- (a) a nonparticipating cooperative (the *relevant cooperative*) is registered as a foreign cooperative; and
  - (b) the law under which the relevant cooperative is registered, incorporated or formed, or to which the relevant cooperative is subject, subsequently becomes a cooperatives law;
- the relevant cooperative becomes a participating cooperative.
- (3) The relevant cooperative does not, only because it has become a participating cooperative, cease to be registered under this section as a foreign cooperative.

**374 Application of Act to foreign cooperatives**

The regulations may prescribe provisions of this Act that apply, with all necessary changes and any changes prescribed by regulation, to a foreign cooperative registered under section 373 as if the foreign cooperative were a cooperative.

**375 Registrar to be told of certain changes in relation to foreign cooperatives**

- (1) A foreign cooperative commits an offence if—
- (a) the foreign cooperative is registered under section 373 (Registration of foreign cooperative); and
  - (b) a notifiable change happens in relation to the foreign cooperative; and
  - (c) the foreign cooperative fails to file with the registrar particulars of the change, accompanied by any documents prescribed by regulation, within 28 days after the day the notifiable change happens.

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.

(3) In this section:

*notifiable change*, in relation to a foreign cooperative, means a change in—

- (a) the rules or constitution of the foreign cooperative; or
- (b) the directors of the foreign cooperative; or
- (c) the agents of the foreign cooperative (or their addresses); or
- (d) the person appointed as the person on whom notices and legal process may be served on behalf of the foreign cooperative; or
- (e) the address of the registered office in the ACT or elsewhere of the foreign cooperative; or
- (f) the name under which the foreign cooperative carries on business.

### **376 Balance sheets of foreign cooperatives**

- (1) A foreign cooperative registered under section 373 must, within 6 months (or any longer period that the registrar allows) after the end of each of its financial years, file with the registrar—
- (a) for a participating cooperative—a copy of the balance sheet relating to its financial affairs as at the end of the financial year, in the form, and with any accompanying documents, required by the cooperatives law of the relevant participating State; and
  - (b) for a nonparticipating cooperative—a copy of the balance sheet relating to its financial affairs as at the end of the financial year and any accompanying documents required by the registrar.

Maximum penalty: 20 penalty units.

*Note* If a form is approved under s 466 for a balance sheet mentioned in par (b), the form must be used.

- (2) If the registrar is of the opinion that a balance sheet filed with the registrar under this section does not sufficiently disclose the financial affairs of the foreign cooperative, the registrar may, by notice, require the foreign cooperative to give the registrar further information or documents.
- (3) A foreign cooperative must comply with a notice given to it under subsection (2) within the period stated in the notice.

Maximum penalty (subsection (3)): 50 penalty units.

### **377 Cessation of business by foreign cooperatives**

- (1) A foreign cooperative registered under section 373 must, within 7 days after the day it ceases to carry on business as a cooperative in the ACT, give the registrar written notice of that fact.

Maximum penalty: 50 penalty units.

- (2) After giving the notice, the foreign cooperative is no longer obliged to comply with this part.
- (3) Unless the registrar has been told in writing that the foreign cooperative has resumed carrying on business as a cooperative in the ACT, the registrar must, 1 year after the day the registrar receives the notice under subsection (1), cancel the foreign cooperative's registration.

### **378 Cooperative proposing to register as foreign cooperative**

- (1) A cooperative that proposes to apply to be registered as a foreign cooperative in another participating State may apply to the registrar for a certificate that it is complying with all provisions of this Act prescribed by regulation, including, if the registrar has varied a requirement in relation to that cooperative, the provision as varied.
- (2) The registrar must issue the certificate to the cooperative unless the registrar is of the opinion that the cooperative is not complying with the provisions prescribed by regulation.

- (3) If the registrar issues the certificate, the registrar must also give to the cooperative the documents prescribed by regulation.

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

#### **379 Definitions for div 14.3**

In this division:

*appropriate registrar*, in relation to a proposed merger or transfer of engagements, means—

- (i) the territory registrar, if the merger is to result in a territory cooperative or the transfer is to a territory cooperative; or
- (ii) the registrar for the relevant participating State, if the merger is to result in a cooperative under the cooperatives law of a participating State or the transfer is to such a cooperative.

*territory cooperative* means a cooperative registered under part 2 (Formation).

*territory registrar* means the registrar under this Act.

#### **380 Authority for merger or transfer of engagements**

- (1) A territory cooperative and a participating cooperative may consolidate all or any of their assets, liabilities and undertakings by way of merger or transfer of engagements approved under this division.
- (2) A territory cooperative and a nonparticipating cooperative may consolidate all or any of their assets, liabilities and undertakings by way of merger or transfer of engagements approved under this division if—
  - (a) the merger is to result in a territory cooperative; or

- (b) the transfer is to a territory cooperative.

**381 Requirements before application may be made**

- (1) A territory cooperative and a participating cooperative may apply for approval under this division of a merger or transfer of engagements only if the proposed merger or transfer has been approved by each of the cooperatives—
  - (a) by a special resolution passed by a special postal ballot; or
  - (b) if the criteria mentioned in subsection (2) apply—by a special resolution of the cooperative or a resolution of the board of the cooperative.
- (2) The criteria for subsection (1) (b) are—
  - (a) that the territory registrar consents in writing to the procedure applying in the particular case; and
  - (b) that the registrar for the relevant participating State also consents to the procedure applying in the particular case.
- (3) A territory cooperative and a nonparticipating cooperative may apply for approval under this division of a merger or transfer of engagements only if the proposed merger or transfer of engagements has been approved—
  - (a) for the nonparticipating cooperative—
    - (i) by a special resolution of cooperative; or
    - (ii) if the territory registrar consents in writing to the procedure applying in the particular case—by a resolution of the board of the cooperative; and
  - (b) for the territory cooperative—
    - (i) by a special resolution passed by a special postal ballot;  
or

- (ii) if the territory registrar consents in writing to the procedure applying in the particular case—by a special resolution of the cooperative or a resolution of the board of the cooperative.
- (4) The consent of the territory registrar under this section may be given on conditions.

**382 Disclosure statement required for certain mergers etc**

- (1) A special resolution of the territory cooperative or foreign cooperative is effective for this division only if this section has been complied with.
- (2) Each cooperative must send to each of its members a disclosure statement approved in writing by the appropriate registrar specifying—
  - (a) the financial position of the territory cooperative and the foreign cooperative as shown in financial statements that have been prepared as at a date not earlier than 6 months before the date of the statement; and
  - (b) any interest that any officer of the territory cooperative or the foreign cooperative has in the proposed merger or transfer of engagements; and
  - (c) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to any officer or member of the territory cooperative or foreign cooperative in relation to the proposed merger or transfer of engagements; and
  - (d) whether the proposal is a merger or transfer of engagements and the reason for the merger or transfer or engagements; and
  - (e) for a transfer of engagements—whether it is a total or partial transfer of engagement; and



- (f) for a merger—whether the merged cooperative will result in a territory cooperative or a cooperative under the cooperatives law of the relevant participating State; and
  - (g) any other information that the appropriate registrar directs.
- (3) The disclosure statement must be sent to the members of the territory cooperative or foreign cooperative so that it will in the ordinary course of post reach each member who is entitled to vote on the special resolution not later than—
- (a) if the resolution is to be decided at a meeting—21 days before the date of the meeting; or
  - (b) if the resolution is to be decided by a postal ballot—21 days before the day on or before which the ballot papers must be returned by members voting in the ballot.
- (4) The appropriate registrar may, in writing, exempt the territory cooperative or foreign cooperative from this section or a provision of this section.
- (5) The appropriate registrar may give an exemption, or approve a disclosure statement, subject to conditions.

### **383 Making application for approval of merger etc**

- (1) An application for approval of a merger or transfer of engagements under this division must be made to the territory registrar and, if the merger or transfer affects a participating cooperative, to the registrar for the relevant participating State in the way and form required by that registrar.
- (2) An application for approval of a merger must be accompanied by—
  - (a) 2 copies of the proposed rules of the merged cooperative; and
  - (b) for a nonparticipating cooperative—details of voting on the special resolution (if any) of the cooperative; and

- (c) any other information required by the registrar to whom the application is made.

### **384 Approval of merger**

- (1) If the territory registrar is the appropriate registrar, the territory registrar must approve a merger under this division if satisfied that—
  - (a) this division has been complied with in relation to the application for the merger; and
  - (b) the proposed rules of the merged cooperative are adequate; and
  - (c) the certificate of registration of the territory cooperative has been surrendered to the territory registrar; and
  - (d) for a merger with a participating cooperative—the certificate of registration of the participating cooperative has been surrendered to the registrar for the relevant participating State; and
  - (e) for a merger with a nonparticipating cooperative—the merged cooperative will comply with this Act; and
  - (f) there is no good reason why the merged cooperative and its rules should not be registered.
- (2) If the territory registrar is not the appropriate registrar, the territory registrar must approve a merger under this division if satisfied that the merger has been approved under the provision of the cooperatives law of the participating State that corresponds with subsection (1).
- (3) On approving a merger, the territory registrar must—
  - (a) cancel the registration of the territory cooperative involved in the merger; and

- (b) if the merger is to result in a territory cooperative—register the merged cooperative and its rules and issue to it a certificate of registration under this Act.
- (4) A merger takes effect on the issue of the certificate of registration for the merged cooperative (whether under this Act or under the cooperatives law of the relevant participating State).

### **385 Approval of transfer of engagements**

- (1) If the territory registrar is the appropriate registrar, the territory registrar must approve a transfer of engagements under this division if satisfied that—
  - (a) this division has been complied with in relation to the application for the transfer; and
  - (b) the rules or proposed rules of the transferee cooperative are adequate; and
  - (c) for a total transfer of engagements from a participating cooperative—the certificate of registration of the participating cooperative has been surrendered to the registrar for the relevant participating State; and
  - (d) for a total transfer of engagements from a nonparticipating cooperative—the certificate of registration of the nonparticipating cooperative has been surrendered to the territory registrar; and
  - (e) for a transfer of engagements by a nonparticipating cooperative—the transferee cooperative will comply with this Act; and
  - (f) there is no good reason why the transfer of engagements should not take effect.
- (2) If the territory registrar is not the appropriate registrar, the territory registrar must approve a transfer of engagements under this division if satisfied that the transfer has been approved under the provision of

the cooperatives Act of the participating State that corresponds with subsection (1).

- (3) A transfer of engagements takes effect on the day stated in the approval of the territory registrar.

### **386 Effect of merger or transfer of engagements**

- (1) In this section:

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

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

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

*original cooperative* means—

- (a) for a transfer of engagements—the transferor cooperative; or  
(b) for a merger—each of the cooperatives that are merging.

*successor cooperative* means—

- (a) for a transfer of engagements—the transferee cooperative; or  
(b) for a merger—the cooperative formed by the merger.

*transfer day* means the day a merger or transfer of engagements takes effect under this division.

- (2) On and from the transfer day, the following provisions apply to the extent necessary to give effect to the merger or transfer:
- (a) the members of the original cooperative immediately before the transfer day are members of the successor cooperative in accordance with its rules;
  - (b) the assets of the original cooperative vest in the successor cooperative without the need for any conveyance, transfer, assignment or assurance;
  - (c) the rights and liabilities of the original cooperative become the rights and liabilities of the successor cooperative;
  - (d) all proceedings by or against the original cooperative that are pending immediately before the transfer day are taken to be proceedings pending by or against the successor cooperative;
  - (e) anything done or omitted to be done by, to or in relation to the original cooperative before the transfer day is taken (to the extent to which it has any force or effect) to have been done or omitted by, to or in relation to the successor cooperative;
  - (f) a reference in an instrument to the original body is, or includes, a reference to the new body.
- (3) An act or omission happening because of, or arising from, this section is not to be regarded as—
- (a) a breach of contract or confidence or otherwise as a civil wrong; or
  - (b) a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or
  - (c) giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.

- (4) A document or an instrument executed or registered in relation to a transfer of any property to give effect to this section in relation to a transfer of engagements is not liable to stamp duty or to any fee payable under any law for registration.
- (5) A document or an instrument executed or registered in relation to a transfer of any property to give effect to this section in relation to a merger is not liable to stamp duty or to any fee payable under any law for registration if the cooperative formed by the merger is a non-trading cooperative.

**387 Div 14.3 applies instead of certain other provisions of Act**

- (1) This division applies, instead of division 12.1 (Mergers and transfers of engagements), in relation to the merger of a territory cooperative with a foreign cooperative.
- (2) This division applies, instead of division 12.1, in relation to a transfer of engagements between a territory cooperative and a foreign cooperative.

## **Part 15**                      **Supervision and protection of cooperatives**

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

#### **388**            **Definitions for div 15.1**

In this division:

*cooperative venture* means—

- (a) any corporation or unit trust formed by a cooperative or in the formation of which a cooperative participated; or
- (b) any partnership, joint venture or association of entities formed or entered into by a cooperative.

*premises* includes any structure, building, aircraft, vehicle, vessel and place (whether built on or not), and any part of the structure, building, aircraft, vehicle, vessel or place.

*relevant documents* means records or other documents that relate to the promotion, formation, membership, control, transactions, dealings, business or property of a cooperative.

#### **389**            **Cooperative includes subsidiaries, foreign cooperatives and cooperative ventures**

In this part:

*cooperative* includes the following:

- (a) a foreign cooperative;
- (b) a subsidiary of a cooperative or foreign cooperative;
- (c) a cooperative venture;

- (d) a cooperative or foreign cooperative, or a subsidiary of either, or a cooperative venture, that is in the course of being wound up or has been deregistered.

### **390 Appointment of inspectors**

The Minister may appoint a person to be an inspector for this Act.

*Note 1* For the making of appointments (including acting appointments), see the Legislation Act, div 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

### **391 Registrar and investigators have functions of inspectors**

The registrar, and any investigator, may exercise all the functions of an inspector and for that purpose is taken to be an inspector.

### **392 Inspector's identity card**

- (1) The registrar must provide each inspector with an identity card.
- (2) An inspector must produce the inspector's identity card on request on applying for entry to any premises.
- (3) If a person ceases to be an inspector, the person must return the person's identity card to the registrar within 7 days after the day the person ceases to be an inspector.

Maximum penalty (subsection (3)): 1 penalty unit.



**393 Inspectors may require certain people to appear, answer questions and produce documents**

- (1) An inspector may, by notice—
  - (a) require a cooperative to produce to the inspector, at a time and place stated in the notice, stated relevant documents relating to the cooperative; or
  - (b) require anyone who is involved in the activities of a cooperative to produce to the inspector, at a time and place stated in the notice, stated relevant documents relating to the cooperative; or
  - (c) require any person who appears to the inspector to be involved in the activities of a cooperative—
    - (i) to attend before the inspector at a time and place stated in the notice; and
    - (ii) to answer any questions put to the person by the inspector relating to the promotion, formation, membership, control, transactions, dealings, business or property of the cooperative.
- (2) A person is taken to be *involved* in the activities of a cooperative if the person—
  - (a) is or has been an officer or employee of, or an agent, banker, solicitor, auditor or other person acting in any capacity for or on behalf of, the cooperative; or
  - (b) has any relevant documents relating to the cooperative in the person's possession or control; or
  - (c) was a party to the creation of any relevant documents relating to the cooperative.
- (3) A person is not subject to any civil or criminal liability because of complying honestly with a requirement made or purportedly made under this section.

### **394 Inspector's powers of entry**

- (1) An inspector has power to enter any of the following premises:
  - (a) any premises where the affairs or activities of a cooperative are managed or conducted;
  - (b) any premises where the inspector believes, on reasonable grounds, there is evidence of the commission of an offence against this Act;
  - (c) any premises where the inspector believes, on reasonable grounds, there are relevant documents.
- (2) However, the consent of the occupier or the authority of a search warrant is required to enter—
  - (a) any part of premises not used for the management or conduct of the affairs or activities of a cooperative; or
  - (b) any part of premises used for residential purposes (whether or not the part is also used for the management or conduct of the affairs or activities of a cooperative).
- (3) If the occupier consents, the inspector must ask the occupier to sign a written acknowledgment—
  - (a) that the occupier was told—
    - (i) the purpose of the entry; and
    - (ii) that consent may be refused; and
  - (b) that the occupier consented to the entry; and
  - (c) stating the time, and day, when consent was given.
- (4) If the occupier signs an acknowledgment of consent, the inspector must immediately give a copy to the occupier.

- (5) A court must assume that an occupier of premises did not consent to an entry to the premises by an inspector under this division if—
- (a) the question whether the occupier consented to the entry arises in a proceeding in a court; and
  - (b) an acknowledgment under this section is not produced in evidence for the entry; and
  - (c) it is not proved that the occupier consented to the entry.

**395 Powers of inspectors on premises entered**

An inspector has the following powers on premises that the inspector is authorised to enter:

- (a) power to search for evidence of any contravention of this Act;
- (b) power to search for relevant documents and to require anyone on the premises to produce to the inspector any relevant documents in the person's custody or under the person's control;
- (c) power to require anyone on the premises who is apparently involved in the management or conduct of the affairs or activities of a cooperative to answer questions or provide information;
- (d) power to exercise the functions of an inspector under section 396 in relation to any relevant documents found on the premises or produced to the inspector.

### **396 Functions of inspectors in relation to relevant documents**

- (1) An inspector has the following powers in relation to a relevant document found by the inspector on premises entered by the inspector or produced to the inspector in accordance with a requirement made under this division:
  - (a) power to take possession of the document or secure it against interference;
  - (b) power to make copies of, or take extracts from, the document;
  - (c) power to require anyone who was party to the creation of the document to make a statement providing any explanation that the person can provide about anything relating to the creation of the document or about anything to which the document relates;
  - (d) power to keep possession of the document for the period necessary to allow it to be inspected, and copies of, or extracts from, the document to be made or taken.
- (2) While an inspector keeps possession of a document, the inspector must allow a person who would be entitled to inspect the document if it were not in the possession of the inspector to inspect the document at any reasonable time and make a copy of, or take extracts from, the document.
- (3) If an inspector takes possession of or secures against interference any relevant document and a person has a lien on the document, the inspector's actions do not prejudice the lien.

### **397 Offence—failing to comply with requirements of inspector etc**

- (1) A person must not, without reasonable excuse, contravene a requirement made by an inspector under this part.

Maximum penalty: 50 penalty units.

- (2) A person must not, in purported compliance with a requirement under this division, give information or make a statement that is false or misleading in a material particular.

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

- (3) A person must not, without reasonable excuse, obstruct or hinder an inspector exercising functions under this Act.

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

- (4) The occupier or person in charge of any premises must provide a person who enters the premises under the authority of this part or under a search warrant mentioned in section 399 with all reasonable facilities and assistance for the effective exercise of the person's powers under this part or under the warrant.

Maximum penalty: 50 penalty units.

- (5) It is a defence to a prosecution of a person for an offence against subsection (2) if the person satisfies the court that the person believed, on reasonable grounds, that the statement was true and not misleading.

**398 Selfincrimination in relation to requirements under div 15.1**

- (1) A person is not excused from answering a question, making a statement, providing information or producing a document under this division on the ground that to do so may tend to incriminate the person.

- (2) However—

- (a) the answering of the question, the making of the statement, the providing of the information or the producing of the document (the *required act*); or

- (b) any other information, document or thing obtained as a direct or indirect consequence of the required act;

is not admissible in evidence against the person in a criminal proceeding.

- (3) Subsection (2) does not apply to a proceeding for an offence against this Act, or any other law, in relation to the falsity or misleading nature of an answer or statement, information or a document.

*Note* The Legislation Act, s 171 deals with the application of client legal privilege.

### **399 Search warrants**

- (1) An inspector may apply to a magistrate for the issue of a search warrant in relation to premises if the inspector suspects on reasonable grounds—
  - (a) that the affairs or activities of a cooperative are being managed or conducted on the premises; or
  - (b) that there is evidence on the premises of the commission of an offence against this Act; or
  - (c) that there are relevant documents on the premises.
- (2) If a magistrate is satisfied by evidence on oath, whether oral or by affidavit, that there are reasonable grounds for doing so, the magistrate may issue a search warrant authorising an inspector named in the warrant and any assistants the inspector considers necessary to enter the premises and exercise all or stated functions of an inspector on the premises.
- (3) In addition to any other requirement, a search warrant issued under this section must state—
  - (a) the grounds for the issue of the warrant; and
  - (b) the premises to be searched; and
  - (c) any conditions to which the warrant is subject; and

- (d) whether entry is authorised to be made at any time or during stated hours; and
  - (e) a day, not later than 7 days after the day of issue of the warrant, when the warrant ceases to have effect.
- (4) A police officer may accompany an inspector executing a search warrant issued under this section and may take all reasonable steps to assist in the exercise of the functions of the inspector under this Act.

**400 Copies or extracts of records to be admitted in evidence**

- (1) In any legal proceeding (whether a proceeding under this Act or otherwise), a copy of or extract from a record relating to affairs of a cooperative is admissible in evidence as if it were the original record or the relevant part of the original record.
- (2) However, a copy of or extract from a record is admissible in evidence under subsection (1) only if it is proved that the copy or extract is a true copy of the record or the relevant part of the record.
- (3) For subsection (2), evidence that a copy of or extract from a record is a true copy of the record or of a part of the record may be given either orally or by an affidavit or statutory declaration by a person who has compared the copy or extract with the record or the relevant part of the record.

