

Queensland



# COOPERATIVES ACT 1997

**Reprinted as in force on 3 November 2000  
(includes amendments up to Act No. 46 of 2000)**

**Reprint No. 2C**

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This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

Queensland



# COOPERATIVES ACT 1997

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# COOPERATIVES ACT 1997

[as amended by all amendments that commenced on or before 3 November 2000]

## **An Act to provide for the formation, registration and management of cooperatives, and for related purposes**

### **PART 1—PRELIMINARY**

#### *Division 1—Introductory*

##### **Short title**

1. This Act may be cited as the *Cooperatives Act 1997*.

##### **Commencement**

2. This Act commences on a day to be fixed by proclamation.

##### **Purpose**

3. The purpose of this Act is to provide a legislative framework for the formation, registration and management of cooperatives that enables flexibility in the operation of cooperatives and promotes the development of cooperatives.

##### **Objects of this Act**

4. 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 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 State and national peak organisations and cooperative instrumentalities.

## **Dictionary**

5. The dictionary in schedule 8<sup>1</sup> defines words used in this Act.

### *Division 2—Qualified privilege provisions*

## **Qualified privilege**

**6.(1)** If this Act provides that a person has qualified privilege for an act, matter or thing, the person, in relation to the act, matter or thing—

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

**(2)** In subsection (1)—

**“malice”** includes ill-will to the person concerned or any other improper motive.

**(3)** Neither this section nor a provision of this Act that provides as mentioned in subsection (1) limits or affects any right, privilege or

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<sup>1</sup> Schedule 8 (Dictionary)

immunity a person has, apart from this section or that type of provision, as defendant in a proceeding, or an action, for defamation.

### *Division 3—The cooperative principles*

#### **Cooperative principles**

7. The cooperative principles are the following principles—

1. Voluntary and open membership

Cooperatives are voluntary organisations, open to all persons 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 way.

3. Member economic participation

Members contribute equitably to, and democratically control, the capital of their cooperative. At least part of the 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—

- developing the cooperative, possibly by setting up reserves, part of which at least would be indivisible
- benefiting members in proportion to their transactions with the cooperative
- 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 member needs, cooperatives work for the sustainable development of their communities through policies accepted by their members.

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

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

### ***Division 4—Application of Corporations Law***

#### **Corporations Law applying under its own force**

9.(1) The provisions of the Corporations Law (other than the provisions mentioned in subsection (2)) are excluded from applying under their own force to cooperatives.

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**(2)** However, the following provisions of the Corporations Law are not excluded from applying under their own force to a cooperative—

- (a) provisions relating to a matter that a regulation provides is not to be excluded from the operation of the Corporations Law;
- (b) provisions relating to the role of a cooperative in the formation of a company;
- (c) provisions relating to substantial shareholdings, by or involving a cooperative, in a company;
- (d) provisions conferring or imposing functions on a cooperative as a member, or former member, of a corporation;
- (e) provisions relating to dealings by a cooperative in securities of a corporation, other than securities of the cooperative itself;
- (f) provisions conferring or imposing functions on a cooperative in its dealings with a corporation, other than dealings in securities of the cooperative;
- (g) provisions relating to securities of a cooperative, other than shares in, debentures of, or deposits with, a cooperative;
- (h) provisions relating to the futures industry;
- (i) provisions relating to participants in the securities industry;
- (j) provisions relating to the conduct of securities business;
- (k) provisions relating to dealers' accounts and audit;
- (l) provisions relating to money and scrip of dealers' clients;
- (m) provisions relating to registers of interests in securities.

**(3)** To remove doubt, it is declared that, in relation to the Corporations Law, parts 1.2A, 7.11 and 7.12, subsection (1) only operates to exclude the operation of those parts in relation to shares in, debentures of, or deposits with, a cooperative.

**(4)** This section does not operate to give rise to any operation of the Corporations Law, and does not confer any function under that Law, that that Law would not otherwise have or confer of its own force.