**401 Client legal privilege in relation to requirements under div 15.1**

- (1) A lawyer is entitled to refuse to comply with a requirement under section 393 or section 396 relating to a document if—
  - (a) the document contains a privileged communication made by, on behalf of or to the lawyer in his or her capacity as a lawyer; or

- (b) the lawyer cannot comply with the requirement without disclosing a privileged communication made by, on behalf of or to the lawyer in his or her capacity as a lawyer.
- (2) The lawyer is not entitled to refuse to comply with the requirement to the extent that the lawyer can comply with it without disclosing the privileged communication.
- (3) The lawyer is also not entitled to refuse to comply with the requirement if the person by or on behalf of whom the communication was made (or, if the person is an entity under administration under the Corporations Act, part 5.3A (Administration of a company's affairs with a view to executing a deed of company arrangement) as applied by this Act, or in the course of being wound up, the administrator or liquidator of the entity) agrees to the lawyer complying with the requirement.
- (4) If the lawyer fails to comply with the requirement, the lawyer must immediately provide in writing to the registrar—
  - (a) the name and address of the person to whom, by or on behalf of whom the privileged communication was made (if known to the lawyer); and
  - (b) sufficient particulars to identify the document containing the privileged communication (if the communication was made in writing).

Maximum penalty (subsection (4)): 50 penalty units.

## **402 Police aid for inspectors**

- (1) An inspector may call a police officer to the inspector's aid if the inspector is obstructed, or believes on reasonable grounds that the inspector will be obstructed, in the exercise of the inspector's functions.
- (2) A police officer has, while acting in aid of an inspector, all the functions of an inspector.



## **Division 15.2      Inquiries**

### **403      Definitions for div 15.2**

In this division:

*affairs*, of a cooperative, includes—

- (a) the promotion, formation, membership, control, transactions, dealings, business and property of the cooperative; and
- (b) loans made to the cooperative; and
- (c) matters that are concerned with identifying people who are, or have been, financially interested in the success or failure, or apparent success or failure, of the cooperative or who are, or have been, able to control or influence materially the policies of the cooperative; and
- (d) the circumstances in which a person placed, withdrew or disposed of funds with, or loans to, the cooperative.

*costs*, in relation to an inquiry under this division, includes—

- (a) the expenses of, and incidental to, the inquiry; and
- (b) the expenses payable by the registrar in any proceeding brought by the registrar under this division in the name of the cooperative the subject of the inquiry; and
- (c) so much of the remuneration of an officer or employee of the Territory as is decided by the Minister to be attributable to matters connected with the inquiry.

*involved person*, in relation to an inquiry into the affairs of a cooperative, means—

- (a) an officer of the cooperative; or
- (b) a person who acts, or has at any time acted, as banker, solicitor, auditor or actuary, or in any other capacity, for the cooperative; or

- (c) a person who has, or at any time had, in the person's possession any property of the cooperative; or
- (d) a person who is indebted to the cooperative; or
- (e) a person who can give information relating to the affairs of the cooperative; or
- (f) a person whom an investigator believes, on reasonable grounds, to be a person mentioned in paragraphs (a) to (e).

#### **404 Appointment of investigators**

- (1) The Minister may appoint a person (an *investigator*) to hold an inquiry into the affairs of a cooperative if the Minister considers that it is desirable to hold the inquiry for the protection or otherwise in the interests of the public or of the members or creditors of the cooperative.
- (2) The Minister may amend the conditions of appointment of an investigator if the investigator agrees to the amendment.
- (3) In the course of an inquiry into the affairs of a cooperative, an investigator may inquire into the affairs of a subsidiary of the cooperative that, if the subsidiary were the cooperative, would be affairs of the cooperative.
- (4) An inquiry into the affairs of a subsidiary of a cooperative may be conducted as if the subsidiary were the cooperative.

#### **405 Powers of investigators**

- (1) An investigator inquiring into the affairs of a cooperative may, by giving an involved person a notice, require the person—
  - (a) to produce any document of which the person has custody or control and that relates to those affairs; or
  - (b) to give the investigator all reasonable assistance in relation to the inquiry; or

- (c) to appear before the investigator for examination on oath or affirmation.

*Note* If a form is approved under s 466 for a notice, the form must be used.

- (2) An investigator may administer an oath or affirmation to an involved person given a notice under subsection (1).
- (3) An investigator may take possession of a document produced by an involved person under subsection (1) and may keep it for the period that the investigator decides is necessary for the inquiry.
- (4) While an investigator keeps possession of a document, the investigator must allow a person who would be entitled to inspect the document were it not in the possession of the investigator to inspect the document at any reasonable time and make a copy of, or take extracts from, the document.

#### **406 Examination of involved person**

- (1) A lawyer acting for an involved person—
  - (a) may attend an examination of the involved person by an investigator; and
  - (b) may, to the extent that the investigator permits, address the investigator and examine the involved person.
- (2) A person is not excused from answering a question or producing a document when required to do so under this division on the ground that to do so may tend to incriminate the person.
- (3) However—
  - (a) the answering of the question or the producing of the document (the *required act*); or
  - (b) any other information or document obtained as a direct or indirect consequence of the required act;

is not admissible in evidence against the person in a criminal proceeding.

- (4) Subsection (3) does not apply to a proceeding for an offence against this Act, or any other law, in relation to the falsity or misleading nature of an answer or document.

*Note* The Legislation Act, s 171 deals with the application of client legal privilege.

- (5) An involved person who attends for examination by an investigator is entitled to be paid the allowances and expenses prescribed by regulation.

#### **407 Client legal privilege of involved person who is a lawyer**

- (1) An involved person who is a lawyer is entitled to refuse to produce a document to an investigator if the document contains a privileged communication made by, on behalf of or to the lawyer in his or her capacity as a lawyer.
- (2) The lawyer is not entitled to refuse to produce the document if the person by or on behalf of whom the communication was made (or, if the person is an entity under administration under the Corporations Act, part 5.3A (Administration of a company's affairs with a view to executing a deed of company arrangement) as applied by this Act, or in the course of being wound up, the administrator or the liquidator of the entity) agrees to the lawyer producing the document.
- (3) If the lawyer fails to comply with the requirement to produce a document, the lawyer must immediately provide in writing to the investigator—
- (a) the name and address of the person to whom, by or on behalf of whom the communication was made (if known to the lawyer); and

(b) sufficient particulars to identify the document.

Maximum penalty (subsection (3)): 50 penalty units.

#### **408 Offences by involved person**

- (1) An involved person must not fail to comply with a lawful requirement of an investigator without showing reasonable cause for the failure.

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

- (2) An involved person must not—
- (a) give an investigator information knowing the information to be false or misleading in a material particular; or
  - (b) when appearing before an investigator—
    - (i) make a statement knowing the statement to be false or misleading in a material particular; or
    - (ii) fail, without reasonable excuse, to be sworn or to make an affirmation.

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

- (3) If an investigator considers that a failure by a person to comply with a requirement of the investigator is an offence against subsection (1), the investigator may certify the failure to the Supreme Court.
- (4) If the investigator certifies the failure to the Supreme Court, the court may—
- (a) order the involved person to comply with the requirement of the investigator within a stated period; or

- (b) instead of, or in addition to, making that order, punish the involved person as for a contempt of the court if satisfied that there was no lawful excuse for the failure to comply with the requirement of the investigator.

#### **409 Offences relating to documents**

- (1) If an inquiry into the affairs of a cooperative is being held under this division, a person must not—
  - (a) conceal, destroy, mutilate or alter a document relating to the cooperative; or
  - (b) send out of the ACT a document or other property that belongs to, or is under the control of, the cooperative.

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

- (2) It is a defence to a prosecution for an offence against subsection (1) if the person satisfies the court that the person did not intend to defeat, delay or obstruct the inquiry.

#### **410 Record of examination**

- (1) Except as provided by section 406, a record of an examination may be used in a proceeding against the person examined, but this subsection does not prevent the admission of other written or oral evidence.
- (2) A person examined is, on written application made to the investigator, entitled to a free copy of the record of examination.
- (3) The registrar may provide a lawyer with a copy of a record of examination made by an investigator if the registrar is satisfied that the lawyer is conducting, or is honestly contemplating, a legal proceeding in relation to affairs of the cooperative to which the record relates.

- (4) A lawyer must not—
- (a) use a copy of a record of examination otherwise than in relation to preparing for, bringing or conducting a legal proceeding; or
  - (b) publish or communicate the record or any part of it for any other purpose.

Maximum penalty (subsection (4)): 50 penalty units.

#### **411 Report of investigator**

- (1) An investigator may make interim reports to the registrar on any inquiry being held by the investigator.
- (2) An investigator must make an interim report to the registrar on any inquiry being held by the investigator if the registrar directs the registrar to make an interim report.
- (3) As soon as practicable after the end of an inquiry, the investigator must report to the registrar—
  - (a) the opinion of the investigator in relation to the affairs of the cooperative the subject of the inquiry; and
  - (b) the findings on which the opinion is based.
- (4) An investigator's report may include a recommendation whether or not an application should be made under section 414 (3), (4) or (5).
- (5) A report by an investigator may be accompanied by any document of which the investigator has taken possession after being produced under this division.
- (6) The registrar—
  - (a) may keep the document for the period that the registrar considers necessary to decide whether a legal proceeding should be brought because of the inquiry; and

- (b) may keep the document for any further period that the registrar considers necessary for a legal proceeding; and
- (c) may allow the use of the document for a legal proceeding brought because of the inquiry; and
- (d) must allow inspection of the document by a person who would be entitled to inspect it if it were returned to its former custody; and
- (e) may allow inspection of the document by anyone else while it is in the possession of the registrar but only if the registrar considers that the person has an interest in the inquiry and, because of that interest, refusal of the inspection would be unjust.

#### **412 Proceedings following inquiry**

- (1) If a legal proceeding is to be, or has been, brought by the registrar because of an inquiry under this division, the registrar may, by notice, require a person who was an involved person in relation to the inquiry to give all assistance in relation to the proceeding that the person can reasonably give.
- (2) The Supreme Court may, on the application of the registrar, order the person to comply with a requirement under subsection (1) if it appears to the court that—
  - (a) the person has unreasonably failed to comply with the requirement; and
  - (b) it is just and proper to order the person to comply with the requirement.



- (3) The registrar may bring a proceeding in the name of a cooperative if, the registrar considers that, because of an inquiry under this division, it is in the public interest that the proceeding should be brought for the recovery of—
- (a) damages for fraud or other misconduct in relation to the affairs of the cooperative; or
  - (b) property of the cooperative.

**413 Admission of investigator's report as evidence**

- (1) A document certified by the registrar as being a copy of a report of an inquiry under this division is admissible as evidence of any findings made by the investigator.
- (2) Subsection (1) does not authorise the admission of evidence that is inadmissible under section 406.

**414 Costs of inquiry**

- (1) The costs of an inquiry under this division are to be paid out of money appropriated by the Legislative Assembly.
- (2) At the direction of the Minister, the registrar must apply under 1 or more of subsections (3), (4) and (5).
- (3) The Supreme Court may, on the application of the registrar on notice served on a cooperative, order the cooperative to pay to the Territory all or part of the costs of an inquiry under this division into the affairs of the cooperative.
- (4) If a proceeding is brought by the registrar under section 412 in the name of a cooperative, the court may, in the course of the proceeding and on the application of the registrar, order that all or part of the costs of the inquiry that led to the proceeding be paid to the Territory by a party to the proceeding.
- (5) If a person is convicted of an offence in a proceeding certified by the registrar to have been brought because of an inquiry into the

affairs of a cooperative, the court may, on the application of the registrar made at the time of the finding or not more than 14 days later, order the person to pay to the Territory all or part of the costs of the inquiry.

- (6) An order under this section must state—
- (a) the amount to be paid; and
  - (b) the time or times for payment; and
  - (c) how the amount must be paid.

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

#### **415 Falsification of records**

A person must not make, order or allow to be made, any entry or erasure in, or any omission from—

- (a) any financial records or financial statements of a cooperative or of a subsidiary of a cooperative; or
- (b) any return, document or other record required to be sent, kept or delivered for this Act;

with intent to falsify them or it, or to evade any of the provisions of this Act.

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

#### **416 Fraud or misappropriation**

- (1) A person must not—
- (a) by false representation or imposition, obtain possession of any property of a cooperative; or

(b) having any property of a cooperative in the person's possession, withhold or misapply it or wilfully apply any part of it to purposes other than purposes authorised under this Act or the rules of the cooperative.

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

- (2) A person who is convicted of an offence against subsection (1) must, if ordered to do so by the court, deliver up all such property and repay all money improperly applied.

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

#### **417 Offering or paying commission**

A person must not offer or pay any commission, fee or reward, whether financial or otherwise, to an officer of a cooperative in relation to a transaction or proposed transaction between the person and the cooperative.

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

#### **418 Accepting commission**

- (1) An officer of a cooperative must not accept any commission, fee or reward, whether financial or otherwise, from anyone in relation to a transaction or proposed transaction between the person and the cooperative.

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

- (2) If the court that convicts an officer of a cooperative of an offence against subsection (1) is satisfied that the cooperative has suffered loss or damage because of the acceptance of the commission, fee or

reward, the court may (in addition to imposing a penalty for the offence) order the officer to pay compensation to the cooperative.

- (3) An order under subsection (2) takes effect, and may be enforced, as a judgment of the court.

**419 False statements in loan application etc**

- (1) A person must not in or in relation to an application, request or demand for money made to or of a cooperative—
- (a) give information or make a statement to the cooperative, or an officer, employee or agent of the cooperative, knowing or believing it to be false or misleading in a material particular; or
  - (b) give to the cooperative, or an officer, employee or agent of the cooperative, information or a statement provided by someone else knowing or believing it to be false or misleading in a material particular.

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

- (2) If a person is convicted of an offence against subsection (1), a cooperative from which money has been obtained by the person in relation to the commission of the offence may exercise any rights under a mortgage or other security given to it by the person to secure the repayment of money that it could exercise if there were a breach of a covenant or of a term of any contract by which the security was given.
- (3) The cooperative may exercise any of the rights whether the mortgage or other security was executed by the person alone or by the person and someone else.

## **Division 15.4            Miscellaneous powers of registrar**

### **420            Application for special meeting or inquiry**

- (1) The registrar must, on the application of a majority of the members of the board or of not less than  $\frac{1}{3}$  of the members of a cooperative—
  - (a) call a special meeting of the cooperative; or
  - (b) hold, or appoint an inspector to hold, an inquiry into the affairs of the cooperative or of a subsidiary of the cooperative.
- (2) An application must be supported by the evidence the registrar directs for the purpose of showing that the applicants have good reason for requiring the meeting or inquiry and that the application is made without malicious motive.
- (3) Notice of the application must be given to the cooperative as the registrar directs.
- (4) The applicants must give any security for the expenses of the meeting or inquiry that the registrar, by notice, directs.

### **421            Holding of special meeting**

- (1) The registrar may direct the time when and place where the special meeting must be held and the matters that are to be discussed and decided at the meeting.
- (2) The registrar must give the notice to members of the holding of the special meeting that the registrar considers appropriate (despite any provision in the cooperative's rules about the giving of notice).
- (3) The special meeting has all the powers of a meeting called in accordance with the rules of the cooperative and has power to appoint its own chairperson (despite any rule of the cooperative to the contrary).

- (4) The registrar or anyone nominated by the registrar may attend and address the meeting.

**422 Expenses of special meeting or inquiry**

The expenses of and incidental to any meeting called, or any inquiry held, under this division must be paid, in the proportions that the registrar directs—

- (a) by the applicants (if any); or
- (b) out of the funds of the cooperative to which the meeting or inquiry related or whose subsidiary was the subject of the inquiry; or
- (c) by any officer, member, former officer or former member of the cooperative.

**423 Power to hold special inquiry into cooperative**

The registrar may without any application hold, or appoint an inspector to hold, an inquiry into the working and financial condition of a cooperative or a subsidiary of a cooperative.

**424 Special meeting following inquiry**

- (1) On completion of any inquiry under this division, the registrar may call a special meeting of the cooperative.
- (2) Section 421 applies to the meeting.

**425 Information and evidence**

- (1) On any application for registration of a cooperative or registration or approval of any rule or document under this Act, the registrar may require from the applicant the information and evidence that is reasonable to show that the application should be granted.
- (2) The registrar may, by notice, require from a cooperative the information and evidence that is reasonable to show that the

cooperative is genuinely carrying on business in accordance with the provisions of this Act.

- (3) The registrar may, by notice, require from a cooperative the evidence that the registrar considers appropriate of anything required to be done under this Act or of an entry in a document required to be provided to the registrar under this Act.

#### **426 Extension or shortening of time**

- (1) The registrar may, by notice, extend or shorten the time for doing anything required to be done by a cooperative under this Act, or the rules of the cooperative, on the conditions (if any) that the registrar decides.
- (2) The registrar may grant an extension of time even if the time for doing the thing has ended.

#### **427 Power of registrar to intervene in proceedings**

- (1) The registrar may intervene in any proceeding relating to a matter arising under this Act.
- (2) If the registrar intervenes in a proceeding, the registrar is taken to be a party to the proceeding and, subject to this Act, has all the rights, duties and liabilities of a party to the proceeding.
- (3) The registrar may appear and be represented in a proceeding in which the registrar wishes to intervene under this section—
  - (a) by a delegate in relation to a matter to which the proceeding relates; or
  - (b) by a public servant engaged in the administration of this Act; or
  - (c) by a lawyer.

## Part 16 Administration of Act

### Division 16.1 Registrar

#### 428 Appointment of registrar

The chief executive must appoint a public servant as Registrar of Cooperatives.

*Note 1* For the making of appointments (including acting appointments), see the Legislation Act, div 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

#### 429 Registrar's functions

- (1) Subject to this Act, the registrar is responsible for the general administration of this Act.
- (2) The registrar has the functions given to the registrar under this Act and any other territory law.
- (3) The registrar must have a seal of office.
- (4) The registrar may enter into any arrangements or agreements with any entity to act as the agent of the registrar in the carrying out of the registrar's functions.

#### 430 Deputy registrar and other staff

- (1) The chief executive may appoint a deputy registrar and assistant registrars.

*Note* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.



- (2) Subject to any direction of the registrar, the deputy registrar or an assistant registrar may exercise any of the functions given to the registrar by this Act or any other territory law.

#### **431 Delegation by registrar**

- (1) The registrar may delegate to a public servant any of the registrar's functions including this power of delegation.

*Note* For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

- (2) A delegate may subdelegate to another public servant any function delegated to the delegate under this section if the delegate is authorised by the delegation to do so.

#### **432 Register of cooperatives**

- (1) The registrar must keep a register of cooperatives.
- (2) The registrar must record in the register the documents relating to cooperatives and proposed cooperatives filed with the registrar that the Minister directs.

#### **433 Keeping of registers etc**

- (1) The registrar must keep the cooperatives register and the other registers that the registrar considers necessary or desirable for this Act.
- (2) Subject to section 432, the cooperatives register must be kept in the form and contain the particulars that the registrar considers appropriate.
- (3) Subject to section 434, any document filed with, provided to or registered by the registrar under this Act must be kept in the office of the registrar.

#### **434 Disposal of records by registrar**

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

- (a) any annual return or balance sheet filed longer than 7 years ago;
- (b) any document creating or evidencing a charge, or the complete or partial satisfaction of a charge, if a memorandum of satisfaction of the charge was registered longer than 7 years ago;
- (c) any other document (except the rules or any document affecting the rules of a cooperative) that was filed, provided or registered longer than 15 years ago;
- (d) any document filed, provided or registered in relation to a cooperative that was deregistered or ceased to be registered longer than 15 years ago;
- (e) any document a transparency or electronic image of which has been incorporated with a register kept by the registrar or is otherwise kept in the office of the registrar.

#### **435 Inspection of cooperatives register etc**

- (1) A person may—
  - (a) inspect the cooperatives register; and
  - (b) inspect documents kept by the registrar that are prescribed by regulation; and
  - (c) obtain a copy, or a certified copy, of a document that the person may inspect under paragraph (b).

*Note* A fee may be determined under s 465 for this subsection.

- (2) If a reproduction or transparency of a document, or an extract of information contained in a document, recorded in the cooperatives register is produced for inspection, a person is not entitled under subsection (1) to require the production of the original of the document.

#### **436 Approvals by registrar**

- (1) This section applies to any provision of this Act that imposes a requirement for the registrar's approval of anything.
- (2) The registrar may indicate in writing to an applicant for an approval that the approval is taken to have been given at the end of a stated period unless the registrar tells the applicant in writing within the period that the approval has not been given or is still being considered.

#### **437 Filing of documents**

A document is taken to have been filed under this Act only if all information required to be provided in or with the document is provided.

*Note* A fee may be determined under s 465 for this section.

#### **438 Method of filing**

- (1) Subject to section 437, it is sufficient compliance with a requirement under this Act that a document be filed with the registrar if the registrar receives a copy of the document by fax or electronic transmission.
- (2) If the registrar receives from a person a copy of a document under subsection (1), the registrar may require the person to produce and file the original within the time stated by the registrar.
- (3) If the person does not comply with a requirement of the registrar within the stated time, the person is taken not to have filed the document.

**439 Power of registrar to refuse to register or reject documents**

- (1) The registrar must refuse to register or may reject a document given to the registrar if the registrar considers that the document—
  - (a) contains matter contrary to Act; or
  - (b) contains matter that, in a material particular, is false or misleading in the form or context in which it is included; or
  - (c) because of an omission or misdescription, has not been properly completed; or
  - (d) does not comply with the requirements of this Act; or
  - (e) contains any error, alteration or erasure of such a nature that the document should not be registered or should be rejected.
- (2) If the registrar refuses to register or rejects a document under subsection (1), the registrar may require—
  - (a) that the document be appropriately amended; or
  - (b) that a fresh document be submitted in its place; or
  - (c) if the document has not been properly completed—that a supplementary document be submitted.

*Note* If a form is approved under s 466 for a supplementary document, the form must be used.

**Division 16.2 Evidence**

**440 Certificate of registration**

- (1) A certificate of registration of a cooperative issued under this Act is conclusive evidence that the cooperative is incorporated under this Act and that all the requirements of this Act in relation to registration have been complied with.

- (2) This section does not affect any provisions of this Act for the winding-up or deregistration of the cooperative or the cancellation of its registration.

#### **441 Certificate evidence**

- (1) If a function under this Act is given to the registrar because of something being done or omitted to be done within a particular period, the registrar may certify that the thing had or had not been done within the period or by a stated date.
- (2) The registrar may issue a certificate stating that a requirement of this Act stated in the certificate—
- (a) had, or had not, been complied with at a date or within a period stated in the certificate; or
  - (b) had been complied with at a date stated in the certificate but not before that date.
- (3) The registrar may issue a certificate stating that on a date stated in the certificate a body stated in the certificate was not or had ceased to be registered as a cooperative under this Act.
- (4) A certificate given by the registrar under this section is evidence of the matters stated in the certificate.

#### **442 Records kept by cooperatives**

- (1) A record kept by a cooperative under a requirement of this Act is admissible in evidence in any proceeding and is evidence of anything stated or recorded in the record.
- (2) A document purporting to be a record kept by a cooperative is taken to be a record kept by the cooperative under a requirement of this Act, unless the contrary is proved.

- (3) A copy of any entry in a record regularly kept by a cooperative in the course of its business is, if verified by statutory declaration of the secretary to be a true copy of the entry, to be received in evidence in any case where and to the same extent as the original entry itself is admissible.

#### **443 Minutes**

- (1) An entry in the minutes purporting to be a minute of the business transacted at a meeting of a cooperative or of the board, and purporting to have been signed by the chairperson at a subsequent meeting, is evidence that the business recorded in the minute was transacted at the meeting and that the meeting was properly called and held.
- (2) An entry in the minutes of a meeting of a cooperative to the effect that a resolution was carried or carried unanimously, or was lost, is evidence of the fact without proof of the number or proportion of votes recorded for or against the resolution.

#### **444 Official certificates**

- (1) A certificate of registration given by the registrar must be received in evidence as if it were the original certificate.
- (2) A certificate of registration or other official document relating to a cooperative signed by or bearing the seal of the registrar must be received in evidence without further proof.
- (3) A copy of rules certified by the registrar to be a true copy of the rules of a cooperative is evidence of the registered rules of the cooperative.

#### **445 Evidence of rules**

A printed copy of the rules of a cooperative verified by statutory declaration of the secretary of the cooperative to be a true copy of its registered rules is in any proceeding evidence of the rules.

**446 Evidence of particulars in certain registers**

The register of directors, members and shares of a cooperative is evidence of the particulars required or authorised by this Act to be inserted in the register.

## Part 17 Offences and proceedings

### 447 Offences by officers of cooperatives

- (1) If a cooperative contravenes a provision of this Act—
  - (a) anyone who is a director of the cooperative or concerned in its management is taken to have contravened the provision if the person knowingly authorised or permitted the contravention; and
  - (b) any other officer of the cooperative who by a wilful act or omission is the cause of the contravention is taken to have contravened the provision.
- (2) A person may be proceeded against and convicted of an offence against subsection (1) whether or not the cooperative has been proceeded against or convicted of an offence against the subsection.
- (3) This section does not affect any liability imposed on a cooperative for an offence committed by the cooperative against this Act.

### 448 Notice to be given of finding of guilt for offence

If a cooperative or an officer of a cooperative is found guilty of an offence against this Act, the cooperative must, not later than 28 days after the day the finding is recorded, give to each member of the cooperative notice of—

- (a) the finding; and
- (b) any penalty imposed in relation to the offence to which the finding relates; and
- (c) the nature of the offence to which the finding relates.



**449      Secrecy**

- (1) A person who is, or at any time was, engaged in the administration of this Act must not record, make use of, or communicate, divulge or make available, in any way, information obtained in the course of the administration.

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

- (2) Subsection (1) does not apply to—
- (a) the recording, making use of or divulging of information in the course of the administration of this Act; or
  - (b) the recording or making use of information for the purpose of divulging it as permitted by subsection (3) or (4); or
  - (c) the divulging of information as permitted by subsection (3) or (4).
- (3) Information may be divulged—
- (a) for a criminal proceeding; or
  - (b) for a proceeding under this Act or an inquiry authorised by a territory law; or
  - (c) with the agreement of the person to whom the information relates; or
  - (d) in accordance with a requirement under the *Ombudsman Act 1989*; or
  - (e) in accordance with a reciprocal arrangement under section 463.
- (4) Information may be divulged to—
- (a) the Minister; or
  - (b) the Treasurer; or
  - (c) the commissioner for revenue; or

- (d) the auditor-general; or
  - (e) the ombudsman; or
  - (f) the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation holding office under a Commonwealth Act; or
  - (g) the Australian Securities and Investments Commission; or
  - (h) the person who, under a law of a State or another Territory, administers a law of the State or other Territory that relates to taxation or the imposition of a duty; or
  - (i) a person seeking information under a reciprocal arrangement under section 463; or
  - (j) a police officer exercising functions as a police officer; or
  - (k) a person nominated by a person mentioned in paragraphs (a) to (h); or
  - (l) anyone to whom, in the registrar's opinion, it is in the public interest that the information be divulged.
- (5) For this section, a person is, or was, engaged in the administration of this Act if the person exercises, or at any time exercised, a function as—
- (a) the registrar; or
  - (b) an inspector; or
  - (c) an investigator; or
  - (d) a person appointed or employed for this Act.

**451 Use of word cooperative etc**

(1) In this section:

*exempt body* means—

- (a) a cooperative, including a foreign cooperative registered under section 373 (Registration of foreign cooperative); or
- (b) a building society; or
- (c) a credit union; or
- (d) an entity prescribed by regulation; or
- (e) a company or society in relation to which an exemption under subsection (6) is in force.

(2) A person, other than an exempt body, must not—

- (a) trade or carry on business under any name or title including—
  - (i) the word ‘cooperative’ or ‘co-operative’; or
  - (ii) any other word having a similar meaning; or
  - (iii) the abbreviation ‘co-op’ or ‘co-op.’; or
- (b) hold out in any way that its trade or business is cooperative in nature.

Maximum penalty: 50 penalty units.

(3) For subsection (2), it is immaterial whether letters in a word or abbreviation are capital letters or non-capital letters.

(4) A company or society formed or incorporated elsewhere than in the ACT may apply in writing to the registrar to become an exempt body.

*Note* A fee may be determined under s 465 for this section.

(5) On application under subsection (4), the registrar may issue a certificate of exemption to the applicant if the registrar is satisfied

that the applicant trades or carries on business for the purpose of promoting the economic interests of its members in accordance with cooperative principles.

- (6) The registrar may issue a certificate of exemption for the period, and subject to the conditions, that the registrar considers appropriate.
- (7) A person must not, without reasonable excuse, contravene a condition of a certificate of exemption issued under subsection (5).

Maximum penalty: 50 penalty units.

#### **451A Contravention of s 451**

- (1) If the registrar is of the opinion that a person is contravening section 451 (2), the registrar may, by written notice to the person, identify the contravention and ask the person—
  - (a) if the person is a company or society formed or incorporated elsewhere than in the ACT—to apply under section 451 (4) to become an exempt body for section 451; or
  - (b) in any other case—to become registered as a cooperative.
- (2) If the person complies with the notice within 6 months after the day the person is given the notice, the person is taken not to have contravened section 451 (2).

#### **452 Further offence for continuing failure to do required act**

- (1) If a provision of this Act requires an act to be done and it has not been done, the obligation to do the act continues until the act is done—
  - (a) even if a person has been convicted of an offence in relation to the failure to do the act; and
  - (b) even if the provision required the act to be done within a particular period or before a particular time and that period has ended or that time has passed.

- (2) If a person is convicted of an offence against this Act for the failure to do the act (whether it is the first, or a second or subsequent, offence by the person in relation to the failure) and the failure of the person continues after the day of the conviction, the person commits a further offence in relation to each day during the period—
- (a) that begins on the day after the conviction; and
  - (b) that ends at the end of the day—
    - (i) a proceeding for the further offence is begun; or
    - (ii) the act is done;whichever happens first.

Maximum penalty: 0.5 penalty unit.

- (3) For subsection (2) (b) (i), a proceeding for the further offence is taken to have begun on the day the information for the further offence is laid or on an earlier day stated in the information for that purpose.

### **453 Civil remedies**

- (1) If a cooperative in making, guaranteeing or raising a loan or receiving a deposit contravenes a provision of this Act or the rules of the cooperative, the civil rights and liabilities of the cooperative or anyone else in relation to the recovery of the loan or deposit are not affected by the contravention but the amount becomes payable immediately.
- (2) The same remedies are available for the recovery of the loan or deposit, and for the enforcement of any security for it, as if there had not been a contravention of this Act or the rules of the cooperative.

**454 Injunctions**

- (1) This section applies if a person (the *relevant person*) has engaged, is engaging or is proposing to engage in conduct that was, is or would be—
  - (a) a contravention of this Act; or
  - (b) attempting to contravene this Act; or
  - (c) aiding, abetting, counselling or procuring a person to contravene this Act; or
  - (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act; or
  - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act; or
  - (f) conspiring with others to contravene this Act.
- (2) The registrar or a person whose interests have been, are or would be, affected by the conduct may apply to the Supreme Court for an injunction.
- (3) On application under subsection (2), the Supreme Court may grant an injunction—
  - (a) restraining the relevant person from engaging in the conduct; and
  - (b) if, in the court's opinion it is desirable to do so, requiring the relevant person to do anything.
- (4) The Supreme court may grant an interim injunction pending determination of the application.
- (5) The Supreme Court may discharge or vary an injunction granted under this section.
- (6) The Supreme Court to grant an injunction restraining a person from engaging in conduct of a particular kind—

- (a) if satisfied that the person has engaged in conduct of that kind, whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
  - (b) if it appears to the court that, if an injunction is not granted, it is likely the person will engage in conduct of that kind, whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to someone else if the person engages in conduct of that kind.
- (7) The Supreme Court may grant an injunction requiring a person to do something—
- (a) if satisfied that the person has failed to do the thing, whether or not it appears to the court that the person intends to fail again, or to continue to fail, to do the thing; or
  - (b) if it appears to the court that, if an injunction is not granted, it is likely the person will fail to do the thing, whether or not the person has previously failed to do the thing and whether or not there is an imminent danger of substantial damage to someone else if the person fails to do the thing.
- (8) If the Supreme Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular thing, the court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to anyone else.

#### **455 Proceedings for recovery of fines etc under cooperative rules**

A proceeding for the recovery of a fine or penalty imposed under the rules of a cooperative may be taken by the cooperative and not by anyone else.

## Part 18 Notification and review of decisions

### 456 Meaning of *reviewable decision*—pt 18

In this part:

*reviewable decision* means a decision mentioned in schedule 5, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

### 457 Reviewable decision notices

If the registrar makes a reviewable decision, the registrar must give a reviewable decision notice to each entity mentioned in schedule 5, column 4 in relation to the decision.

*Note 1* The registrar must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

*Note 2* The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

### 458 Applications for review

The following may apply to the ACAT for review of a reviewable decision:

- (a) an entity mentioned in schedule 5, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

*Note* If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.



## Part 19                      Miscellaneous

### 459                      Exemption from stamp duty for certain instruments

- (1) Stamp duty is not payable in relation to any of the following instruments:
  - (a) the certificate of registration of a cooperative;
  - (b) a share certificate or any other instrument issued or executed in relation to the capital of a cooperative, other than a transfer of shares.
- (2) This section, and any other provision of this Act about stamp duty, prevails over any inconsistent provision of another Act (including, in particular, any inconsistent provision of the *Duties Act 1999*).

### 460                      Cooperative ceasing to exist

- (1) As soon as practicable after a cooperative has ceased to exist, other than on deregistration under division 12.3, the registrar must deregister the cooperative by registering the cessation and cancelling the registration of the cooperative.
- (2) The registrar may remove from any register kept by the registrar the name of any cooperative that has been deregistered or otherwise ceased to exist.
- (3) For this section, a cooperative that has transferred its engagements to another cooperative is taken to have ceased to exist.

**461 Service of documents on foreign cooperative**

A document may be served on a foreign cooperative by sending it by prepaid post, addressed to the cooperative (or an officer of the cooperative), at the registered office of the cooperative in its place of registration, incorporation or formation.

*Note* For other ways of serving documents on cooperatives (including foreign cooperatives), see the Legislation Act, pt 19.5.

**462 Service on member of cooperative**

- (1) This section applies to a document that is authorised or required under this Act to be served on a member of a cooperative (whether the word ‘serve’, ‘give’, ‘notify’, ‘send’, ‘tell’ or any other word is used).
- (2) The document may be served by publishing it in a newspaper circulating generally in the ACT or in the area served by the cooperative, if—
  - (a) the cooperative is a non-trading cooperative; or
  - (b) the member’s whereabouts are unknown to the cooperative; or
  - (c) the registrar permits notice to be given to members of the cooperative in that way.

*Note* For other ways of serving documents on members of cooperatives, see the Legislation Act, pt 19.5.

**463 Reciprocal arrangements**

- (1) If a reciprocal arrangement with a State is in force, the registrar—
  - (a) may, at the request of the appropriate official of the State, provide the official with information or documents relating to a cooperative; or

- (b) may request the appropriate official of the State to provide the registrar with documents or information relating to an entity that, under the arrangement, is an entity corresponding to a cooperative.
- (2) A *reciprocal arrangement* with a State is an arrangement made between the Minister and a representative of the government of the State under which it is agreed—
- (a) that the registrar will comply with a request mentioned in subsection (1) (a); and
  - (b) that a request made by the registrar to an official designated in the arrangement as the appropriate official for subsection (1) (b) will be complied with.

#### **464 Translations of documents**

A requirement under this Act to provide, file or lodge a document or make a document available for inspection is, for a document that is not in English, taken to include a requirement that a translation of the document be provided, filed, lodged or made available for inspection at the same time.

#### **465 Determination of fees**

- (1) The Minister may, in writing, determine fees for this Act.

*Note* The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

**466 Approved forms**

- (1) The registrar may, in writing, approve forms for this Act.
- (2) If the registrar approves a form for a particular purpose, the approved form must be used for that purpose.

*Note* For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

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

**467 Guidelines about exercise of registrar's functions**

- (1) The Minister—
  - (a) must, in writing, make guidelines about the exercise of the registrar's function of giving exemptions under section 142, 241, 276 (2), 289, 297, 301 (4), 318 (2) or schedule 3, section 3.44; and
  - (b) may, in writing, make guidelines about the exercise of any other functions of the registrar under this Act.
- (2) The registrar must not give an exemption mentioned in subsection (1) (a) until the Minister has made the guidelines mentioned in the paragraph.
- (3) Subsection (2) and this subsection expire on the day after the day guidelines mentioned in subsection (1) (a) are notified under the Legislation Act.
- (4) In exercising a function under this Act, the registrar must comply with any guidelines applying to the exercise of the function.
- (5) A guideline is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

**468 References to Co-operatives Societies Act etc**

In an Act (other than this Act), statutory instrument or document—

- (a) a reference to the *Co-operatives Societies Act 1939* is, in relation to anything to which this Act applies, a reference to this Act; and
- (b) a reference to a society or cooperative society registered under the *Co-operatives Societies Act 1939* is a reference to a cooperative registered under this Act.

**469 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) A regulation may make provision in relation to—
  - (a) the making of applications for the exercise of a function by the registrar; and
  - (b) the filing of documents with the registrar (including electronic filing and filing by fax).
- (3) A regulation may modify this Act—
  - (a) by providing that a provision of the Corporations Act applied by this Act for any purpose or in any respect—
    - (i) does not apply for that purpose or in that respect; or
    - (ii) applies for that purpose or in that respect in the circumstances, or subject to the conditions or limitations, that the regulation prescribes; or
  - (b) by providing that a provision of the Corporations Act applied by this Act applies to cooperatives for the purposes, in the respects or circumstances, or subject to the conditions or limitations, that the regulation prescribes; or

- (c) by changing a reference to a provision of the Corporations Act if the change is necessary because of an amendment of the Corporations Act.
- (4) A regulation may also prescribe offences for contraventions of a regulation and prescribe maximum penalties of not more than 10 penalty units for offences against a regulation.

## **Schedule 1      Associates and relevant interests**

(see dict, def of *associate*, def of *relevant interest*)

### **Part 1.1              Associates**

#### **1.1              Effect of pt 1.1**

- (1) Nothing in this part limits anything else in it.
- (2) A person is an associate of someone else only as provided by this part.

#### **1.2              *Associates* of a corporation**

The *associates* of a corporation include the following:

- (a) a director or secretary of the corporation;
- (b) a related corporation;
- (c) a director or secretary of a related corporation.

#### **1.3              Matters relating to voting rights**

- (1) If a reference to an associate of a person relates to—
  - (a) the extent of power to exercise, or to control the exercise of, the voting power attached to voting shares in or arising from membership of a corporation; or
  - (b) the person's entitlement to shares in a corporation; or
  - (c) an offer to buy shares to which division 11.2 applies;the reference includes a reference to someone else with whom the person has, or proposes to enter into, an agreement mentioned in subclause (2).

- (2) Subsection (1) applies to an agreement—
- (a) because of which a person mentioned in subsection (1) has or will have power (even if it is in any way qualified)—
    - (i) to exercise; or
    - (ii) to control, directly or indirectly, the exercise of; or
    - (iii) to influence substantially the exercise of;  
any voting power attached to shares in the corporation; or
  - (b) for the purpose of controlling or influencing—
    - (i) the composition of the corporation's board; or
    - (ii) the conduct of affairs of the corporation; or
  - (c) under which a person mentioned in subsection (1)—
    - (i) will or may acquire; or
    - (ii) may be required by the other to acquire;  
shares in the corporation in which the other person has a relevant interest; or
  - (d) under which a person mentioned in subsection (1) may be required to dispose of shares in the corporation in accordance with the other person's directions.
- (3) Subsection (1) applies despite any other effect the agreement may have.
- (4) In relation to a matter relating to shares in a corporation, a person may be an associate of the corporation and the corporation may be an associate of a person.



## **1.4 Meaning of *associate* of a person**

- (1) A reference to an *associate* of a person includes a reference to—
  - (a) anyone in concert with whom the person is acting or proposes to act; or
  - (b) anyone who, under the regulations, is, for the provision in which the reference occurs, an associate of the person; or
  - (c) anyone with whom the person is or proposes to become associated, whether formally or informally, in any other way;in relation to the matter to which the reference relates.
- (2) If a person has entered, or proposes to enter, into a transaction, or has done, or proposes to do, anything, to become associated with someone else as mentioned in an applicable provision of this part, a reference to an *associate* of the person includes a reference to the other person.

## **1.5 Exclusions**

A person is not an associate of someone else because of section 1.3 or section 1.4 (1), or because of section 1.4 (2) as it applies in relation to section 1.3 or section 1.4 (1), only because of 1 or more of the following:

- (a) the person gives advice to the other person, or acts on the other person's behalf, in the proper exercise of the functions attaching to a professional capacity or a business relationship;
- (b) the person, a client, gives specific instructions to the other person, whose ordinary business includes dealing in securities, to acquire shares on the client's behalf in the ordinary course of that business;
- (c) the person has made, or proposes to make, to the other person an offer to which division 11.2 applies, in relation to shares held by the other person;

- (d) the person has appointed the other person, otherwise than for valuable consideration given by the other person or by an associate of the other person, to vote as a proxy or representative at a meeting of members, or of a class of members, of a corporation.

## Part 1.2 Relevant interests

### 1.6 Interpretation of pt 1.2

- (1) This section applies for this part.
- (2) Power to vote in relation to a right to vote is power to exercise, or to control the exercise of, the right to vote.
- (3) A reference to *power* to dispose of a share includes a reference to power to exercise control over the disposal of the share.
- (4) A reference to *power* or *control* includes a reference to power or control that is direct or indirect or is, or can be, exercised because of, by means of, in breach of, or by revocation of, trusts, agreements and practices, or any of them, whether or not they are enforceable.
- (5) Power to vote in relation to a right to vote, or power to dispose of a share, that is exercisable by 2 or more people jointly is taken to be exercisable by either or any of them.
- (6) A reference to a *controlling interest* includes a reference to an interest that gives control.

### 1.7 Effect of pt 1.2

- (1) Nothing in this part limits anything else in it.
- (2) A person does not have a relevant interest in a share of a cooperative or right to vote in relation to a cooperative except as provided in this part.

**1.8 Basic rules—relevant interests**

- (1) A person who has power to vote in relation to a right to vote has a relevant interest in the right to vote.
- (2) A person who has power to dispose of a share has a relevant interest in the share.

**1.9 Control of corporation having power in relation to a share etc**

- (1) This section applies if a corporation has, or is by this part taken to have—
  - (a) power to vote in relation to a right to vote; or
  - (b) power to dispose of a share.
- (2) A person is taken for this part to have in relation to the right to vote or share the same power as the corporation has, or is taken to have, if—
  - (a) the corporation is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person in relation to the exercise of the power mentioned in subclause (1) (a) or (b); or
  - (b) the person has a controlling interest in the corporation.