(5) This section has effect despite the *Corporations (Queensland) Act 1990* or the applicable provisions of Queensland within the meaning of that Act.

### **Corporations Law adopted by this Act or the regulations**

**10.(1)** A regulation may adopt, with or without stated changes, a provision of the Corporations Law for application to cooperatives.

(2) A provision of this Act or a regulation that adopts provisions of the Corporations Law for application to cooperatives operates to apply those provisions as part of this Act and the adopted provisions are to be read as forming part of this Act.

(3) If a provision of the Corporations Law is adopted by a provision of this Act or a regulation, neither the adopted provision nor the adopting provision gives power to the Australian Securities and Investments Commission to administer the adopted provision for this Act.

### **Interpretation of adopted provisions of Corporations Law**

**11.(1)** Provisions of the Corporations Law adopted by this Act apply with any changes that may be necessary or appropriate for the effectual application of the provisions to cooperatives.

(2) Examples of necessary or appropriate changes are as follows—

- (a) a reference to articles or memorandum of association or constitution or replaceable rules is to be read as a reference to rules;
- (b) a cross-reference to another provision of the Corporations Law is, if the cross-reference is not appropriate (because, for example, the provision cross-referred to is not among the provisions applied), to be read as a cross-reference to the equivalent provision of this Act;
- (c) a reference to the gazette is to be read as a reference to the Queensland Government Gazette;
- (d) a reference to the Commonwealth is to be read as a reference to Queensland;

- (e) provisions that are not relevant to cooperatives or incapable of application to cooperatives are to be ignored;
- (f) changes made under a regulation under subsection (3);
- (g) a reference to the Australian Securities and Investments Commission, however referred to, is to be read as a reference to the registrar.

(3) A regulation may prescribe the changes necessary or desirable for the effectual operation of the adopted provisions of the Corporations Law.

(4) Provisions of the Corporations Law adopted by or under this Act apply and are to be interpreted as if the definitions of words and expressions and other interpretative provisions contained in the Corporations Law formed part of this Act.

(5) This section has effect subject to any specific requirements of provisions of this Act that adopt provisions of the Corporations Law.

### **Implied adoption of regulations and other provisions of Corporations Law**

**12.(1)** When a provision of this Act or a regulation adopts a provision (“**adopted provision**”) of the Corporations Law for application to cooperatives, the following provisions are also adopted by force of this section and are to be read as forming part of this Act—

- (a) the provisions of any regulation (“**adopted regulation**”) for the time being in force under the adopted provision;
- (b) any provision of the Corporations Law that creates an offence for a contravention of the adopted provision;
- (c) the provisions of the Corporations Law, part 9.4B for the purposes of any provision of the Corporations Law adopted by this Act that is a civil penalty provision under that part.

(2) A regulation under this Act may prescribe changes to any of the provisions adopted by subsection (1) for the purposes of their application under this section, and those provisions apply subject to the changes.

(3) If a provision of the Corporations Law or a regulation under that Law adopted under this Act (including under this section) creates an offence and

the penalty for the offence is specified in another provision (the “**penalty provision**”) of the Corporations Law or the regulation, the penalty provision applies for deciding the maximum penalty for the offence.

## **PART 2—FORMATION**

### *Division 1—Types of cooperatives*

#### **Types of cooperatives**

**13.(1)** A body may be registered under this Act as a cooperative.

**(2)** A cooperative may be either—

- (a) a trading cooperative; or
- (b) a non-trading cooperative.

#### **Trading cooperatives**

**14.(1)** A trading cooperative must have a share capital.

**(2)** A trading cooperative is a cooperative whose rules allow it to give returns or distributions on surplus or share capital.

**(3)** A trading cooperative must have a membership of—

- (a) for an association—2 or more cooperatives; or
- (b) for a federation—2 or more associations; or
- (c) for another trading cooperative—
  - (i) if a lesser number than 5 is prescribed under a regulation—at least that number of active members; or
  - (ii) otherwise—5 or more active members.