**1.10 Control of 20% of voting power in corporation having power in relation to a share etc**

- (1) This section applies if a corporation or an associate of a corporation has, or is by this part (other than this section) taken to have—
  - (a) power to vote in relation to a right to vote; or
  - (b) power to dispose of a share.

- (2) A person is taken for this part to have in relation to the right to vote or share the same power as the corporation or associate has, or is taken to have, if—
- (a) the person has; or
  - (b) an associate of the person has; or
  - (c) associates of the person together have; or
  - (d) the person and an associate or associates of the person together have;

power to vote in relation to the right to vote attached to not less than 20% of the voting shares in the corporation.

**1.11 Deemed relevant interest in advance of performance of agreement that will give rise to a relevant interest**

- (1) This section applies if—
- (a) a person—
    - (i) has entered into an agreement with someone else in relation to an issued share or right to vote in which the other person has a relevant interest; or
    - (ii) has a right enforceable against someone else in relation to an issued share or right to vote in which the other person has a relevant interest, whether the right is enforceable presently or in the future and whether or not on the fulfilment of a condition; or
    - (iii) has an option granted by someone else, or has granted to someone else an option, in relation to an issued share or right to vote in which the other person has a relevant interest; and
  - (b) on performance of the agreement, enforcement of the right, or exercise of the option, the person would have a relevant interest in the share or right to vote.

- (2) If this section applies, the person is taken for this part to have that relevant interest in the share or right to vote.

**1.12 Control of corporation having a relevant interest because of s 1.11**

If a corporation is by section 1.11 taken to have a relevant interest in a share in or right to vote at meetings of a cooperative, a person is taken for this part to have a relevant interest in the share or right to vote if—

- (a) the corporation is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person in relation to the exercise of power to vote in relation to the right to vote or power to dispose of the shares; or
- (b) the person has a controlling interest in the corporation; or
- (c) the person has power to vote in relation to the right to vote attached to not less than 20% of the voting shares in the corporation.

**1.13 Matters not affecting application of pt 1.2**

- (1) It is immaterial for this part whether or not power to vote in relation to a right to vote, or power to dispose of a share—
- (a) is express or implied or formal or informal; or
  - (b) is exercisable by a person alone or jointly with another person; or
  - (c) cannot be related to a particular share; or
  - (d) is, or can be made, subject to restraint or restriction.

- (2) A relevant interest in a share or right to vote is not to be disregarded only because of either or both of the following:
- (a) its remoteness;
  - (b) how it arose.

**1.14 Corporation may have a relevant interest in its own shares**

A corporation may, because of this part, be taken to have a relevant interest in a share in or right to vote arising from membership of the corporation itself.

**1.15 Exclusions—moneylenders**

A relevant interest of a person in a share or right to vote must be disregarded if the person's ordinary business includes lending money and the person has authority to exercise powers as the holder of the relevant interest only because of a security given for a transaction entered into in the ordinary course of business in relation to lending money, other than a transaction entered into with an associate of the person.

**1.16 Exclusions—certain trustees**

A relevant interest of a person in a share or right to vote must be disregarded if—

- (a) the share or right is subject to a trust; and
- (b) the person has the relevant interest as a trustee of the trust; and
- (c) either—
  - (i) a beneficiary under the trust is by section 1.11 taken to have a relevant interest in the share or right because the beneficiary has a presently enforceable and unconditional right mentioned in section 1.11 (1) (a) (ii); or
  - (ii) the person is a bare trustee.

**1.17 Exclusions—instructions to securities dealer to dispose of share**

A relevant interest of a person in a share or right to vote must be disregarded if—

- (a) the person's ordinary business includes dealing in securities; and
- (b) the person has authority to exercise powers as the holder of the relevant interest only because of instructions given to the person, by or on behalf of someone else, to dispose of the share on the other person's behalf in the ordinary course of the business.

**1.18 Exclusions—honorary proxies**

A relevant interest of a person in a share or right to vote must be disregarded if the person has it only because of having been appointed, otherwise than for valuable consideration given by the person or an associate of the person, to vote as a proxy or representative at a meeting of members, or of a class of members, of a corporation.

**1.19 Exclusions—holders of prescribed offices**

A relevant interest of a person in a share or right to vote must be disregarded if the person has it because of holding an office prescribed by regulation.

**1.20 Prescribed exclusions**

A regulation may provide for relevant interests in shares to be disregarded for a provision of this Act in prescribed circumstances and subject to any prescribed conditions.

**1.21 Relevant interest etc—corporation other than cooperative**

A reference in this Act (including in this schedule) to a relevant interest in a share of a corporation other than a cooperative or a right to vote in relation to a corporation other than a cooperative must be interpreted in accordance with the Corporations Act.



## Schedule 2      Matters for which rules must make provision

(see s 102)

### 2.1      Requirements for all cooperatives

The rules of all cooperatives must set out or make provision for each of the following matters:

- (a) the name of the cooperative;
- (b) active membership provisions;
- (c) the mode and conditions of admission to membership, and the payment to be made or the share or interest to be acquired before rights of membership are exercised;
- (d) the rights and liabilities of members, and of the estates of dead members, and the rights and liabilities of representatives of members under bankruptcy or mental incapacity;
- (e) the circumstances in which members may be expelled or suspended, and the rights and liabilities of expelled and suspended members;
- (f) the circumstances in which membership ceases;
- (g) any charges or subscriptions that are to be payable by a member to the cooperative;
- (h) the circumstances in which fines and forfeitures may be imposed on members of the cooperative, and the amount of the fines, not exceeding the maximum amount prescribed by regulation;

- (i) the grievance procedures under the rules of the cooperative (as required by section 83) for settling disputes between the cooperative and any of its members, or between a member and another member;
- (j) the restrictions (if any) on the powers of the cooperative and the board;
- (k) the number of directors, the qualifications of directors, how directors are to be elected, remunerating and removing directors, the filling of director vacancies, the period for which directors are to hold office, whether directors are to retire by rotation or otherwise, and the holding of annual elections for directors;
- (l) the quorum for meetings, and the procedure at meetings, of the board;
- (m) the device, custody and use of the seal of the cooperative;
- (n) how the funds of the cooperative are to be managed, and in particular the drawing and signing of cheques, drafts, bills of exchange, promissory notes, and other negotiable instruments for the cooperative;
- (o) provision for the custody of securities belonging to the cooperative;
- (p) how debentures may be transferred;
- (q) the financial year of the cooperative;
- (r) provision for the financial statements of the cooperative to be audited annually or more frequently and how the auditor is to be appointed;
- (s) how any loss that may result from the transactions of the cooperative is to be provided for;
- (t) how general and special meetings are to be called, the notice required for meetings, and the quorum for meetings;

- (u) the procedure at meetings of the cooperative (including the rights of members in voting at meetings, the way of voting, and the majority necessary for carrying resolutions);
- (v) the conduct of postal ballots and special postal ballots (including the sending and filing of information and votes by fax or electronic means);
- (w) how the rules are to be altered;
- (x) how the cooperative may be wound up;
- (y) anything prescribed by regulation, whether in addition to or in substitution for anything mentioned in this section.

## **2.2 Additional matters—cooperatives with share capital**

In addition to the matters mentioned in section 2.1, the rules of a cooperative with a share capital must set out or make provision for each of the following matters:

- (a) the nominal value of each share in the cooperative;
- (b) the amount of the contingent liability (if any) attaching to shares;
- (c) the terms on which shares, other than bonus shares, but including shares (if any) with a contingent liability attached to them are to be issued;
- (d) the periodic subscriptions by which or how shares are to be paid for;
- (e) for a trading cooperative—how any surplus may be distributed;
- (f) the allocation of a deficiency on the winding-up of a cooperative;

- (g) provision for the forfeiture of shares on expulsion or on failure to pay any subscription or call, the extent to which members whose shares have been forfeited are to remain liable for any amount still unpaid in relation to them, and the sale or cancellation of forfeited shares;
- (h) how shares may be transferred;
- (i) anything prescribed by regulation, whether in addition to or in substitution for anything mentioned in this section.

**2.3 Additional matters—non-trading cooperatives**

In addition to the matters mentioned in section 2.1 and section 2.2, the rules of a non-trading cooperative must provide—

- (a) that there must be no return or distribution on surplus or share capital to members other than the nominal value of shares (if any) at winding-up; and
- (b) how the surplus property at winding-up is to be distributed.

## Schedule 3 Charges

(see s 270)

### Part 3.1 Preliminary

#### 3.1 Definitions for sch 3

In this schedule:

*charges register* means the register of cooperative charges mentioned in section 3.18.

*cooperative* includes a foreign cooperative registered under part 14.

*document of title* means a document—

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

and includes—

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

*present liability*, in relation to a charge, means a liability that has arisen if the extent or amount of the liability is fixed or can be worked out, whether or not the liability is immediately owing.

*property*, of a cooperative, means property within the ACT held by the cooperative, whether or not as trustee.

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

*registrable charge* means a charge in relation to which, because of section 3.4, the provisions of this schedule mentioned in section 3.4 (1) apply.

### **3.2 Application to charges mentioned in s 3.17**

- (1) A charge mentioned in section 3.17 (Acquisition of property subject to charge) is, until the charge is registered, to be treated for this schedule as if it were not a registrable charge but, when the charge is so registered, it has the priority accorded to a registered charge as from the time of registration.
- (2) The registration of a charge mentioned in section 3.17 does not prejudice any priority that would have been accorded to the charge under any other law (whether or not a law of a place in Australia) if the charge had not been registered.

### **3.3 Filing of documents**

For this schedule, a notice or other document is taken to be filed when it is received at the office of the registrar by an officer authorised to receive it.

## **Part 3.2 Registration**

### **Division 3.2.1 Charges**

#### **3.4 Charges to which sch 3 applies**

- (1) Subject to this division, the provisions of this schedule relating to the giving of notice in relation to, the registration of, and the priorities of, charges—
  - (a) apply in relation to the charges mentioned in subsection (2) (whether legal or equitable) on property of a cooperative; and
  - (b) do not apply in relation to any other charges.
- (2) Subsection (1) applies to the following charges:
  - (a) a floating charge on all or a part of the property, business or undertaking of the cooperative;
  - (b) a charge on uncalled share capital or uncalled share premiums;
  - (c) a charge on a call, whether in relation to share capital or share premiums, made but not paid;
  - (d) a charge on a personal chattel (including a personal chattel that is unascertained or is to be acquired in the future), other than a ship registered in an official register kept under a law of the Commonwealth or a State relating to title to ships;
  - (e) a charge on goodwill, on a patent or licence under a patent, on a trade mark or service mark or a licence to use a trade mark or service mark, on a copyright or a licence under a copyright or on a registered design or a licence to use a registered design;
  - (f) a charge on a book debt;

- (g) a charge on a marketable security, other than—
  - (i) a charge created in whole or part by the deposit of a document of title to the marketable security; or
  - (ii) a mortgage under which the marketable security is registered in the name of the chargee or a person nominated by the chargee;
- (h) a lien or charge on a crop, a lien or charge on wool or a stock mortgage;
- (i) a charge on a negotiable instrument other than a marketable security.

### **3.5 Excluded charges**

The provisions of this schedule mentioned in section 3.4 (1) do not apply in relation to—

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



### **3.6 Personal chattels**

The reference in section 3.4 (2) (d) to *a charge on a personal chattel* is a reference to a charge on any article capable of complete transfer by delivery, whether at the time of the creation of the charge or at some later time, and includes a reference to a charge on a fixture or a growing crop that is charged separately from the land to which it is attached or on which it is growing, but does not include a reference to a charge on—

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

### **3.7 Book debts**

The reference in section 4 (2) (f) to *a charge on a book debt*—

- (a) is a reference to a charge on a debt owing to the cooperative, or to become owing to the cooperative at some future time, on account of or in relation to a profession, trade or business carried on by the cooperative, whether entered in a book or not; and
- (b) includes a reference to a charge on a future debt of the same nature although not incurred or owing at the time of the creation of the charge;

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

### 3.8 Crops or stock

The reference in section 3.4 (2) (h) to *a lien or charge on a crop, a lien or charge on wool or a stock mortgage* includes a reference to a security (however described) that is registrable under a law of a State or Territory prescribed by regulation.

### 3.9 Deposit of documents of title

For this division, a cooperative is taken to have deposited a document of title to property with someone else (the *chargee*) if—

- (a) the document of title is not in the possession of the cooperative; and
- (b) either—
  - (i) the person who holds the document of title acknowledges in writing that the person holds the document of title on behalf of the chargee; or
  - (ii) a government, an authority or a corporation that proposes to issue a document of title in relation to the property agrees, in writing, to deliver the document of title, when issued, to the chargee.

### 3.10 Charges on land or fixtures on land

- (1) The provisions of this schedule mentioned in section 3.4 (1) do not apply in relation to a charge on land.
- (2) The provisions of this schedule mentioned in section 3.4 (1) do not apply in relation to a charge on fixtures given by a charge on the land to which they are attached.

### **3.11 Charges if other property is also charged**

For this division, a charge is taken to be a charge on property to which a particular paragraph of section 3.4 (2) applies even though the instrument of charge also charges other property of the cooperative (including property to which none of the paragraphs of the subsection applies).

### **3.12 Effect of failure to file or give notice or document**

A charge on property of a cooperative is not invalid only because of the failure to file with the registrar, or give to the cooperative or someone else, a notice or other document required to be filed or given under this part.

## **Division 3.2.2 Notice of charge**

### **3.13 Filing of notice of charge and copy of instrument**

- (1) If a cooperative creates a charge, the cooperative must ensure that there is filed with the registrar, within 45 days after the day the charge is created, a notice setting out the following particulars:
  - (a) the name of the cooperative and the date of the creation of the charge;
  - (b) whether the charge is a fixed charge, a floating charge or both a fixed and floating charge;
  - (c) if the charge is a floating charge—whether there is any provision in the resolution or instrument creating or evidencing the charge that prohibits or restricts the creation of subsequent charges;
  - (d) a short description of the liability (whether present or prospective) secured by the charge;
  - (e) a short description of the property charged;

- (f) whether the charge is created or evidenced by a resolution, by an instrument or by a deposit or other conduct;
- (g) if the charge is constituted by the issue of a debenture or debentures—the name of the trustee (if any) for debenture holders;
- (h) if the charge is not constituted by the issue of a debenture or debentures or there is no trustee for debenture holders—the name of the chargee;
- (i) any other information prescribed by regulation for this section.

*Note* If a form is approved under s 466 for a notice, the form must be used.

- (2) If, in accordance with resolutions passed by the cooperative, the cooperative issues a series of debentures constituting a charge to the benefit of which all the holders of debentures in the series are entitled in equal priority, and the charge is evidenced only by the resolutions and the debentures, the notice under subsection (1) must be accompanied by—
  - (a) a copy of each of the resolutions verified by a written statement to be a true copy; and
  - (b) a copy of the first debenture issued in the series and a written statement verifying the execution of the first debenture.
- (3) If, in a case to which subsection (2) does not apply, the charge created by the cooperative was created or evidenced by an instrument, the notice under subsection (1) must be accompanied by—
  - (a) the instrument; or
  - (b) a copy of the instrument verified by a written statement to be a true copy, and a written statement verifying the execution of the instrument.

### **3.14 Series of debentures**

In a case to which section 3.13 (2) applies—

- (a) the charge is, for section 3.13, taken to be created when the first debenture in the series of debentures is issued; and
- (b) if, after the issue of the first debenture in the series, the cooperative passes a further resolution authorising the issue of debentures in the series, the cooperative must ensure that a copy of that resolution, verified by a written statement to be a true copy of that resolution, is filed within 45 days after the day the resolution is passed.

### **3.15 Operation of priority provisions in relation to issue of debentures**

If a notice in relation to an instrument creating a charge has been filed under section 3.13 (1), and the charge is in relation to an issue of several debentures whose holders have under the instrument the benefit of the charge in equal priority, sections 3.48 to 3.51 apply as if any charges constituted by the debentures were registered when the charge to which the notice relates was registered.

### **3.16 Discounts**

- (1) This section applies if a cooperative has allowed (directly or indirectly) a payment or discount to a person in return for the person—
  - (a) subscribing, or agreeing to subscribe (with or without conditions), for debentures; or
  - (b) obtaining, or agreeing to obtain (with or without conditions), subscriptions for debentures.
- (2) A notice required under section 3.13 (1) must include particulars about the amount or percentage rate of the payment or discount.

- (3) The issue by a cooperative of debentures as security for a debt of the cooperative is not taken, for this section, to be a discount.

### **3.17 Acquisition of property subject to charge**

- (1) If a cooperative acquires property that is subject to a charge, and the charge would have been registrable when it was created if it had been created by a cooperative, the cooperative must, within 45 days after the day the property is acquired—
- (a) file with the registrar a notice in relation to the charge that sets out—
- (i) the name of the cooperative; and
- (ii) the date the property was acquired; and
- (iii) any other particulars required by section 3.13 (1); and
- (b) give to the chargee notice that it has acquired the property and the date it was acquired.

*Note* If a form is approved under s 466 for a notice, the form must be used.

- (2) If the charge mentioned in subsection (1) was created and evidenced as mentioned in section 3.13 (2), the notice under subsection (1) (a) must be accompanied by—
- (a) a copy of each of the resolutions mentioned in section 3.13 (2) verified by a written statement to be a true copy; and
- (b) a copy of the first debenture issued in the series mentioned in section 3.13 (2) verified by a written statement to be a true copy.
- (3) If the charge mentioned in subsection (1) was created or evidenced by an instrument (otherwise than as mentioned in section 3.13 (2)), the notice under subsection (1) (a) must be accompanied by—
- (a) the instrument; or

- (b) a copy of the instrument verified by a written statement to be a true copy.

## **Division 3.2.3      Registration**

### **3.18      Register of cooperative charges**

The registrar must keep a register to be known as the register of cooperative charges.

### **3.19      Registration of documents relating to charge**

- (1) If a notice is filed with the registrar in accordance with division 3.2.2, the registrar must, as soon as practicable, enter in the charges register the time and date the notice was filed and the following particulars in relation to the charge:
- (a) for a charge created by the cooperative—the date it was created;
  - (b) for a charge existing on property acquired by the cooperative—the date the property was acquired;
  - (c) a short description of the liability (whether present or prospective) secured by the charge;
  - (d) a short description of the property charged;
  - (e) the name of the trustee for debenture holders or, if there is no trustee, the name of the chargee.
- (2) Subsection (1) only applies if the notice contains the required particulars and is accompanied by the required documents.
- (3) Subsection (1) applies whether the notice is filed during or after the period within which the notice is required to be filed.

- (4) Subject to this division, if particulars in relation to a charge are entered in the charges register in accordance with subsection (1), the charge is taken to be registered, and to have been registered from and including the time and date entered in the charges register under that subsection.
- (5) The registrar may enter in the charges register in relation to a charge, in addition to the particulars expressly required by this division to be entered, any other particulars the registrar considers appropriate.

### **3.20 Provisional registration if stamp duty not paid**

- (1) If—
  - (a) a notice in relation to a charge on property of a cooperative is filed under division 3.2.2; and
  - (b) the notice is not accompanied by a certificate to the effect that all documents accompanying the notice have been properly stamped as required by any applicable law relating to stamp duty;

the registrar must enter in the charges register the time and date the notice was filed and the particulars mentioned in section 3.19 (1) (a) to (e), and must also enter the word ‘provisional’ in the charges register next to the entry.

- (2) Subsection (1) applies whether the notice was filed during or after the period within which the notice was required to be filed.
- (3) The registrar must delete the word ‘provisional’ entered in the charges register under subsection (1) in relation to the entry if a certificate to the effect mentioned in subsection (1) (b) is produced to the registrar within—
  - (a) 28 days after the day the entry is made; or
  - (b) if a longer period is prescribed by regulation—that period; or



- (c) if the registrar allows a further period to the period applying under paragraph (a) or (b)—the further period.
- (4) The registrar must delete from the charges register an entry in relation to a charge if—
  - (a) the word ‘provisional’ is entered in the charges register under subsection (1) in relation to the entry; and
  - (b) a certificate to the effect mentioned in subsection (1) (b) is not produced in relation to the entry within the period applying under subsection (3).

**3.21 Provisional registration if required particulars not supplied**

- (1) If a defective notice in relation to a charge on property is filed with the registrar under section 3.19, the registrar must enter in the charges register—
  - (a) the time and date the document was filed; and
  - (b) any of the particulars mentioned in section 3.19 (1) that are ascertainable; and
  - (c) the word ‘provisional’ next to the entry.
- (2) If a defective notice in relation to a charge is filed under section 3.19, the registrar must, by notice to the person who filed the defective notice, direct the person to ensure that there is filed, on or before the date stated in the notice, a notice in relation to the charge that complies with the requirements of division 3.2.2.
- (3) Subsections (1) and (2) apply whether the defective notice was filed during or after the period within which the notice was required to be filed.
- (4) The giving by the registrar of a direction to the person under subsection (2) does not affect any liability that the cooperative may

have incurred or may incur because of a contravention of division 3.2.2.

- (5) If the registrar gives a direction to a person under subsection (2) in relation to a charge and the direction is complied with on or before the date stated in the notice containing the direction, the registrar must—
- (a) delete from the charges register the word ‘provisional’ that was entered under subsection (1); and
  - (b) enter in the charges register in relation to the charge any particulars mentioned in section 3.19 (1) that have not previously been entered.
- (6) If the registrar gives a direction to a person under subsection (2) in relation to a charge and the direction is not complied with on or before the date stated in the notice, the registrar must delete from the charges register all the particulars that were entered in relation to the charge.
- (7) If the registrar gives a direction to a person under subsection (2) in relation to a charge and the direction is complied with after the date stated in the notice, the registrar must enter in the charges register in relation to the charge—
- (a) the time and date the direction was complied with; and
  - (b) the particulars mentioned in section 3.19 (1).
- (8) In this section:
- defective notice***, in relation to a cooperative, means a document that—
- (a) purports to be a notice in relation to a charge on property of the cooperative for division 3.2.2; and
  - (b) contains the name of the cooperative and the particulars mentioned in section 3.13 (1) (g) or (h);

but does not contain some or all of the other particulars required to be included in the notice or is otherwise defective.

### **3.22 Effect of provisional registration**

- (1) If the word ‘provisional’ is entered in the charges register next to an entry stating a time and date in relation to a charge, the charge is taken not to have been registered.
- (2) However, if the word ‘provisional’ is deleted from the charges register under section 3.20 or section 3.21 (5), the charge is taken to be registered and to have been registered from the time and date stated in the charges register.
- (3) Also, if the particulars in relation to the charge are deleted from the charges register under section 3.21 (6) and the particulars and a time and date are subsequently entered in the charges register in relation to the charge under section 3.21 (7), the charge is taken to be registered from that time and date.

### **3.23 Two or more charges relating to same property**

- (1) If, under section 3.17, a cooperative files notices relating to 2 or more charges that are not already registered under this division on the same property acquired by the cooperative, the time and date to be entered in the charges register in relation to each of the charges is the time and date when the first notice was filed.
- (2) If, in accordance with subsection (1), the time and date entered in the charges register are the same in relation to 2 or more charges on property acquired by a cooperative, the charges have, as between themselves, the respective priorities that they would have had if they had not been registered under this division.

### **3.24 Registration of assignment or variation of charge**

- (1) If a notice is filed under section 3.36, the registrar must as soon as practicable enter in the charges register the time and date the notice was filed and the particulars set out in the notice.

- (2) This section applies whether the notice was filed during or after the period within which the notice was required to be filed.

### **3.25 Standard time for div 3.2.3**

- (1) The registrar may, in writing, declare a standard time to be the standard time for this division.
- (2) A declaration is a notifiable instrument.

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

- (3) If a declaration is in force under subsection (1), a reference in this division to entering the time when a particular event happened is a reference to entering that time as expressed in terms of the standard time stated in the declaration.

## **Division 3.2.4 Certain charges void against liquidator or administrator**

### **3.26 Definitions for div 3.2.4**

In this division:

*critical day*, in relation to a cooperative, means—

- (a) if the cooperative is being wound up—the day the winding-up began; or
- (b) if the cooperative is under administration—the relevant day in relation to the administration; or
- (c) if the cooperative has executed a deed of arrangement—the relevant day in relation to the administration that ended when the deed was executed.

*relevant day*, in relation to the administration of a cooperative, means—

- (a) if, when the administration began, a winding-up of the cooperative was in progress—the day the winding-up is taken

to have begun because of the Corporations Act, part 5.6 (Winding up generally), division 1A (When winding up taken to begin) as applied by this Act; or

(b) in any other case—the day the administration began.

### **3.27 Certain charges void against liquidator or administrator**

(1) Subject to this division, if—

- (a) an order is made, or a resolution is passed, for the winding-up of a cooperative; or
- (b) the registrar gives a certificate under section 315 for the winding-up of the cooperative; or
- (c) an administrator of the cooperative is appointed under the Corporations Act, part 5.3A (Administration of a company's affairs with a view to executing a deed of company arrangement) as applied by this Act; or
- (d) the cooperative executes a deed of arrangement;

a registrable charge on property of the cooperative is void as a security on the property as against the liquidator, the administrator of the cooperative, or the administrator of the deed.

(2) However, the charge is not void under subsection (1) if—

- (a) a notice in relation to the charge was filed under section 3.13 or section 3.17, as the case requires—
  - (i) within the relevant period; or
  - (ii) at least 6 months before the critical day; or
- (b) the required period in relation to the charge has not ended before the critical day and a notice in relation to the charge is filed under a section of this part (other than section 3.36) before the end of the required period; or

(c) for a charge to which section 3.17 applies—the period of 45 days after the day the chargee becomes aware that the property charged has been acquired by a cooperative has not ended before the critical day and the notice is filed before the end of the 45 day period.

(3) In this section:

*relevant period*, for a notice in relation to a charge mentioned in subsection (2) (a) means—

- (a) for a charge to which section 3.13 applies—the period of 45 days mentioned in that section or, if the period is extended by the Supreme Court under section 3.29, the extended period; or
- (b) for a charge to which section 3.17 applies—45 days after the day the chargee becomes aware that the property has been acquired by a cooperative.

*required period*, for a notice in relation to a charge mentioned in subsection (2) (b), means the period mentioned in the section under which the notice is filed or, if the period is extended by the Supreme Court under section 3.29, the extended period.

### **3.28 Certain varied charges void against liquidator or administrator**

- (1) Subject to this division, if, after there has been a variation in the terms of a registrable charge on property of a cooperative having the effect of increasing the amount of the debt or increasing the liabilities (whether present or prospective) secured by the charge—
  - (a) an order is made, or a resolution is passed, for the winding-up of the cooperative; or
  - (b) an administrator of the cooperative is appointed under Corporations Act, part 5.3A (Administration of a company's affairs with a view to executing a deed of company arrangement) as applied by this Act; or

(c) the cooperative executes a deed of arrangement;

the registrable charge is void as a security on the property to the extent that it secures the amount of the increase in the debt or liability.

(2) However, the charge is not void under subsection (1) if—

(a) a notice in relation to the variation was filed under section 3.36—

(i) within the period of 45 days mentioned in section 3.36 (2) or, if the period is extended by the Supreme Court under section 3.29, the extended period; or

(ii) not later than 6 months before the critical day; or

(b) the period of 45 days mentioned in section 3.36 (2) (or, if the period is extended by the Supreme Court under section 3.29, the extended period) has not ended at the start of the critical day, and the notice is filed before the end of the period.

### **3.29 Supreme Court may extend required period for notice of charge**

If the Supreme Court is satisfied that—

(a) the failure to file a notice in relation to a charge, or in relation to a variation in the terms of a charge, as required by any provision of this schedule—

(i) was accidental or caused by inadvertence or some other sufficient cause; and

(ii) is not of a nature to prejudice the position of creditors or shareholders; or

(b) that on other grounds it is just and equitable to grant relief;

the court may, on the application of the cooperative or anyone interested and on any conditions the court considers just, extend the period.

### **3.30 Certain later charges void**

- (1) If—
- (a) a registrable charge (the *later charge*) is created before the end of 45 days after the creation of an unregistered registrable charge (the *earlier charge*); and
  - (b) the later charge relates to all or any of the property to which the earlier charge related; and
  - (c) the later charge is given as a security for the liability secured by the earlier charge or any part of the liability;

the later charge, to the extent to which it is a security for the liability or part of the liability, and so far as it relates to property to which the earlier charge related, is void as a security on the property as against a liquidator or administrator of the cooperative, or an administrator of a deed of arrangement executed by the cooperative.

- (2) Subsection (1) applies even if a notice in relation to the later charge was filed under section 3.13 within the period mentioned in section 3.27 (2) (a).
- (3) Subsection (1) does not apply if it is proved to the satisfaction of the Supreme Court that the later charge was given honestly for the purpose of correcting some material error in the earlier charge or under other proper circumstances and not to avoid or evade the provisions of this division.

### **3.31 Effect of provisions on honest purchaser**

- (1) Section 3.27 and section 3.28 do not affect the title of a person to property purchased for value from a chargee or from a receiver appointed by a chargee in the exercise of powers given by the



charge or implied by law if that person purchased the property honestly and without notice of—

- (a) the filing of an application for an order for the winding-up of the cooperative; or
  - (b) the passing of the necessary resolution for the voluntary winding-up of the cooperative; or
  - (c) an administrator of the cooperative being appointed under the Corporations Act, part 5.3A (Administration of a company's affairs with a view to executing a deed of company arrangement) as applied by this Act; or
  - (d) the cooperative executing a deed of arrangement.
- (2) The burden of proving that a person purchased property honestly and without notice of any of the matters mentioned in subsection (1) (a), (b), (c) and (d) is on the person asserting that the property was so purchased.

## **Division 3.2.5      Certain charges void**

### **3.32      Definitions for div 3.2.5**

In this division:

*chargee*, in relation to a charge, means—

- (a) in any case—the holder, or all or any of the holders, of the charge; and
- (b) for a charge that is an agreement to give or execute a charge in favour of a person or 2 or more people, whether on demand or otherwise—that person, or all or any of those people.

*officer*, of a foreign cooperative, includes a local agent of the foreign cooperative.

*receiver* includes a receiver and manager.

*relevant person*, in relation to a charge created by a cooperative, means—

- (a) a person who is when the charge is created, or who was at any time during the 6 months before the charge was created, an officer of the cooperative; or
- (b) a person associated, in relation to the creation of the charge, with a person mentioned in paragraph (a).

### **3.33 Charges in favour of certain people void in certain cases**

(1) If—

- (a) a cooperative creates a charge on property of the cooperative in favour of a person who is, or in favour of 2 or more people at least 1 of whom is, a relevant person in relation to the charge; and
- (b) within 6 months after the creation of the charge, the chargee purports to take a step in the enforcement of the charge without the Supreme Court having, under section 3.34, given leave for the charge to be enforced;

the charge, and any powers purported to be given by an instrument creating or evidencing the charge, are, and are to be considered always to have been, void.

(2) Without limiting subsection (1), if a person—

- (a) appoints a receiver of property of a cooperative under powers given by an instrument creating or evidencing a charge created by the cooperative; or
- (b) whether directly or by an agent, enters into possession, or assumes control, of any property of a cooperative for enforcing a charge created by the cooperative;

the person is taken, for subsection (1), to take a step in the enforcement of the charge.

**3.34 Supreme Court may give leave for enforcement of charge**

On application by the chargee under a charge, the Supreme Court may give leave for the charge to be enforced, if the court is satisfied that—

- (a) immediately after the creation of the charge, the cooperative that created the charge was solvent; and
- (b) in all the circumstances of the case, it is just and equitable for the court to do so.

**3.35 Certain transactions excluded**

- (1) Section 3.33 does not affect a debt or liability of a cooperative that would, if that section had not been enacted, have been secured by a charge created by the cooperative.
- (2) Section 3.33 does not affect the title of a person to property (other than the charge concerned or an interest in the charge) purchased for value from—
  - (a) a chargee under a charge; or
  - (b) an agent of a chargee under a charge; or
  - (c) a receiver appointed by a chargee under a charge in the exercise of powers given by the charge or implied law;

if the person purchased the property honestly and without notice that the charge was created in favour of a person who is, or in favour of 2 or more people at least 1 of whom is, a relevant person in relation to the charge.

- (3) The burden of proving that a person purchased property honestly and without notice that a charge was created as mentioned in subsection (2) is on the person asserting that the property was so purchased.

## Division 3.2.6 Assignment, variation and satisfaction of charges

### 3.36 Assignment and variation of charges

- (1) If, after a registrable charge on property of a cooperative has been created, a person other than the original chargee becomes the holder of the charge, the person who becomes the holder of the charge must, within 45 days after the day the person becomes the holder of the charge—
  - (a) file a notice with the registrar stating that the person has become the holder of the charge; and
  - (b) give the cooperative a copy of the notice.
- (2) If, after a registrable charge on property of a cooperative has been created, there is a variation in the terms of the charge having the effect of—
  - (a) increasing the amount of the debt or increasing the liabilities (whether present or prospective) secured by the charge; or
  - (b) prohibiting or restricting the creation of subsequent charges on the property;the cooperative must, within 45 days after the day the variation happens, ensure that there is filed with the registrar a notice setting out particulars of the variation and accompanied by the instrument (if any) effecting the variation or a certified copy of the instrument.
- (3) If a charge created by a cooperative secures a debt of an unspecified amount or secures a debt of a specified amount and further advances, a payment or advance made by the chargee to the cooperative in accordance with the terms of the charge is taken, for subsection (2), not to be a variation in the terms of the charge having the effect of increasing the amount of the charge or the liabilities (whether present or prospective) secured by the charge.

- (4) If a charge is constituted by a debenture or debentures and there is a trustee for debenture holders, a reference in this section to the *chargee* in relation to the charge is a reference to the trustee for debenture holders.
- (5) Section 3.13 does not require the filing of a notice under the section in relation to a charge if the terms of the charge are varied only in a way mentioned in this section.

### **3.37 Satisfaction of, and release of property from, charges**

- (1) This section applies if, in relation to a charge registered under this part—
  - (a) the debt or other liability secured by the charge over property of a cooperative has been paid or discharged completely or in part; or
  - (b) the property of a cooperative charged, or part of the property charged, is released from the charge.
- (2) The cooperative may, by notice, require the person who held the charge at the time of the payment, discharge or release to give the cooperative a memorandum acknowledging that the debt or other liability was paid or discharged or the property or part of the property was released.

*Note* If a form is approved under s 466 for a memorandum, the form must be used.

- (3) If the cooperative gives the person a notice under subsection (2), the person must, within 14 days after the day the person receives the notice, give the memorandum to the cooperative.

Maximum penalty: 10 penalty units.

- (4) The cooperative may file the memorandum with the registrar and, on the memorandum being filed, the registrar must enter in the charges register the particulars stated in the memorandum.

- (5) If the charge is constituted by a debenture or debentures and there is a trustee for debenture holders, the reference in subsection (2) to the person who held the charge at the time of the payment, discharge or release is a reference to the trustee for debenture holders.

## **Division 3.2.7 General**

### **3.38 Filing of notices under pt 3.2**

- (1) If a notice in relation to a charge on property of a cooperative is required to be filed under section 3.13, section 3.17 or section 3.36 (2), the notice may be filed by the cooperative or by any interested person.
- (2) If a document required by this part other than section 3.36 (1) to be filed with the registrar is filed by a person other than the cooperative concerned, the person—
- (a) must, within 7 days after the day the document is filed, give to the cooperative a copy of the document; and
  - (b) may recover from the cooperative the amount of any fees properly paid by the person on filing of the document.

### **3.39 Filing offences**

- (1) If section 3.13, section 3.17 or section 3.36 (2) is contravened in relation to a registrable charge on property of a cooperative, the cooperative and any officer of the cooperative who is knowingly concerned in or a party to the contravention commits an offence.

Maximum penalty: 10 penalty units.

- (2) If a person who becomes the holder of a registrable charge fails to comply with section 3.36 (1), the person and, if the person is a corporation, any officer of the corporation who is in default, each commit an offence.

Maximum penalty: 10 penalty units.

### **3.40 Cooperative to keep documents relating to charges**

A cooperative must, at the place where the register mentioned in section 3.41 is kept, keep a copy of—

- (a) every document relating to a charge on property of the cooperative that is filed with the registrar under this part; and
- (b) every document given to the cooperative under this part.

Maximum penalty: 10 penalty units.

### **3.41 Cooperative to keep register of charges**

- (1) A cooperative must keep a register of charges.
- (2) On the creation of a charge (whether registrable or not) on property of the cooperative, or on the acquisition of property subject to a charge (whether registrable or not), the cooperative must as soon as practicable enter in the register, the following particulars of the charge:
  - (a) if the charge is a charge created by the cooperative—the date of its creation;
  - (b) if the charge was a charge existing on property acquired by the cooperative—the date the property was acquired;
  - (c) a short description of the liability (whether present or prospective) secured by the charge;
  - (d) a short description of the property charged;
  - (e) the name of the trustee for debenture holders or, if there is not a trustee for debenture holders, the name of the chargee;
  - (f) the name of the person whom the cooperative believes to be the holder of the charge.
- (3) A register kept by a cooperative under subsection (1) must be open for inspection during the cooperative's normal business hours—

- (a) by a creditor or member of the cooperative, without charge; and
  - (b) by anyone else, on payment for each inspection of the amount (not exceeding any amount prescribed by regulation) the cooperative requires or, if the cooperative does not require payment, without charge.
- (4) A person may ask a cooperative to provide the person with a copy of the register or any part of the register.
- (5) If a person makes a request under subsection (4), the cooperative must give the copy to the person—
- (a) if the cooperative requires payment of an amount not exceeding any amount prescribed by regulation—within 21 days after the day payment of the amount is received by the cooperative or, if the registrar allows a longer period, the longer period; or
  - (b) in any other case—within 21 days after the day the request is made or, if the registrar allows a longer period, the longer period.
- (6) A cooperative must not, without reasonable excuse, contravene a provision of this section.

Maximum penalty (subsection (6)): 10 penalty units.

### **3.42 Certificates about charges**

- (1) If particulars of a charge are entered in the charges register in accordance with this part, the registrar must, on request by any person, issue to that person a certificate—
- (a) setting out the particulars; and
  - (b) stating the time and date when a notice in relation to the charge containing the particulars was filed with the registrar; and



- (c) if the word ‘provisional’ appears in the charges register next to the reference to the time and date—stating that fact.
- (2) A certificate issued under subsection (1) is evidence of the matters stated in the certificate.
- (3) If particulars of a charge are entered in the charges register in accordance with this part, and the word ‘provisional’ does not appear in the charges register next to the reference to the time and date when a notice in relation to the charge was filed, the registrar must, on request by anyone, issue a certificate to the person that states that particulars of the charge are entered in the charges register in accordance with this part.
- (4) A certificate issued under subsection (3) is conclusive evidence that the requirements of this part about registration (other than the requirements relating to the period after the creation of the charge within which notice in relation to the charge is required to be filed) have been complied with.

### **3.43 Power of Supreme Court to rectify charges register**

If the Supreme Court is satisfied—

- (a) that—
  - (i) a particular in relation to a registrable charge on property of a cooperative has been omitted from, or is misstated in, the charges register or a memorandum mentioned in section 3.37; and
  - (ii) the omission or misstatement—
    - (A) was accidental or caused by inadvertence or some other sufficient cause; and
    - (B) is not of a nature to prejudice the position of creditors or shareholders; or
- (b) that on other grounds it is just and equitable to grant relief;

the court may, on the application of the cooperative or anyone interested and on any conditions that the court considers just, order that the omission or misstatement be rectified.

**3.44 Registrar may give exemptions for certain requirements of pt 3.2**

- (1) The registrar may, in writing, exempt a person from any requirement of section 3.13, section 3.17 or section 3.36 relating to—
  - (a) the particulars to be contained in a notice under the section; or
  - (b) the documents (other than the notice) to be filed under the section; or
  - (c) the verification of any document required to be filed under the section.
- (2) An exemption may be unconditional or subject to conditions.
- (3) An exemption is a notifiable instrument.

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

- (4) If a person is exempted by the registrar, subject to a condition, from a requirement of section 3.13, section 3.17 or section 3.36, the person must not, without reasonable excuse, contravene the condition.

Maximum penalty: 10 penalty units.

- (5) If a person contravenes a condition to which an exemption under this clause is subject, the Supreme Court may, on the application of the registrar, order the person to comply with the condition (whether or not the person has been prosecuted for an offence against subsection (4) for the contravention).

## **Part 3.3**                      **Order of priority**

### **Division 3.3.1**            **General**

#### **3.45**            **Definitions for pt 3.3**

In this part:

*priority time*, in relation to a registered charge, means—

- (a) except as provided by paragraph (b) or (c), the time and date appearing in the charges register in relation to the charge that was entered in the register under division 3.2.3; or
- (b) if a notice has been filed under section 3.17 in relation to a charge on property that, when the notice was filed, was already registered under part 3.2—the earlier or earliest time and date appearing in the charges register in relation to the charge that was entered in the charges register under section 3.17; or
- (c) to the extent that the charge has effect as varied by a variation notice of which was required to be filed under section 3.36 (2), the time and date entered in the charges register in relation to the charge under section 3.24.

*prior registered charge*, in relation to another registered charge, means a charge the priority time of which is earlier than the priority time of the other charge.

*registered charge* means a charge that is registered under part 3.2.

*subsequent registered charge*, in relation to another registered charge, means a charge the priority time of which is later than the priority time of the other registered charge.

*unregistered charge* means a charge that is not registered under part 3.2, but does not include a charge that is not a registrable charge.

### 3.46 Constructive notice of charge

A reference in this part to a person having *notice* of a charge includes a reference to a person having constructive notice of the charge.

### 3.47 Registered charge with 2 or more priority times

If, because of the definition of *priority time* in section 3.45, a registered charge has 2 or more priority times and each of the priority times relates to a particular liability secured by the charge, each of the liabilities is taken, for this part, to be secured by a separate registered charge with the same priority time as the first registered charge that relates to the liability.

### 3.48 Priorities of charges

- (1) Subject to this section, division 3.3.2 has effect in relation to the priorities, in relation to each other, of registrable charges on the property of a cooperative.
- (2) The application, in relation to particular registrable charges, of the order of priorities of charges set out in division 3.3.2 is subject to—
  - (a) any reduction in the priority of a charge in relation to all or any of the other charges, if the holder of the charge agrees (expressly or by implication) to the reduction; and
  - (b) any agreement between the chargees that affects the priorities in relation to each other of the charges in relation to which they are the chargees.
- (3) The holder of a registered floating charge on property of a cooperative is taken, for subsection (2), to have agreed to the charge being postponed to a subsequent registered charge that is a fixed charge created before the floating charge becomes fixed unless—

- (a) the creation of the subsequent registered charge contravened a provision of the instrument or resolution creating or evidencing the floating charge; and
  - (b) a notice in relation to the floating charge indicating the existence of the provision mentioned in paragraph (a) was filed with the registrar under section 3.13, section 3.17 or section 3.36 before the creation of the subsequent registered charge.
- (4) If a charge relates to property mentioned in section 3.4 (2) and also to other property, division 3.3.2 only affects the priority of the charge so far as it relates to the property mentioned in section 3.4 (2) and does not affect the priority of the charge so far as it relates to the other property.