**Non-trading cooperatives**

**15.(1)** A non-trading cooperative is a cooperative whose rules prohibit it from giving returns or distributions on surplus or share capital to members, other than the nominal value of shares, if any, at winding-up.

**(2)** A non-trading cooperative may or may not have a share capital.

**(3)** A non-trading cooperative must have a membership of—

- (a) for an association—2 or more cooperatives; or
- (b) for a federation—2 or more associations; or
- (c) for another non-trading cooperative—
  - (i) if a lesser number than 5 is prescribed under a regulation—at least that number of active members; or
  - (ii) otherwise—5 or more active members.

***Division 2—Formation meeting*****Formation meeting**

**16.(1)** Before a proposed cooperative (other than an existing corporation) can be registered, a formation meeting must be held under this section.

**(2)** At the formation meeting—

- (a) for a proposed trading cooperative—a disclosure statement approved under section 17 must be presented to the meeting; and
- (b) the proposed rules of the cooperative approved under section 18 for the proposed cooperative, and including active membership provisions under part 6,<sup>2</sup> must be passed by two-thirds 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

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<sup>2</sup> Part 6 (Active membership)

- (d) the proposed members must elect the first directors of the proposed cooperative under 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.
- (3)** The formation meeting must be held by—
- (a) for an association—not less than 2 suitably qualified cooperatives; or
  - (b) for a federation—not less than 2 suitably qualified associations; or
  - (c) for another cooperative—not less than 5 persons, or if a lesser number than 5 is prescribed under a regulation, not less than the prescribed number of persons, suitably qualified to be members 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 18 or older; and
  - (c) the person satisfies any other requirements for membership in 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 1 person.

### *Division 3—Approval of disclosure statement and rules*

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

**17.(1)** A draft disclosure statement of a proposed trading cooperative must be submitted to the registrar at least 28 days (or the shorter period the registrar may allow in a particular case) before the formation meeting is due to be held.

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(2) The disclosure statement must contain the information necessary to ensure 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 directs.

(3) The disclosure 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 disclosure statement with the statement included in the form and context in which it is included; and
- (b) there appears in the disclosure statement a statement that the expert has given, and has not withdrawn, the expert's consent.

(4) The registrar may—

- (a) approve the draft statement as submitted; or
- (b) amend the draft, or require a stated amendment of the draft, and then approve the amended statement; or
- (c) approve a different statement to that submitted; or
- (d) refuse to approve the statement; or
- (e) require the person submitting the draft statement to give the registrar any additional information the registrar reasonably requires, and then act under paragraph (a), (b), (c) or (d).

(5) Approval may be given at any time before the formation meeting is held.

(5A) The registrar may approve a disclosure statement with or without conditions.

(6) Subject to subsection (7), the registrar approves of a disclosure statement by giving notice of the approval of the statement to the person who submitted the draft statement to the registrar.

(7) The registrar is taken to have approved the disclosure statement as submitted to the registrar unless at least 5 days before the formation meeting is due to be held—

- (a) the registrar gives notice of approval of a different disclosure statement; or
- (b) the registrar gives notice to the person who submitted the draft statement that the registrar is still considering the matter; or
- (c) the registrar gives notice of refusal to approve the disclosure statement and the reasons for the refusal.

(8) A notice under this section must be in writing.

### **Approval of rules**

**18.(1)** A draft of the rules proposed for the cooperative (including active membership provisions under part 6<sup>3</sup>) must be submitted to the registrar at least 28 days (or the shorter period the registrar may allow in a particular case) before the formation meeting is due to be held.

(2) The proposed rules must—

- (a) be in accordance with section 101;<sup>4</sup> and
- (b) be in a form that may reasonably be approved; and
- (c) if the rules contain any alterations of the model rules—be accompanied by a statement showing the alterations and the reasons for the alterations.