## **Division 3.3.2      Priority rules**

### **3.49      General priority rules in relation to registered charges**

- (1) A registered charge on property of a cooperative has priority over—
- (a) a subsequent registered charge on the property, unless—
    - (i) the subsequent registered charge was created before the creation of the prior registered charge; and
    - (ii) the chargee in relation to the subsequent registered charge proves that the chargee in relation to the prior registered charge had notice of the subsequent registered charge when the prior registered charge was created; and
  - (b) an unregistered charge on the property created before the creation of the registered charge, unless the chargee in relation to the unregistered charge proves that the chargee in relation to the registered charge had notice of the unregistered charge when the registered charge was created; and
  - (c) an unregistered charge on the property created after the creation of the registered charge.

- (2) A registered charge on property of a cooperative is postponed to—
- (a) a subsequent registered charge on the property, if—
    - (i) the subsequent registered charge was created before the creation of the prior registered charge; and
    - (ii) the chargee in relation to the subsequent registered charge proves that the chargee in relation to the prior registered charge had notice of the subsequent registered charge when the prior registered charge was created; and
  - (b) an unregistered charge on the property created before the creation of the registered charge, if the chargee in relation to the unregistered charge proves that the chargee in relation to the registered charge had notice of the unregistered charge when the registered charge was created.

### **3.50 General priority rule in relation to unregistered charges**

An unregistered charge on property of a cooperative (the *first charge*) has priority over—

- (a) a registered charge on the property that—
  - (i) was created after the first charge; and
  - (ii) does not have priority over the first charge under section 3.49 (1); and
- (b) another unregistered charge on the property created after the first charge.

### **3.51 Special priority rules**

- (1) Except as provided by this section, any priority given under this part to a charge (the *first charge*) over another charge does not extend to any liability that is not a present liability at the priority time in relation to the first charge.

- (2) If a registered charge on property of a cooperative (the *first charge*) secures—
- (a) a present liability and a prospective liability of an unspecified amount; or
  - (b) a prospective liability of an unspecified amount;
- any priority given under this part to the first charge over another charge extends to the prospective liability, whether the prospective liability became a present liability before or after the registration of the first charge.
- (3) However, subsection (2) applies only if, when the first charge was created, the chargee in relation to the charge did not have actual knowledge of the prospective liability.
- (4) If—
- (a) a registered charge on property of a cooperative (the *first charge*) secures—
    - (i) a present liability and a prospective liability up to a specified maximum amount; or
    - (ii) a prospective liability up to a specified maximum amount; and
  - (b) the notice filed under section 3.13 or section 3.17 in relation to the charge sets out the nature of the prospective liability and the maximum amount specified;
- any priority given under this part to the first charge over another charge extends to any prospective liability secured by the first charge to the extent of the maximum amount specified.
- (5) Subsection (4) applies whether the prospective liability became a present liability before or after the registration of the first charge and despite the fact that the chargee in relation to the first charge had actual knowledge of the other charge when the prospective liability became a present liability.

- (6) Subsection (7) applies to a registered charge on property of a cooperative—
- (a) if—
- (i) the charge secures—
- (A) a present liability and a prospective liability up to a specified maximum amount; or
- (B) a prospective liability up to a specified maximum amount; and
- (ii) the notice filed under section 3.13 or section 3.17 in relation to the charge does not set out the nature of the prospective liability or the maximum amount so specified; or
- (b) if the charge secures a prospective liability of an unspecified amount.
- (7) Any priority given under this part to a registered charge to which this subclause applies because of subsection (6) (the *priority charge*) over another charge of which the chargee in relation to the priority charge has actual knowledge extends to any prospective liability secured by the priority charge that—
- (a) had become a present liability when the chargee in relation to the priority charge first obtained actual knowledge of the other charge; or
- (b) became a present liability, because of the making of an advance, after the time when the chargee in relation to the priority charge first obtained actual knowledge of the other charge if, at that time, the terms of the priority charge required the chargee in relation to that charge to make the advance after that time.
- (8) Subsection (7) (b) extends to the prospective liability whether the advance was made before or after the registration of the priority



charge and despite the fact that the chargee in relation to the priority charge had actual knowledge of the other charge when the advance was made.

## Schedule 4 Receivers, and other controllers, of property of cooperatives

(see s 271 and s 344)

### 4.1 Definitions for sch 4

In this schedule:

**administrator**, of a deed of arrangement, means the administrator of the deed appointed under the Corporations Act, part 5.3A (Administration of a company's affairs with a view to executing a deed of company arrangement) as applied by this Act.

**control day**, in relation to a controller of property of a cooperative, means—

- (a) unless paragraph (b) applies—
  - (i) for a receiver, or receiver and manager, of the property—the day the receiver, or receiver and manager, was appointed; or
  - (ii) for anyone else who is in possession, or has control, of the property for the purpose of enforcing a charge—the day the person entered into possession, or took control, of any property of the cooperative for that purpose; or
- (b) if the controller became a controller of property of the cooperative—
  - (i) to act with an existing controller of the property; or
  - (ii) in place of a controller of the property who died or ceased to be a controller of the property;

the day that is, because of any other application of this definition, the control day in relation to the controller mentioned in subparagraph (i) or (ii).

**controller**, of property of a cooperative, means—

- (a) a receiver, or receiver and manager, of the property; or
- (b) anyone else who (whether or not as agent for the cooperative) is in possession, or has control, of the property for the purpose of enforcing a charge.

**cooperative** includes a foreign cooperative registered under part 14.

**daily newspaper** means a newspaper ordinarily published on each day that is a business day where it is published, whether or not the newspaper is ordinarily published on other days.

**managing controller**, of property of a cooperative, means—

- (a) a receiver and manager of the property; or
- (b) any other controller of the property who has functions in relation to managing the cooperative.

**national newspaper** means a daily newspaper that circulates generally in the ACT and each State.

**officer**, of a foreign cooperative, includes a local agent of the foreign cooperative.

**property**, of a cooperative, means property—

- (a) for a cooperative that is not a foreign cooperative—in or outside Australia; or
- (b) for a cooperative that is a foreign cooperative—in Australia or an external Territory.

**receiver**, of property of a cooperative, includes a receiver and manager.

### 4.3 People not to act as receivers

- (1) A person is not qualified to be appointed, and must not act, as receiver of property of a cooperative if the person—
  - (a) is a mortgagee of property of the cooperative; or
  - (b) is an auditor or an officer of the cooperative; or
  - (c) is an officer of a corporation that is a mortgagee of property of the cooperative; or
  - (d) is not a registered liquidator under the Corporations Act; or
  - (e) is an officer of a corporation related to the cooperative; or
  - (f) unless the registrar directs in writing that this paragraph does not apply in relation to the person in relation to the cooperative, has at any time within the last 12 months been an officer or promoter of the cooperative or of a related corporation.
- (2) In subclause (1):

*officer*, of a corporation, does not include a receiver, appointed under an instrument, of property of the corporation.
- (3) Subsection (1) (d) does not apply in relation to a corporation authorised under a Commonwealth, State or territory law to act as receiver of property of the cooperative concerned.

### 4.4 Supreme Court may declare whether controller validly acting

- (1) If there is doubt, on a specific ground, about—
  - (a) whether a purported appointment of a person as receiver of property of a cooperative is valid; or
  - (b) whether a person who has entered into possession, or assumed control, of any property of a cooperative did so validly under the terms of a charge on the property;

the person, the cooperative or any of the cooperative's creditors may apply to the Supreme Court for an order under subsection (2).

- (2) On an application, the Supreme Court may make an order declaring whether or not—
- (a) the purported appointment was valid; or
  - (b) the person entered into possession, or assumed control, validly under the terms of the charge;

on the ground stated in the application or on some other ground.

#### **4.5 Liability of controller**

- (1) Subsection (2) applies to a receiver or another authorised person who (whether as agent for the cooperative concerned or not) enters into possession, or assumes control, of any property of a cooperative for the purpose of enforcing any charge.
- (2) The receiver or other authorised person is liable for debts incurred by the person in the course of the receivership, possession or control for services rendered, goods purchased or property hired, leased, used or occupied.
- (3) For subsection (2), the following provisions apply:
- (a) the subclause applies despite any agreement to the contrary;
  - (b) the subclause does not prejudice the rights of the receiver or other authorised person against the cooperative or anyone else;
  - (c) the receiver or other authorised person is not, under the subclause, constituted a mortgagee in possession.
- (4) Subsection (5) applies if—
- (a) a person (the *relevant person*) enters into possession, or assumes control, of any property of a cooperative; and

- (b) the relevant person purports to have been properly appointed as a receiver in relation to the property under a power contained in an instrument, but has not been properly so appointed; and
  - (c) a civil proceeding in a federal court or a court of a State or Territory arise out of an act claimed to have been done by the relevant person.
- (5) If this subclause applies, the court may, if it is satisfied that the relevant person believed on reasonable grounds that the relevant person had been properly appointed, order that—
- (a) the relevant person be relieved completely or in part of a liability that the person has incurred but would not have incurred if the person had been properly appointed; and
  - (b) a person who purported to appoint the relevant person as receiver be liable in relation to anything so far as the relevant person has been relieved under paragraph (a) of liability in relation to the thing.

#### **4.6 Liability of controller under pre-existing agreement about property used by cooperative**

- (1) This section applies if—
- (a) under an agreement made before the control day in relation to a controller of property of a cooperative, the cooperative continues after that day to use or occupy, or to be in possession of, property (the *third-party property*) of which someone else is the owner or lessor; and
  - (b) the controller is controller of the third-party property.
- (2) Subject to subsections (4) and (7), the controller is liable for so much of the rent or other amounts payable by the cooperative under the agreement as is attributable to a period—
- (a) that begins more than 7 days after the control day; and

- (b) throughout which—
- (i) the cooperative continues to use or occupy, or to be in possession of, the third-party property; and
  - (ii) the controller is controller of the third-party property.
- (3) Within 7 days after the control day, the controller may give to the owner or lessor a notice that specifies the third-party property and states that the controller does not propose to exercise rights in relation to the property as controller of the property, whether on behalf of the cooperative or anyone else.
- (4) Despite subsection (2), the controller is not liable for so much of the rent or other amounts payable by the cooperative under the agreement as is attributable to a period during which a notice under subsection (3) is in force, but such a notice does not affect a liability of the cooperative.
- (5) A notice under subsection (3) ceases to have effect if—
- (a) the controller revokes it by writing given to the owner or lessor; or
  - (b) the controller exercises, or purports to exercise, a right in relation to the third-party property as controller of the property, whether on behalf of the cooperative or anyone else.
- (6) For subsection (5), the controller does not exercise, or purport to exercise, a right mentioned in subsection (5) (b) only because the controller continues to be in possession, or to have control, of the third party property, unless the controller—
- (a) also uses the property; or
  - (b) asserts a right, as against the owner or lessor, so to continue.
- (7) Subsection (2) does not apply so far as the Supreme Court, by order, excuses the controller from liability, but an order does not affect a liability of the cooperative.

- (8) The controller is not taken because of subsection (2)—
- (a) to have applied the agreement mentioned in the subsection; or
  - (b) to be liable under the agreement otherwise than as mentioned in the subsection.

#### **4.7 Powers of receiver**

- (1) A receiver of property of a cooperative has power to do, anywhere in Australia or elsewhere, all things necessary or convenient to be done for or in relation to, or as incidental to, the attainment of the objectives for which the receiver was appointed.
- (2) Without limiting subsection (1), a receiver of property of a cooperative has power, for the purpose of attaining the objectives for which the receiver was appointed—
- (a) to enter into possession and take control of property of the cooperative in accordance with the terms of the order or instrument of the receiver's appointment; and
  - (b) to lease, let on hire or dispose of property of the cooperative; and
  - (c) to grant options over property of the cooperative on the conditions the receiver considers appropriate; and
  - (d) to borrow money on the security of property of the cooperative; and
  - (e) to insure property of the cooperative; and
  - (f) to repair, renew or enlarge property of the cooperative; and
  - (g) to convert property of the cooperative into money; and
  - (h) to carry on any business of the cooperative; and
  - (i) to take on lease or on hire, or to acquire, any property necessary or convenient in relation to the carrying on of a business of the cooperative; and



- (j) to execute any document, bring or defend any proceeding or do anything else in the name of and on behalf of the cooperative; and
- (k) to draw, accept, make and endorse a bill of exchange or promissory note; and
- (l) to use the seal of the cooperative; and
- (m) to engage or discharge employees on behalf of the cooperative; and
- (n) to appoint a solicitor, accountant or other professionally qualified person to assist the receiver; and
- (o) to appoint an agent to do any business that the receiver cannot do personally, or that it would be unreasonable to expect the receiver to do personally; and
- (p) if a debt or liability is owed to the cooperative—to prove the debt or liability in a bankruptcy, insolvency or winding-up and, in that connection, to receive dividends and to assent to a proposal for a composition or a scheme of arrangement; and
- (q) if the receiver was appointed under an instrument that created a charge on uncalled capital or uncalled premiums of the cooperative—
  - (i) to make a call, in the name of the cooperative, in relation to money unpaid on shares in the cooperative (whether on account of the nominal value of the shares or by way of premium); or
  - (ii) on the giving of a proper indemnity to a liquidator of the cooperative in the name of the liquidator, to make a call in relation to money unpaid on account of the nominal value of shares in the cooperative; and
- (r) to enforce payment of any call that is payable, whether the calls were made by the receiver or otherwise; and

- (s) to make or defend an application for the winding-up of the cooperative; and
  - (t) to refer to arbitration any question affecting the cooperative.
- (3) The powers given by subsection (2) are additional to any powers given by the court order by which, or the instrument under which, the receiver was appointed, or by any other law, but the subclause applies subject to any provision of the relevant court order or instrument that limits the receiver's powers in any way.
- (4) The giving by this section to a receiver of powers in relation to property of a cooperative does not affect the rights of anyone else (other than the cooperative) in relation to the property.
- (5) In this section, a reference, in relation to a receiver, to *property* of a cooperative is a reference to the property of the cooperative in relation to which the receiver was appointed.

#### **4.8 Controller's duty of care in exercising power of sale**

- (1) In exercising a power of sale in relation to property of a cooperative, a controller must take all reasonable care to sell the property for—
- (a) if, when it is sold, it has a market value—not less than that market value; or
  - (b) in any other case—the best price reasonably obtainable, having regard to the circumstances existing when the property is sold.
- (2) This section does not limit division 9.3 (Duties and liabilities of directors, officers and employees).

#### **4.9 Supreme Court may authorise managing controller to dispose of property despite prior charge**

- (1) On the application of a managing controller of property of a cooperative, the Supreme Court may, by order, authorise the controller to sell, or to dispose of in another way, particular property of the cooperative, even though it is subject to a charge (the *prior*

*charge*) that has priority over a charge (the *controller's charge*) on that property that the controller is enforcing.

- (2) The Supreme Court may make an order if satisfied that—
  - (a) apart from the existence of the prior charge, the controller would have power to sell, or to so dispose of, the property; and
  - (b) the controller has taken all reasonable steps to obtain the consent of the holder of the prior charge to the sale or disposal, but has not obtained that consent; and
  - (c) sale or disposal of the property under the order is in the best interests of the cooperative's creditors and of the cooperative; and
  - (d) sale or disposal of the property under the order will not unreasonably prejudice the rights or interests of the holder of the prior charge.
- (3) The Supreme Court may have regard to the need to protect adequately the rights and interests of the holder of the prior charge.
- (4) If the property (the *relevant property*) would be sold or disposed of together with other property subject to the controller's charge, the Supreme Court may have regard to—
  - (a) the amount (if any) by which it is reasonable to expect that the net proceeds of selling or disposing of the other property otherwise than together with the relevant property would be less than so much of the net proceeds of selling or disposing of all the property together as would be attributable to the other property; and
  - (b) the amount (if any) by which it is reasonable to expect that the net proceeds of selling or disposing of the relevant property otherwise than together with the other property would be greater than so much of the net proceeds of selling or disposing of all the property together as would be attributable to the relevant property.

- (5) Subsections (3) and (4) do not limit the matters to which the Supreme Court may have regard for subsection (2).
- (6) An order may be made subject to conditions, including, for example—
- (a) a condition that—
- (i) the net proceeds of the sale or disposal; and
- (ii) the net proceeds of the sale or disposal of other property (if any) that is stated in the condition and is subject to the controller's charge;
- or a stated part of the net proceeds, be applied in payment of stated amounts secured by the prior charge; or
- (b) a condition that the controller apply a stated amount in payment of stated amounts secured by the prior charge.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

#### **4.10 Receiver's power to carry on cooperative's business during winding-up**

- (1) A receiver of property of a cooperative that is being wound up may—
- (a) with the written approval of the cooperative's liquidator or with the approval of the Supreme Court, carry on the cooperative's business either generally or as otherwise stated in the approval; and
- (b) do whatever is necessarily incidental to carrying on that business under paragraph (a).
- (2) Subsection (1) does not—
- (a) affect a power that the receiver has otherwise than under that subsection; or

- (b) authorise the receiver to do anything that the receiver would not have power to do if the cooperative were not being wound up.
- (3) A receiver of property of a cooperative who carries on the cooperative's business under subsection (1) does so—
  - (a) as agent for the cooperative; and
  - (b) in his or her capacity as receiver of property of the cooperative.
- (4) The consequences of subsection (3) include, for example, the following:
  - (a) for section 4.5 (Liability of controller), a debt that the receiver incurs in carrying on the business as mentioned in subsection (3) of this section is incurred in the course of the receivership;
  - (b) a debt or liability that the receiver incurs in so carrying on the business is not a cost, charge or expense of the winding-up.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

#### **4.11 Controller's duties in relation to bank accounts and financial records**

- (1) A controller of property of a cooperative must—
  - (a) open and maintain at least 1 account, with an Australian bank, bearing—
    - (i) the controller's own name; and
    - (ii) for a receiver of the property—the title 'receiver'; and
    - (iii) for any other controller—the title 'controller'; and
    - (iv) the cooperative's name; and

- (b) within 3 business days after the day an amount of the cooperative comes under the control of the controller, pay the amount into such an account that the controller maintains; and
  - (c) ensure that no such account that the controller maintains contains an amount other than an amount of the cooperative that comes under the control of the controller; and
  - (d) keep the financial records necessary to correctly record and explain all transactions that the controller enters into as controller.
- (2) Any director, creditor or member of a cooperative may at any reasonable time, unless the Supreme Court otherwise orders, personally or by an agent, inspect financial records kept by a controller of property of the cooperative for subsection (1) (d).

#### **4.12 Managing controller to report within 2 months about cooperative's affairs**

- (1) A managing controller of property of a cooperative must prepare a report about the cooperative's affairs that is made up to a day not later than 28 days before the day it is prepared.

*Note* If a form is approved under s 466 for a report, the form must be used.

- (2) The managing controller must prepare the report and file it with the registrar within 2 months after the control day.
- (3) As soon as practicable, and in any event within 14 days, after filing the report with the registrar, the managing controller must publish in a national newspaper, or in the ACT and each State in a daily newspaper that circulates generally in the ACT or State, a notice stating—
- (a) that the report has been prepared; and
  - (b) that a person can inspect the report at the office of the registrar.

- (4) If, in the managing controller's opinion, it would seriously prejudice—
- (a) the cooperative's interests; or
  - (b) the achievement of the objectives for which the controller was appointed, or entered into possession, or assumed control, of any property of the cooperative;
- if particular information that the controller would otherwise include in the report were made available to the public, the controller need not include the information in the report.
- (5) If the managing controller omits information from the report as allowed by subsection (4), the controller must include instead a notice—
- (a) stating that certain information has been omitted from the report; and
  - (b) summarising what the information is about, but without disclosing the information itself.

#### **4.13 Reports by receiver**

- (1) Subsection (2) applies if it appears to the receiver of property of a cooperative that—
- (a) a past or present officer, or a member, of the cooperative may have been guilty of an offence against a Commonwealth, State or territory law in relation to the cooperative; or
  - (b) a person who has taken part in the formation, promotion, administration, management or winding-up of the cooperative—
    - (i) may have misapplied or kept, or may have become liable or accountable for, any money or property of the cooperative (whether the money or property is in or outside Australia); or

- (ii) may have been guilty of negligence, default, breach of duty or breach of trust in relation to the cooperative.
- (2) If this subsection applies, the receiver must—
- (a) file with the registrar as soon as practicable a report about the matter; and
  - (b) give to the registrar the information, and access to and facilities for inspecting and taking copies of any documents, that the registrar requires.
- (3) The receiver may also file further reports specifying anything else that, in the receiver's opinion, it is desirable to bring to the notice of the registrar.
- (4) If it appears to the Supreme Court—
- (a) that—
    - (i) a past or present officer, or a member, of a cooperative in relation to property of which a receiver has been appointed has been guilty of an offence against a law mentioned in subsection (1) (a) in relation to the cooperative; or
    - (ii) a person who has taken part in the formation, promotion, administration, management or winding-up of a cooperative in relation to property of which a receiver has been appointed has engaged in conduct mentioned in subsection (1) (b) in relation to the cooperative; and
  - (b) that the receiver has not filed a report with the registrar about the matter;

the court may, on the application of a person interested in the appointment of the receiver or on its own initiative, direct the receiver to file a report about the matter with the registrar.