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<sup>3</sup> Part 6 (Active membership)

<sup>4</sup> Section 101 (Content of rules)

(3) If the rules do not make provision for any matter included in the model rules, the registrar may approve the relevant provisions of the model rules as rules of the cooperative.

(4) The registrar may—

- (a) approve the rules as submitted; or
- (b) approve different rules to those submitted; or
- (c) refuse to approve the rules.

(5) The registrar approves of the rules by giving written notice of the approval of the rules to the person who submitted the draft rules to the registrar.

(6) The registrar must give written notice of the refusal to approve the rules and the reasons for the refusal to the person who submitted the rules to the registrar.

#### *Division 4—Registration of proposed cooperative*

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

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

- (a) be made in the approved form; and
- (b) be accompanied by the fee prescribed under a regulation; and
- (c) be signed by—
  - (i) for an association or federation—at least 2 directors; and
  - (ii) for any other proposed cooperative—at least 5, or if a lesser number than 5 is prescribed under a regulation, at least the prescribed number of, suitably qualified members, including 2 directors elected at the formation meeting; and
- (d) be accompanied by—
  - (i) 2 copies of the proposed rules signed and certified by the persons 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 persons 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 the registrar may require in a particular case.

(2) The application must be filed with the registrar within 2 months after closure of the formation meeting for the proposed cooperative or within the extended period that the registrar may allow.

### **Registration of cooperative**

**20.(1)** If an application is made under this division for registration of a proposed cooperative, the registrar must register the cooperative and its rules if satisfied the requirements for registration of the cooperative have been met.

(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 18;<sup>5</sup>
- (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 under the cooperative principles or, if it is not designed to function entirely under the cooperative principles, the registrar must be satisfied 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 the requirements for registration of the

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<sup>5</sup> Section 18 (Approval of rules)

cooperative have been met, the registrar may refuse to register the cooperative and its rules.

(4) The registrar must give to the applicant written notice of the refusal and the reasons for the refusal.

### **Incorporation and certificate of registration**

**21.(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 5—Registration of an existing corporation***

#### **Existing corporation can be registered**

**22.** 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 before or after the commencement of this Act, the corporation was—

- (a) incorporated or registered or taken to be registered under the Corporations Law; or
- (b) incorporated or registered under another Act relating to the incorporation or registration of corporations.

#### **Formation meeting**

**23.(1)** Before applying for registration as a cooperative, the corporation must pass a special resolution under 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 enable 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 18,<sup>6</sup> and including active membership provisions under part 6,<sup>7</sup> must also be passed by special resolution; and
- (b) for a proposed trading cooperative—a disclosure statement approved under section 17<sup>8</sup> must be presented to the meeting.

### **Application for registration**

**24.** An application for registration must be—

- (a) in the approved form; and
- (b) accompanied by the fee prescribed under a regulation; and
- (c) accompanied by—
  - (i) 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
  - (ii) a report in the approved form as to the affairs of the corporation and showing its assets and liabilities, made up to the latest practicable date before the application; and
  - (iii) a copy of the memorandum and articles of association or rules of the corporation in force at the date of the application; and
  - (iv) 2 copies of the proposed rules of the cooperative, as provided for by the special resolution; and
  - (v) for a proposed trading cooperative—a copy of the disclosure statement presented to the meeting held under section 23 and signed and certified by the directors or committee of management of the corporation; and

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<sup>6</sup> Section 18 (Approval of rules)

<sup>7</sup> Part 6 (Active membership)

<sup>8</sup> Section 17 (Approval of disclosure statement)

- (vi) a list containing the name, address, occupation and place and date of birth of each director; and
- (vii) evidence to the satisfaction of the registrar of the incorporation of the existing corporation; and
- (viii) any other particulars the registrar may require in a particular case.