**4.14 Supervision of controller**

- (1) If—
- (a) it appears to the Supreme Court or to the registrar that a controller of property of a cooperative has not faithfully exercised, or is not faithfully exercising, the controller's functions or has not observed, or is not observing, a requirement of—
    - (i) for a receiver—the order by which, or the instrument under which, the receiver was appointed; or
    - (ii) in any other case—an instrument under which the controller entered into possession, or took control, of the property; or
    - (iii) in any case—the Supreme Court or this Act; or
  - (b) a person complains to the Supreme Court or to the registrar about an act or omission of a controller of property of a cooperative in relation to the exercise of any of the controller's functions;

the court or the registrar may inquire into the matter and, after inquiry, may take the action the court or registrar considers appropriate.

- (2) The registrar may report to the Supreme Court anything that in the registrar's opinion is a misfeasance, neglect or omission by a controller of property of a cooperative, and the court may—
- (a) order the controller to make good any loss that the estate of the cooperative has sustained by it; and
  - (b) make any other orders it considers appropriate.

- (3) The Supreme Court may at any time—
- (a) require a controller of property of a cooperative to answer questions about the exercise of any of the controller's functions as controller; or
  - (b) examine a person about the exercise by the controller of any of the controller's functions as controller; or
  - (c) direct an investigation to be made of the controller's books.

#### **4.15 Controller may apply to Supreme Court**

- (1) A controller of property of a cooperative may apply to the Supreme Court for directions in relation to anything arising in relation to the exercise of any of the controller's functions as controller.
- (2) For a receiver of property of a cooperative, subsection (1) applies only if the receiver was appointed under a power contained in an instrument.

#### **4.16 Supreme Court may fix receiver's remuneration**

- (1) The Supreme Court may, by order, fix the amount to be paid by way of remuneration to anyone who, under a power contained in an instrument, has been appointed as receiver of property of a cooperative.
- (2) The power of the Supreme Court to make an order under this section—
  - (a) extends to fixing the remuneration for any period before the making of the order or the application for the order; and
  - (b) is exercisable even if the receiver has died, or ceased to act, before the making of the order or the application for the order; and
  - (c) if the receiver has been paid or has kept for the receiver's remuneration for any period any amount in excess of the amount fixed for the period—extends to requiring the receiver

or the receiver's personal representatives to account for the excess or part of it.

- (3) The power given by subsection (2) (c) may be exercised in relation to a period before the making of the application for the order only if, in the Supreme Court's opinion, there are special circumstances making it proper to exercise the power.
- (4) The Supreme Court may from time to time amend an order under this section.
- (5) An order under this section may be made or amended on the application of—
  - (a) a liquidator of the cooperative; or
  - (b) an administrator of the cooperative; or
  - (c) an administrator of a deed of arrangement executed by the cooperative; or
  - (d) the registrar.
- (6) An order under this section may also be amended on the application of the receiver.
- (7) An order under this section may be made or amended only on application as provided under subsections (5) and (6).

#### **4.17 Controller has qualified privilege in certain cases**

A controller of property of a cooperative has qualified privilege in relation to—

- (a) a matter contained in a report that the controller files with the registrar under section 4.12 or section 4.13; or
- (b) a comment that the controller makes under section 4.20 (4) (a).

**4.18 Notification of appointment of controller etc**

- (1) This section applies if any of the following (the *relevant action*) happens:
- (a) a person obtains an order for the appointment of a receiver of property of a cooperative;
  - (b) a person appoints a receiver of property of a cooperative under a power in an instrument;
  - (c) a person appoints someone else to enter into possession, or take control, of any property of a cooperative (whether or not as agent for the cooperative) to enforce a charge otherwise than as receiver of the property;
  - (d) a person enters into possession, or takes control, of any property of a cooperative (whether or not as agent of the cooperative) under an appointment made by someone else to enforce a charge otherwise than as receiver of the property;
  - (e) a person ceases to be a controller of property of a cooperative.
- (2) If this section applies, the person must prepare a notice of the relevant action.
- Note* If a form is approved under s 466 for a notice under this section the form must be used.
- (3) However, subsection (2) does not apply if the person is a person mentioned in subsection (1) (d) and the person that appointed the person complies with this section.
- (4) The notice is a notifiable instrument.
- Note* A notifiable instrument must be notified under the Legislation Act.
- (5) The notice must be notified under the Legislation Act within 21 days after the day the relevant action happens.
- (6) The person must also file a copy of the notice with the registrar within 7 days after the day the relevant action happens.

- (7) Also, within 14 days after the day a person becomes a controller of property of a cooperative, the person must file with the registrar notice of the address of the person's office.
- (8) If the address of the person's office changes, the person must file with the registrar notice of the new address within 14 days after the day the change happens.

#### **4.19 Statement that receiver appointed or other controller acting**

- (1) If a receiver of property (whether in or outside the ACT or Australia) of a cooperative has been appointed, the cooperative must set out, in every public document, and in every eligible negotiable instrument, of the cooperative, after the name of the cooperative where it first appears, a statement that a receiver, or a receiver and manager, (as the case requires) has been appointed.
- (2) If there is a controller (other than a receiver) of property (whether in or outside Australia) of a cooperative, the cooperative must set out, in every public document, and in every eligible negotiable instrument, of the cooperative, after the cooperative's name where it first appears, a statement that a controller is acting.

#### **4.20 Officers to report to controller about cooperative's affairs**

- (1) In this section:  
*reporting officer*, of a cooperative means a person who was, on the control day—
  - (a) for a cooperative other than a foreign cooperative—a director or secretary of the cooperative; or
  - (b) for a foreign cooperative—a local agent of the foreign cooperative.

- (2) As soon as practicable after a person becomes the controller of property of a cooperative, the person must give the cooperative notice that the person has become the controller of the property.
- (3) Within 14 days after the day the cooperative receives the notice (or, if the period is extended under subsection (7) or (8), the extended period), the reporting officers of the cooperative must give the controller a report about the affairs of the cooperative as at the control day.

*Note* If a form is approved under s 466 for a report, the form must be used.

- (4) Within 28 days after the day the controller receives the report, the controller must—
  - (a) file with the registrar a copy of the report and a notice setting out any comments the controller considers appropriate to make on the report or, if the controller does not wish to comment on the report, a notice stating that the controller does not wish to comment on the report; and
  - (b) send to the cooperative a copy of the notice filed in accordance with paragraph (a); and
  - (c) if there are trustees for the holders of debentures of the cooperative—send to the trustees a copy of the report and notice.
- (5) For subsection (4) (c), there are trustees for debenture holders if—
  - (a) the controller became controller of the property—
    - (i) because of an appointment of receiver of the property that was made by or on behalf of the holders of debentures of the cooperative; or
    - (ii) by entering into possession, or taking control, of the property for the purpose of enforcing a charge secured by debentures of the cooperative; and
  - (b) there are trustees for the holders of the debentures.

- (6) If notice has been given to a cooperative under subsection (2), the reporting officers, or any of them, may apply to the controller or to the Supreme Court to extend the period within which the report must be given to the controller.
- (7) If application is made to the controller under subsection (6), the controller may, by notice given to the reporting officers, extend the period until a stated day if the controller believes there are special reasons for extending the period.
- (8) If application is made to the Supreme Court under subsection (6), the court may, by order, extend the period until a stated day if the court believes that there are special reasons for extending the period.
- (9) As soon as practicable after granting an extension under subsection (7), the controller must file a copy of the notice of extension with the registrar.
- (10) As soon as practicable after the Supreme Court gives an extension under subsection (8), the reporting officers must file a copy of the order with the registrar.
- (11) This section does not apply if a person becomes a controller of property of a cooperative—
- (a) to act with an existing controller of property of the cooperative; or
  - (b) in place of a controller of the property who has died or ceased to be a controller of the property.
- (12) However, the section does apply if a controller of property of a cooperative dies, or ceases to be a controller of property of the cooperative, before this section has been fully complied with.
- (13) If this section applies because of subsection (12), a reference in this section to the *controller* includes a reference to the controller's successor and to any continuing controller.

- (14) If a cooperative is being wound up, this section (including, if relevant, subsections (12) and (13)) and section 4.21 apply even if the controller and the liquidator are the same person, but apply with any necessary changes.

#### **4.21 Controller may require reports**

- (1) A controller of property of a cooperative may, by notice, require a relevant person to give the controller, within the period stated in the notice, a written statement (verified as required by the notice and signed by the person giving the statement) about—
- (a) the affairs generally of the cooperative at a stated date or during a stated period; or
  - (b) stated affairs of the cooperative at a stated date or during a stated period.

*Note* If a form is approved under s 466 for a statement, the form must be used.

- (2) Without limiting subsection (1), a notice under the subsection may state the information that the controller requires about the affairs of the cooperative by reference to information that this Act requires to be included in another report, statement or notice under this Act.
- (3) A person making a report and verifying it as required by subsection (1) must, subject to the regulations, be allowed, and must be paid by the receiver (or the controller's successor) out of the controller's receipts, any costs and expenses incurred in relation to the preparation and making of the report and the verification of the report that the controller (or the controller's successor) considers reasonable.
- (4) A person must not, without reasonable excuse, fail to comply with a notice under subsection (1).

Maximum penalty: 10 penalty units.



(5) In this section:

**relevant person**, in relation to a cooperative, means—

- (a) a person who is, or has at an time been, an officer of the cooperative; or
- (b) a person who is, or was at any time not earlier than 1 year before the control day, an employee of the cooperative if the controller is of the opinion that the person can give the information required; or
- (c) if the cooperative was incorporated within 1 year before the control day—a person who took part in the formation of the cooperative.

**successor**, of a controller, includes a continuing controller.

(6) For the definition of **relevant person** in subsection (5)—

- (a) if the cooperative was an existing corporation that has become registered as the cooperative—the reference in paragraph (a) of the definition to **the cooperative** includes a reference to the existing corporation; and
- (b) if the cooperative was an existing corporation that has, not earlier than 1 year before the control day, become registered as the cooperative—the reference in paragraph (b) of the definition to **the cooperative** includes a reference to the existing corporation.

#### **4.22 Controller may inspect books**

- (1) A controller of property of a cooperative is entitled to inspect at any reasonable time any books of the cooperative that relate to the property.
- (2) A person must not fail to allow the controller to inspect the books at any reasonable time.

Maximum penalty: 10 penalty units.

**4.23 Filing controller's financial statements**

- (1) A controller of property of a cooperative must file with the registrar a financial statement—
  - (a) within 28 days after the end of—
    - (i) 6 months, or any shorter period the controller decides, after the day the controller became a controller of property of the cooperative; and
    - (ii) each subsequent 6 months throughout which the controller is a controller of property of the cooperative; and
  - (b) within 28 days after the day the controller ceases to be a controller of property of the cooperative.
- (2) A financial statement must show—
  - (a) the controller's receipts and payments during—
    - (i) for a financial statement under subsection (1) (a)—the 6 months or shorter period, as the case requires; or
    - (ii) for a financial statement under subsection (1) (b)—the period beginning at the end of the period to which the last financial statement related, or on the control day, (as the case requires) and ending on the day the controller ceased to be a controller; and
  - (b) except for a financial statement filed under subsection (1) (a) (i)—the respective totals of the controller's receipts and payments since the control day.

*Note* If a form is approved under s 466 for an account, the form must be used.
- (3) Subsection (4) applies to the controller if the controller is—
  - (a) a receiver appointed under a power contained in an instrument; or

- (b) anyone else who is in possession, or has control, of any property of the cooperative for the purpose of enforcing a charge.
- (4) If the controller is a controller to whom this subsection applies, the financial statements must also show—
- (a) the amount (if any) owing under the instrument or charge—
    - (i) for a financial statement filed under subsection (1) (a) (i)—at the end of the control day and at the end of the period to which the financial statement relates; or
    - (ii) in any other case—at the end of the period to which the financial statement relates; and
  - (b) the controller's estimate of the total value, at the end of the period to which the account relates, of the property of the cooperative subject to the instrument or charge.
- (5) The registrar may, on the registrar's own initiative or on the application of the cooperative or a creditor of the cooperative, arrange for the financial statements filed under subsection (1) to be audited by a registered company auditor appointed by the registrar.
- (6) For the audit, the controller must provide the auditor with any books and information that the auditor requires.
- (7) If the registrar arranges for the financial statements to be audited on the application of the cooperative or a creditor, the registrar may require the cooperative or creditor to give security for the payment of the cost of the audit.
- (8) The costs of an audit mentioned in subsection (5) are to be decided by the registrar.
- (9) The registrar may direct that the costs of the audit are taken, for section 4.5, to be a debt incurred in the course of the receivership by the controller.

- (10) A person must not fail, without reasonable excuse, to comply with a requirement made under this section.

Maximum penalty (subsection (10)): 10 penalty units.

**4.24 Payment of certain debts, out of property subject to floating charge, in priority to claims under charge**

- (1) This section applies if—
- (a) a receiver is appointed on behalf of the holders of any debentures of a cooperative that are secured by a floating charge, or possession is taken or control is assumed, by or on behalf of the holders of any debentures of a cooperative, of any property comprised in or subject to a floating charge; and
  - (b) at the date of the appointment or of the taking of possession or assumption of control (the *relevant date*)—
    - (i) the cooperative has not begun to be wound up voluntarily; and
    - (ii) the cooperative has not been ordered to be wound up by the Supreme Court.
- (2) The receiver or other person taking possession or assuming control of property of the cooperative must pay, out of the property coming the hands of the receiver or other person, the following debts or amounts in priority to any claim for principal or interest in relation to the debentures:
- (a) first, an amount that in a winding-up is payable in priority to unsecured debts and claims under the Corporations Act, section 556 (Priority payments) as applied by this Act;
  - (b) next, if an auditor of the cooperative had applied to the registrar for consent to the auditor's resignation and the registrar had refused the consent before the relevant date, the reasonable fees and expenses of the auditor incurred during the

period beginning on the day of the refusal and ending on the relevant date;

- (c) subject to subsections (4) and (5), next, any debt or amount that in a winding-up is payable in priority to other unsecured debts and claims under the Corporations Act, section 556 (1) (e), (g) or (h) or section 560 (Advances for company to make priority payments in relation to employees) as applied by this Act.
- (3) The receiver or other person taking possession or assuming control of property must pay debts and amounts payable under subsection (2) (c) in the same order of priority as is provided by the Corporations Act, part 5.6 (Winding up generally), division 6 (Proof and ranking of claims) as applied by this Act.
- (4) If—
- (a) an auditor of the cooperative applied to the registrar for consent to resign; and
  - (b) the registrar had refused the consent before the relevant day;
- the receiver must, when property comes to the receiver's hands make provision out of the property for the reasonable fees and expenses of the auditor incurred after the relevant date but before the day the property comes into the receiver's hands, if provision has not already been made for the fees and expenses under this subsection.
- (5) If—
- (a) an auditor of the cooperative applies to the registrar for consent to resign; and
  - (b) the registrar refuses the consent after the relevant date;
- the receiver must, in relation to property that comes into the receiver's hands after the refusal, make provision out of the property for the reasonable fees and expenses of the auditor incurred after the

refusal but before the day the property comes into the receiver's hands, if provision has not already been made for the fees and expenses under this subsection.

- (6) The receiver must comply with subsection (4) or (5) before paying any debt or amount mentioned in subsection (2) (c).
- (7) The receiver must make provision in relation to reasonable fees and expenses of an auditor in relation to a period as required by subsection (4) or (5) whether or not the auditor has made a claim for fees and expenses for the period, but, if the auditor has not made a claim, the receiver may estimate the reasonable fees and expenses of the auditor for the period and make provision in accordance with the estimate.
- (8) For this section, the Corporations Act, part 5.6, division 6 applies subject to the change mentioned in subsection (9).
- (9) A reference in the division to the *relevant date* is a reference to the date of the appointment of the receiver, or of possession being taken or control being assumed, as the case may be.

#### **4.25 Enforcement of controller's duty to make returns etc**

- (1) This subsection applies if a receiver of property of a cooperative—
  - (a) fails to make or file a return, financial statement or other document or to give a notice required by law; and
  - (b) fails to comply with the requirement within 14 days after the day of service on the receiver of a notice, by any member or creditor of the cooperative or a trustee for debenture holders, requiring the receiver to comply with the requirement.
- (2) If subsection (1) applies, the Supreme Court may, on application by a member or creditor of the cooperative or a trustee for debenture holders, make an order directing the receiver to comply with the requirement within a stated time.

- (3) This subsection applies if—
- (a) a receiver of property of a cooperative has become a controller of property of the cooperative otherwise than by being appointed a receiver of the property by a court; and
  - (b) after being required at any time by the liquidator of the cooperative to do so, fails to render proper financial statements of, and to vouch, the controller's receipts and payments and to pay over to the liquidator the amount properly payable to the liquidator.
- (4) If subsection (3) applies, the Supreme Court may, on application by the liquidator, make an order directing the controller to comply with the requirement within a stated time.

#### **4.26 Supreme Court may remove controller for misconduct**

If, on the application of a cooperative, the Supreme Court is satisfied that a controller of property of the cooperative has been guilty of misconduct in relation to the exercise of any of the controller's functions, the court may order that, on and after a stated day, the controller cease to act as receiver or give up possession or control of property of the cooperative.

#### **4.27 Supreme Court may remove redundant controller**

- (1) The Supreme Court may order that, on and after a stated day, a controller of property of a cooperative—
- (a) cease to act as receiver, or give up possession or control of property, of the cooperative; or
  - (b) act as receiver, or continue in possession or control only of stated property, of the cooperative.
- (2) The Supreme Court may make an order under subsection (1) if it is satisfied that the objectives for which the controller was appointed, or entered into possession or took control of property of the

cooperative have been achieved, so far as is reasonably practicable, except in relation to any property stated in the order under subsection (1) (b).

- (3) For subsection (2), the Supreme Court may have regard to—
- (a) the cooperative's interests; and
  - (b) the interests of the holder of the charge that the controller is enforcing; and
  - (c) the interests of the cooperative's other creditors; and
  - (d) any other relevant matter.
- (4) The Supreme Court may make an order under subsection (1) on the application of a liquidator appointed for winding up the cooperative in insolvency.
- (5) An order under subsection (1) may also prohibit the holder of the charge from doing, except with the Supreme Court's leave, any or all of the following:
- (a) appointing a person as receiver of property of the cooperative under a power contained in an instrument relating to the charge;
  - (b) entering into possession, or taking control, of the property for the purpose of enforcing the charge;
  - (c) appointing a person so to enter into possession or take control (whether as agent for the chargee or for the cooperative).



**4.28 Effect of s 4.26 and s 4.27**

- (1) Except as expressly provided in section 4.26 or section 4.27, an order under the section does not affect a charge on property of a cooperative.
- (2) Section 4.26 and section 4.27 do not limit any other power of the Supreme Court to remove, or otherwise deal with, a controller of property of a cooperative (for example, the Supreme Court's powers under section 4.14).

## Schedule 5 Reviewable decisions

(see pt 18)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	20 (5) (b)	amend draft disclosure statement or require stated amendment of draft disclosure statement	proposed cooperative that submits statement
2	20 (5) (c)	approve draft disclosure statement different from draft disclosure statement submitted to registrar	proposed cooperative that submits statement
3	20 (5) (d)	refuse to approve draft disclosure statement	proposed cooperative that submits statement
4	21 (3) (b)	approve different draft rules for proposed cooperative to those submitted to registrar	proposed cooperative that submits draft rules
5	21 (3) (c)	refuse to approve draft rules for proposed cooperative	proposed cooperative that submits draft rules
6	23 (3) (a)	refuse to register proposed cooperative and its rules	proposed cooperative that applies for registration
7	28 (3)	refuse to register existing corporation and its rules	existing cooperative that applies for registration

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<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 decision</b>	<b>column 4 entity</b>
8	109 (3) (b)	approve different alteration to proposed alteration of rules of cooperative submitted to registrar	cooperative that submits proposed alteration
9	109 (3) (c)	refuse to approve proposed alteration of rules of cooperative	cooperative that submits proposed alteration
10	112 (3)	refuse to register alteration or proposed alteration of rules of cooperative	cooperative that applies for registration of alteration
11	256 (6)	refuse to approve change of name of cooperative	cooperative that changes its name
12	256 (7)	order cooperative to change its name	cooperative given order

## Dictionary

(see s 4)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* In particular, the Legislation Act, dict, pt 1, defines the following terms:

- ACAT
- ACT
- appoint
- body
- contravene
- Corporations Act
- domestic partner
- exercise
- function
- reviewable decision notice.

***active member***, of a cooperative—see section 115.

***active membership provisions***—see section 116 (1).

***active membership resolution***—see section 116 (2).

***administrator***, for schedule 4 (Receivers, and other controllers, of property of cooperatives)—see schedule 4, section 4.1 (Definitions for sch 4).

***affairs***, for division 15.2 (Inquiries)—see section 403 (Definitions for div 15.2).

***agreement*** means an agreement, arrangement or understanding—

- (a) whether formal or informal or partly formal and partly informal; and
- (b) whether written or oral or partly written and partly oral; and
- (c) whether or not having legal or equitable force and whether or not based on legal or equitable rights.