### **Requirements for registration**

**25.(1)** When an application is made for registration of a cooperative under this division, the registrar must register the corporation as a cooperative under this Act and register its rules under this Act if the registrar is satisfied the requirements for registration of the cooperative have been met.

**(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 18;<sup>9</sup>
- (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 the requirements for registration of the cooperative have been met, the registrar may refuse to register the cooperative and its rules and must give to the applicant written notice of the refusal and the reasons for the refusal.

**(4)** If the registrar has decided under this section to register a corporation under this Act, the corporation must notify 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

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<sup>9</sup> Section 18 (Approval of rules)

to be registered under the law under which it was previously registered.

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

### **Certificate of registration**

**26.(1)** On the registration of the corporation as a cooperative, the registrar must—

- (a) issue a certificate of registration; and
- (b) publish notice of the issue of the certificate in the gazette.

(2) The corporate name of a corporation registered as a cooperative is the name approved by the registrar, as stated in the certificate of registration issued by the registrar.

### **Effect of registration**

**27.(1)** The corporation is to be taken to be incorporated under this Act on its registration.

(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 that is taken to be the same body after registration as a cooperative as it was before and no act, matter or thing is affected by the change.

## ***Division 6—Conversion of cooperative***

### **Conversion of cooperative**

**28.(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 7—Appeals*

#### **Appeal against refusal to approve disclosure statement**

29. The person who submitted a draft disclosure statement to the registrar under this Act may appeal to the Supreme Court against a failure of the registrar to approve the statement.

#### **Appeal against refusal to approve draft rules**

30. The person who submitted draft rules to the registrar under this Act may appeal to the Supreme Court against a failure of the registrar to approve the rules.

#### **Appeal against refusal to register**

31. The applicants for registration of a proposed cooperative under this part may appeal to the Supreme Court against a failure of the registrar to register the cooperative.

#### **Supreme Court's powers on appeal**

32. The Supreme Court may make any order it considers appropriate to dispose of an appeal under this division.

### *Division 8—General*

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

33.(1) A proposed cooperative or any person on its behalf or otherwise who accepts money for the proposed cooperative before the proposed

cooperative is registered must hold that money on trust until the cooperative is registered.

(2) If a cooperative is not registered within 3 months after the acceptance of 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—60 penalty units.

### **Issue of duplicate certificate**

**34.** The registrar must issue a duplicate certificate of registration—

- (a) if the registrar is satisfied the original certificate is lost or destroyed; and
- (b) on payment of the fee prescribed under a regulation.

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

### *Division 1—General powers*

#### **Effect of incorporation**

**35.** As a corporation, a cooperative—

- (a) has perpetual succession; and
- (b) has a common seal; and
- (c) may sue and be sued in its corporate name; and
- (d) subject to this Act, is capable of taking, purchasing, leasing, holding, selling and disposing of real and personal property; and
- (e) may do and suffer all acts and things that corporations may by law do and suffer and that are necessary or expedient.

**Power to form companies and enter into joint ventures**

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

- (a) to form or participate 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 persons or bodies.

***Division 2—Doctrine of ultra vires abolished*****Interpretation**

**37.** In this division—

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

**Doctrine of ultra vires abolished**

**38.(1)** 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 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.

**(2)** This division is to be construed and have effect in accordance with subsection (1).

**Legal capacity**

**39.(1)** A cooperative has, both within and outside the State, the legal capacity of an individual.

**(2)** Without limiting subsection (1), a cooperative has, both within and outside the State, 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 State; and
- (g) to do any other act it is authorised to do by any other law (including a law of a place outside the State).

**(3)** Subsections (1) and (2) have effect in relation to a cooperative—

- (a) subject to this Act but despite section 40(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.

**Restrictions on cooperatives in rules**

**40.(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 on, or an express prohibition of, the exercise of that power, being a restriction or prohibition contained in the cooperative's rules; 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 those objects.

(3) An officer of a cooperative who is involved in a contravention by the cooperative of this section also contravenes this section.