**alter**, in relation to the rules of a cooperative, includes add to, substitute and rescind.

**appropriate registrar**, for division 14.3 (Mergers and transfers of engagements)—see section 379 (Definitions for div 14.3).

**associate**—see schedule 1 (Associates and relevant interests), part 1.1 (Associates).

**association** means an association registered under this Act.

**board** means the board of directors of a cooperative, and includes a committee of management of a cooperative.

**chargee**, for schedule 3 (Charges), division 3.2.5 (Certain charges void)—see schedule 3, section 3.32 (Definitions for div 3.2.5)

**charges register**, for schedule 3 (Charges)—see schedule 3, section 3.1 (Definitions for sch 3).

**company**—see the Corporations Act, section 9.

**component cooperative** means a member of an association.

**compulsory acquisition notice**, for division 13.3 (Acquisition of shares of dissenting shareholders)—see section 355 (1).

**control**—

- (a) for division 9.7 (Financial statements, reports and audit)—see section 239; and
- (b) for schedule 1 (Associates and relevant interests), part 1.2 (Relevant interests)—see schedule 1, section 1.6 (Interpretation of pt 1.2).

**control day**, for schedule 4 (Receivers, and other controllers, of property of cooperatives)—see schedule 4, section 4.1 (Definitions for sch 4).

**controller**, for schedule 4 (Receivers, and other controllers, of property of cooperatives)—see schedule 4, section 4.1 (Definitions for sch 4).

**controlling interest**, for schedule 1 (Associates and relevant interests), part 1.2 (Relevant interests)—see schedule 1, section 1.6 (Interpretation of pt 1.2).

**convicted**, of an offence, includes found guilty of the offence.

**conviction** includes a finding of guilty.

**cooperative**—

- (a) means a body registered under this Act as a cooperative, and includes an association or federation; and
- (b) for schedule 3 (Charges)—see schedule 3, section 3.1 (Definitions for sch 3); and
- (c) for schedule 4 (Receivers, and other controllers, of property of cooperatives)—see schedule 4, section 4.1 (Definitions for sch 4).

**cooperative principles** means the principles set out in section 8.

**cooperatives law**, for part 14 (Foreign cooperatives)—see section 365 (Definitions for pt 14).

**cooperatives register** means the register of cooperatives kept by the registrar under section 432.

**cooperative venture**, for division 15.1 (Supervision and inspection)—see section 388 (Definitions for div 15.1).

**Corporations legislation**—see the Corporations Act, section 9.

**costs**, for division 15.2 (Inquiries)—see section 403 (Definitions for div 15.2).

**critical day**, for schedule 3 (Charges), division 3.2.4 (Certain charges void against liquidator or administrator)—see schedule 3, section 3.26 (Definitions for div 3.2.4).

**daily newspaper**, for schedule 4 (Receivers, and other controllers, of property of cooperatives)—see schedule 4, section 4.1 (Definitions for sch 4).

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***debenture*** means a document issued by a cooperative that evidences or acknowledges indebtedness of the cooperative in relation to money that is or may be deposited with or lent to the cooperative, whether constituting a charge on property of the cooperative or not, and includes a unit of a debenture, but does not include—

- (a) a cheque, order for the payment of money or bill of exchange; or
- (b) a promissory note having a face value of not less than \$50 000; or
- (c) any other document prescribed by regulation as exempt from this definition.

***deed of arrangement*** means a deed of arrangement executed under the Corporations Act, part 5.3A (Administration of a company's affairs with a view to executing a deed of company arrangement) as applied by this Act or such a deed as varied and in force from time to time.

***deposit-taking cooperative*** means a cooperative that is permitted under section 260 (2) to accept money on deposit.

***deregistration*** means deregistration under this Act.

***director***, of a cooperative, includes—

- (a) a person who occupies or acts in the position of a director or member of the board of a cooperative, whether or not the person is called a director and whether or not the person is validly appointed or properly authorised to act in the position; and
- (b) a person in accordance with whose directions or instructions the directors or members of the board of directors of the cooperative are accustomed to act.

***dissenting shareholder***, for division 13.3 (Acquisition of shares of dissenting shareholders)—see section 353 (Definitions for div 13.3).

**document of title**, for schedule 3 (Charges)—see schedule 3, section 3.1 (Definitions for sch 3).

**doing**, of an act and for division 3.2 (Non-application of doctrine of ultra vires)—see section 38.

**entity**, for division 9.7 (Financial statements, reports and audit)—see section 239.

**excluded shares**, for division 13.3 (Acquisition of shares of dissenting shareholders)—see section 353 (Definitions for div 13.3).

**failure**, of the registrar to do an act, means failure to do the act within a reasonable time.

**federation** means a federation registered under this Act.

**financial records**—see the Corporations Act, section 9.

**financial report**—see the Corporations Act, section 9.

**financial statement**—see the Corporations Act, section 9.

**foreign cooperative** means a corporation registered, incorporated or formed under, or subject to, a law in force outside the ACT (including outside Australia) that regulates cooperatives or entities having attributes the same as or similar to cooperatives, but does not include—

- (a) an entity registered under the Corporations Act; or
- (b) an authorised deposit-taking institution or a foreign ADI within the meaning of the *Banking Act 1959* (Cwlth).

**inspector** means a person appointed as an inspector under section 390.

**interest**, for division 4.3 (Death of member)—see section 78.

**investigator** means a person appointed as an investigator under section 404.



***involved person***, for division 15.2 (Inquiries)—see section 403 (Definitions for div 15.2).

***legal capacity***, for division 3.2 (Non-application of doctrine of ultra vires)—see section 38.

***listed corporation***—see the Corporations Act, section 9.

***managing controller***, for schedule 4 (Receivers, and other controllers, of property of cooperatives)—see schedule 4, section 4.1 (Definitions for sch 4).

***marketable securities***—see Corporations Act, section 9.

***member***, for division 4.5 (Oppressive conduct of affairs)—see section 85.

***model rules*** means the model rules approved by the registrar under section 106.

***mortgage*** includes a lien, charge or other security over property.

***national newspaper***, for schedule 4 (Receivers, and other controllers, of property of cooperatives)—see schedule 4, section 4.1 (Definitions for sch 4).

***new body***—

- (a) for division 12.2 (Transfer of registration or incorporation)—see section 306 ; and
- (b) for division 12.6 (Effect of merger, transfer of engagements and transfer of incorporation)—see section 333 (2) (How div 12.6 applies to merger), section 334 (2) (How div 12.6 applies to transfer of engagements) and section 335 (2) (How div 12.6 applies to transfer of incorporation).

***nonparticipating cooperative***, for part 14 (Foreign cooperatives)—see section 365 (Definitions for pt 14).

***non-trading cooperative*** means a cooperative that complies with section 18.

**notice**—

- (a) means written notice; and
- (b) for schedule 3 (Charges), part 3.3 (Order of priority)—see schedule 3, section 3.46 (Constructive notice of charge).

**obtaining** financial accommodation, for division 10.1 (Power to raise money)—see section 258.

**officer**—

- (a) of a cooperative, means—
  - (i) a director, secretary or employee of the cooperative; or
  - (ii) a person who is concerned, or takes part, in the management of the cooperative, whether or not as a director; or
  - (iii) a receiver and manager of property of the cooperative who is appointed under a power in an instrument; or
  - (iv) an administrator of a deed of arrangement executed by the cooperative; or
  - (v) a liquidator or provisional liquidator appointed in a voluntary winding-up of the cooperative; or
  - (vi) an administrator of the cooperative appointed under—
    - (A) the Corporations Act, part 5.3A (Administration of a company's affairs with a view to executing a deed of company arrangement) as applied by this Act; or
    - (B) division 12.5 (Appointment of administrator) of this Act; or

- (vii) a trustee or other person administering a compromise or arrangement made between the cooperative and someone else; and
- (b) of a foreign cooperative for schedule 3 (Charges), division 3.2.5 (Certain charges void)—see schedule 3, section 3.32 (Definitions for div 3.2.5); and
- (c) of a foreign cooperative for schedule 4 (Receivers, and other controllers, of property of cooperatives)—see schedule 4, section 4.1 (Definitions for sch 4).

**order**, of the registrar, means a written order of the registrar.

**original body**, for division 12.6 (Effect of merger, transfer of engagements and transfer of incorporation)—see section 333 (2) (How div 12.6 applies to merger), section 334 (2) (How div 12.6 applies to transfer of engagements) and section 335 (2) (How div 12.6 applies to transfer of incorporation).

**participating cooperative**, for part 14 (Foreign cooperatives)—see section 365 (Definitions for pt 14).

**participating State**, for part 14 (Foreign cooperatives)—see section 365 (Definitions for pt 14).

**power**, for schedule 1 (Associates and relevant interests), part 1.2 (Relevant interests)—see schedule 1, section 1.6 (Interpretation of pt 1.2).

**premises**, for division 15.1 (Supervision and inspection)—see section 388 (Definitions for div 15.1).

**pre-registration contract**—see section 56 (Contracts before registration).

**present liability**, for schedule 3 (Charges)—see schedule 3, section 3.1 (Definitions for sch 3).

**primary activity**—see section 114.

**principal executive officer**, of a cooperative or a subsidiary of a cooperative, means the principal executive officer of the cooperative or subsidiary, by whatever name called, and whether or not the officer is a director or the secretary.

**priority time**, for schedule 3 (Charges), part 3.3 (Order of priority)—see schedule 3, section 3.45 (Definitions for pt 3.3).

**prior registered charge**, for schedule 3 (Charges)—see schedule 3, section 3.45 (Definitions for pt 3.3).

**property**—

- (a) of a cooperative for schedule 3 (Charges)—see schedule 3, section 3.1 (Definitions for sch 3); and
- (b) of a cooperative for schedule 4 (Receivers, and other controllers, of property of cooperatives)—see schedule 4, section 4.1 (Definitions for sch 4).

**prospective liability**, for schedule 3 (Charges)—see schedule 3, section 3.1 (Definitions for sch 3).

**receiver**—

- (a) for schedule 3 (Charges), division 3.2.5 (Certain charges void)—see schedule 3, section 3.32 (Definitions for div 3.2.5); and
- (b) for schedule 4 (Receivers, and other controllers, of property of cooperatives)—see schedule 4, section 4.1 (Definitions for sch 4).

**records** includes books, financial records, financial statements, minutes, registers, deeds, writings, documents and other sources of information compiled, recorded or stored in written form or on microfilm, or by electronic process, or in any other way or by any other means.

**registered charge**, for schedule 3 (Charges), part 3.3 (Order of priority)—see schedule 3, section 3.45 (Definitions for pt 3.3).

**registered office**, of a cooperative, means the office of the cooperative at the address notified to the registrar from time to time under section 257.

**registrable charge**, for schedule 3 (Charges)—see schedule 3, section 3.1 (Definitions for sch 3).

**registrar** means the Registrar of Cooperatives appointed under section 428.

**related**—a corporation is **related** to another corporation if—

- (a) one of the corporations is a subsidiary of the other corporation; or
- (b) both corporations are subsidiaries of a third corporation.

**relevant day**—

- (a) for division 12.6 (Effect of merger, transfer of engagements and transfer of incorporation)—see section 333 (2) (How div 12.6 applies to merger), section 334 (2) (How div 12.6 applies to transfer of engagements) and section 335 (2) (How div 12.6 applies to transfer of incorporation); and
- (b) for schedule 3 (Charges), division 3.2.4 (Certain charges void against liquidator or administrator)—see schedule 3, section 3.26 (Definitions for div 3.2.4).

**relevant documents**, for division 15.1 (Supervision and inspection)—see section 388 (Definitions for div 15.1).

**relevant interest**—see schedule 1 (Associates and relevant interests), part 1.2 (Relevant interests).

**relevant person**, for schedule 3 (Charges), division 3.2.5 (Certain charges void)—see schedule 3, section 3.32 (Definitions for div 3.2.5).

**reviewable decision**, for part 18 (Notification and review of decisions)—see section 456.

**rules**, of a cooperative, means the registered rules of the cooperative as in force from time to time.

**seal**, of a cooperative, means the common seal or an official seal of the cooperative.

**secretary**, of a cooperative, means the secretary of the cooperative appointed under section 220.

**share** means a share in the share capital of a cooperative.

**stamp duty** includes a duty charged, or that would apart from this Act be charged, under the *Duties Act 1999*.

**State**, for part 14 (Foreign cooperatives)—see section 365 (Definitions for pt 14).

**subordinated debt**—see section 263 (2).

**subsequent registered charge**, for schedule 3 (Charges), part 3.3 (Order of priority)—see schedule 3, section 3.45 (Definitions for pt 3.3).

**subsidiary**—see the Corporations Act, section 9.

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

**territory cooperative**, for division 14.3 (Mergers and transfers of engagements)—see section 379 (Definitions for div 14.3).

**territory registrar**, for division 14.3 (Mergers and transfers of engagements)—see section 379 (Definitions for div 14.3).

**trading cooperative** means a cooperative that complies with section 17.

**transfer**, for division 12.2 (Transfer of registration or incorporation)—see section 306.

***unregistered charge***, for schedule 3 (Charges), part 3.3 (Order of priority)—see schedule 3, section 3.45 (Definitions for pt 3.3).

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired



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### 3 Legislation history

**Cooperatives Act 2002 No 45**

notified LR 5 December 2002

s 1, s 2 commenced 5 December 2002 (LA s 75 (1))

remainder commenced 5 June 2003 (s 2 and LA s 79)

as amended by

**Legislation (Gay, Lesbian and Transgender) Amendment Act 2003  
A2003-14 sch 1 pt 1.7**

notified LR 27 March 2003

s 1, s 2 commenced 27 March 2003 (LA s 75 (1))

sch 1 pt 1.7 commenced 28 March 2003 (s 2)

**Justice and Community Safety Legislation Amendment Act 2003  
(No 2) A2003-47 pt 2**

notified LR 31 October 2003

s 1, s 2 commenced 31 October 2003 (LA s 75 (1))

pt 2 commenced 1 November 2003 (s 2)

**Criminal Code (Theft, Fraud, Bribery and Related Offences)  
Amendment Act 2004 A2004-15 sch 2 pt 2.22**

notified LR 26 March 2004

s 1, s 2 commenced 26 March 2004 (LA s 75 (1))

sch 2 pt 2.22 commenced 9 April 2004 (s 2 (1))

**Justice and Community Safety Legislation Amendment Act 2004  
A2004-18 pt 5**

notified LR 6 April 2004

s 1, s 2 commenced 6 April 2004 (LA s 75 (1))

pt 5 commenced 20 April 2004 (s 2)

**Justice and Community Safety Legislation Amendment Act 2004  
(No 2) A2004-32 pt 7**

notified LR 29 June 2004

s 1, s 2 commenced 29 June 2004 (LA s 75 (1))

pt 7 commenced 13 July 2004 (s 2 (3))

## Endnotes

4 Amendment history

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### **Statute Law Amendment Act 2005 (No 2) A2005-62 sch 3 pt 3.4**

notified LR 21 December 2005

s 1, s 2 commenced 21 December 2005 (LA s 75 (1))

sch 3 pt 3.4 commenced 11 January 2006 (s 2 (1))

### **ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 (No 2) A2008-37 sch 1 pt 1.25**

notified LR 4 September 2008

s 1, s 2 commenced 4 September 2008 (LA s 75 (1))

sch 1 pt 1.25 commenced 2 February 2009 (s 2 (1) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

## 4 Amendment history

### **Commencement**

s 2 om LA s 89 (4)

### **Filing of documents not to constitute constructive knowledge**

s 46 (4), (5) exp 5 June 2005 (s 46 (5))

### **Application of div 3.4 to pre-commencement matters**

s 55 exp 5 June 2005 (s 55 (2))

### **Notice of resolution for bonus share issue**

s 155 am A2003-14 amdt 1.23

### **Financial accommodation to directors and associates**

s 232 am A2003-14 amdt 1.24

### **Name to include certain matter**

s 253 (6), (7) exp 5 June 2005 (s 253 (7))

### **Acquisition and disposal of assets**

s 276 am A2003-14 amdt 1.25

### **Transfer of engagements by direction of registrar**

s 305 am A2003-47 s 4

### **Application for transfer of registration etc**

s 307 am A2004-18 s 15

### **Winding-up on registrar's certificate**

s 315 am A2003-47 s 5

### **Appointment of administrator**

s 325 am A2003-47 s 6

### **Grounds for winding-up, transfer of engagements, appointment of administrator**

s 338A ins A2003-47 s 7

- People disqualified from administering compromise etc**  
s 343 (5), (6) exp 5 June 2004 (s 343 (6))
- Registrar to be told of certain changes in relation to foreign cooperatives**  
s 375 sub A2004-18 s 16
- Deputy registrar and other staff**  
s 430 am A2004-18 s 17
- Secrecy**  
s 449 (6)-(8) exp 5 June 2005 (s 449 (8))
- False or misleading statements**  
s 450 om A2004-15 amdt 2.49
- Use of word cooperative etc**  
s 451 (1) (f), (8) exp 5 June 2005 (s 451 (8))
- Contravention of s 451**  
s 451A ins A2004-32 s 70
- Notification and review of decisions**  
pt 18 hdg sub A2008-37 amdt 1.96
- Meaning of *reviewable decision*—pt 18**  
s 456 sub A2008-37 amdt 1.96
- Reviewable decision notices**  
s 457 sub A2008-37 amdt 1.96
- Applications for review**  
s 458 sub A2008-37 amdt 1.96
- Guidelines about exercise of registrar's functions**  
s 467 am A2005-62 amdt 3.99  
(2), (3) exp on the day after the day guidelines mentioned in s 467 (1) (a) are notified under the Legislation Act 2001 (s 467 (3)).
- Transitional provisions**  
pt 20 hdg exp 5 June 2005 (s 474)
- Transitional provisions**  
s 470 exp 5 June 2005 (s 474)
- Regulations may provide for transitional matters**  
s 471 exp 5 June 2004 (s 473 (a))
- Modification of pt 20 and sch 5**  
s 472 exp 5 June 2004 (s 473 (a))
- Expiry after 1 year**  
s 473 exp 5 June 2004 (s 473 (a))

## Endnotes

4 Amendment history

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### **Expiry after 2 years**

s 474 exp 5 June 2005 (s 474)

### **Repeals and consequential provisions**

pt 21 hdg om LA s 89 (3)

### **Repeals**

s 475 om LA s 89 (3)

### **Amendment of other Acts and regulations**

s 476 om LA s 89 (3)

### **Application of sch 4**

sch 4 cl 2 exp 5 June 2005 (sch 4 cl 2 (2))

### **People not to act as receivers**

sch 4 cl 3 (4), (5) exp 5 June 2005 (sch 4 cl 3 (5))

### **Reviewable decisions**

sch 5 exp 5 June 2005 (s 474)  
ins A2008-37 amdt 1.97

### **Definition for sch 5**

sch 5 cl 1 exp 5 June 2004 (s 473 (b))

### **General savings**

sch 5 cl 2 exp 5 June 2004 (s 473 (b))

### **Saving of existing cooperatives**

sch 5 cl 3 exp 5 June 2004 (s 473 (b))

### **Society or cooperative started to be formed before commencement of clause**

sch 5 cl 4 exp 5 June 2004 (s 473 (b))

### **Mergers**

sch 5 cl 5 exp 5 June 2004 (s 473 (b))

### **Rules to comply with Act**

sch 5 cl 6 exp 5 June 2005 (s 474)

### **Alteration of certain rules**

sch 5 cl 7 exp 5 June 2004 (s 473)

### **Rules to contain active membership provisions**

sch 5 cl 8 exp 5 June 2005 (s 474)

### **Special resolutions and majority resolutions**

sch 5 cl 9 exp 5 June 2004 (s 473 (b))

### **Documents**

sch 5 cl 10 exp 5 June 2004 (s 473 (b))

### **Existing accounts provisions to apply to transferred cooperatives**

sch 5 cl 11 exp 5 June 2005 (s 474)

**Winding-up**

sch 5 cl 12 exp 5 June 2004 (s 473 (b))

**Special meeting and inquiry**

sch 5 cl 13 exp 5 June 2004 (s 473 (b))

**Registrar**

sch 5 cl 14 exp 5 June 2004 (s 473 (b))

**Existing share premium accounts**

sch 5 cl 15 exp 5 June 2005 (s 474)

**Amendments of other Acts and regulations**

sch 6 om LA s 89 (3)

**Dictionary**

dict am A2003-14 amdt 1.27; A2008-37 amdt 1.98  
 def **alteration** om A2008-37 amdt 1.99  
 def **spouse** om A2003-14 amdt 1.26  
 def **reviewable decision** sub A2008-37 amdt 1.100

**5 Earlier republications**

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 5 June 2003	5 June 2003– 31 Oct 2003	A2003-14	new Act and amendments by A2003-14
R2 1 Nov 2003	1 Nov 2003– 9 Apr 2004	A2003-47	amendments by A2003-47
R3 9 Apr 2004	9 Apr 2004– 19 Apr 2004	A2004-15	amendments by A2004-15
R4 20 Apr 2004	20 Apr 2004– 5 June 2004	A2004-18	amendments by A2004-18

## Endnotes

5 Earlier republications

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<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R5 6 June 2004	6 June 2004– 12 July 2004	A2004-18	commenced expiry
R6 13 July 2004	13 July 2004– 5 June 2005	A2004-32	amendments by A2004-32
R7 6 June 2005	6 June 2005– 10 Jan 2006	A2004-32	commenced expiry
R8 11 Jan 2006	11 Jan 2006– 1 Feb 2009	A2005-62	amendments by A2005-62

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