(4) A person who contravenes this section is not guilty of an offence.

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

**41.(1)** The exercise of a power or the doing of an act in contravention of section 40 is not invalid merely because of the contravention.

(2) An act of an officer of a cooperative is not invalid merely because, by doing the act, the officer contravenes section 40.

(3) The fact that the exercise of a power or the doing of an act contravenes or would contravene section 40 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 part 4, division 5;<sup>10</sup> or
- (c) an application for an injunction under section 460<sup>11</sup> 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), a court would have power under section 460 to grant, on the application of a person, an injunction restraining

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<sup>10</sup> Part 4, division 5 (Oppressive conduct of affairs)

<sup>11</sup> Section 460 (Injunctions)

a cooperative or an officer of a cooperative from engaging in particular conduct constituting a contravention of section 40, the court may, on the application of that person, order the cooperative or the officer to pay damages to that person or any other person.

### *Division 3—Persons having dealings with cooperatives*

#### **Assumptions entitled to be made**

**42.(1)** A person may make the assumptions in section 43 in relation to—

- (a) dealings with a cooperative; or
- (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 may assume a matter, the cooperative or anyone mentioned in subsection (1)(b) can not assert in a proceeding in relation to the dealings that the matter is incorrect.

#### **Assumptions**

**43.(1)** A person may assume that the cooperative's rules have been complied with.

**(2)** A person may assume 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—

- (a) has been properly appointed; and
- (b) has authority to exercise the powers and perform the duties customarily exercised or performed by a director or officer of a similar cooperative.

**(3)** A person may assume that anyone who is held out by the cooperative to be an officer or agent of the cooperative—

- (a) has been properly appointed; and
- (b) has authority to exercise the powers and perform the duties customarily exercised or performed by that kind of officer or agent of a similar cooperative.

(4) A person may assume 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.

(5) A person may assume 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 is, or may be assumed to be, a director or officer of the cooperative.

(6) A person may assume that a document has been 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 is, or may be assumed to be, a director or officer of the cooperative.

(7) A person may assume that the officers and agents of the cooperative properly perform their duties to the cooperative.

### **Person who knows or ought to know can not make assumptions**

44. This division does not entitle a person to make an assumption, and does not prevent an assertion being made in relation to an assumption if—

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

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

45.(1) A person is not considered 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, merely 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, or filed with a person under a previous law corresponding to a provision of this Act.

(2) Subsection (1) does not apply to a document, or the contents of a document, that has been filed under part 10, division 2<sup>12</sup> to the extent that the document relates to a charge that is registrable under that division or law.

(3) Despite subsection (1), a member of a cooperative is taken to have knowledge of the rules of the cooperative.

### **Effect of fraud**

**46.(1)** A person's entitlement under this division to make an assumption is not affected merely by the fact that any person—

- (a) has acted or is acting fraudulently in relation to the dealing, acquisition or purported acquisition of title to property to which the assumption relates; or
- (b) has forged a document that appears to have been sealed on behalf of a cooperative.

(2) A person may not make an assumption if the person has actual knowledge of the fraudulent action or forgery mentioned in subsection (1).

### ***Division 4—Authentication and execution of documents and confirmation of contracts***

#### **Common seal**

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

#### **Official seal**

**48.(1)** A cooperative may, if authorised by its rules, have, for use in place

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<sup>12</sup> Part 10, division 2 (Charges)

of its common seal outside the State where its common seal is kept, 1 or more official seals, each of which must be a facsimile of the common seal of the cooperative with the addition on its face of the name of the place where it is to be used.

(2) The person attaching an official seal must, by signed writing, certify on the instrument to which it is attached the date on which and the place at which it is attached.

(3) A document sealed with an official seal under this section is taken to be sealed with the common seal of the cooperative.

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

49. A document or proceeding requiring authentication by a cooperative may be authenticated by the signature of 2 people, 1 of whom is a director of the cooperative and 1 of whom is a director or an officer of the cooperative and need not be authenticated under the seal of the cooperative.

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

50.(1) A cooperative may, by writing under its common seal, empower a person, either generally or in relation to a stated matter, as its agent or attorney (“**authorised attorney**”) to execute deeds on its behalf.

(2) A deed signed by an authorised attorney on behalf of the cooperative and under the seal of the 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 an authorised attorney, as between the cooperative and a person dealing with the attorney, continues during the period, if any, mentioned in the instrument conferring the authority or, if no period is mentioned, until notice of the revocation or termination of the authority of the attorney has been given to the person dealing with the attorney.

### **Execution under seal**

51. A contract or other document executed, or purporting to have been executed, under the seal of a cooperative is not invalid merely because a person certifying 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.

### **Contractual formalities**

**52.(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 the contract were made, varied or discharged by an individual.

**(2)** The making, varying or discharging of a contract under subsection (1) is effectual 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.

### **Other requirements as to consent or sanction not affected**

**53.** 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.

### **Transitional**

**54.** This division does not apply to the making, varying or discharging of a contract before the commencement of this division, but applies otherwise to a cooperative whether it gives its authority before, on, or after, the commencement.

## ***Division 5—Pre-registration contracts***

### **Contracts before registration**

**55.(1)** If a person enters into, or purports to enter into, a 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 that is 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) The person is liable to pay damages to each other party to the pre-registration 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) within the period agreed to by the parties to the contract.

(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 it thinks just in the circumstances, including ordering the cooperative—

- (a) to pay all or part of the damages the person is liable to pay; or
- (b) to transfer property the cooperative received because of the contract to a party to the contract; or
- (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.

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

**56.(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 can not recover damages under section 55 from the person.

(4) Despite any rule of law or equity, the person does not have a right of indemnity against the cooperative in relation to the person's liability under this division even if the person was acting, or purporting to act, as trustee for the cooperative.

### **This division replaces other rights and liabilities**

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

## **PART 4—MEMBERSHIP**

### *Division 1—General*

#### **Becoming a member**

58.(1) On the registration of a cooperative, the persons who signed the application for registration become members of the cooperative.

(2) Other persons may be admitted as members of the cooperative as provided by its rules.

(3) A person who is under 18 may be admitted as a member of the cooperative unless the rules of the cooperative otherwise provide.

(4) A corporation is not (merely because it is a corporation) disqualified from being a member of a cooperative unless the cooperative's rules provide that corporations are disqualified from being members.

(5) If 2 or more cooperatives merge, the members of the merged cooperative are—

(a) the members of the merging cooperatives; and

- (b) other persons admitted as members of the merged cooperative under its rules.

### **Members of associations**

**59.(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 under 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 (not being a cooperative) may be admitted to membership of the association as a component cooperative if—

- (a) it is incorporated or registered under another law, whether or not a law of Queensland; and
- (b) in the opinion of the board of the association, it is designed to function under cooperative principles; and
- (c) it is eligible to be admitted to membership under the rules of the association.

### **Members of federations**

**60.(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 under the rules of the federation; and
- (c) any corporations admitted to membership under subsection (2).

**(2)** If the registrar certifies 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.

**Qualification for membership**

**61.(1)** A person is not qualified to be admitted to membership of a cooperative unless—

- (a) there are reasonable grounds for believing the person will be an active member of the cooperative; and
- (b) the person is otherwise eligible under the rules of the cooperative.

**(2)** The rules of a cooperative must contain provisions that—

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

**Membership may be joint**

**62.** Membership of a cooperative may be individual and, unless the rules of the cooperative provide otherwise, may be joint.

**Members under 18**

**63.(1)** A member of a cooperative is not entitled to avoid any obligation or liability as a member under a contract, deed or other document entered into as a member on any ground relating to minority.

**(2)** A person who is under 18 is not competent to hold any office in a cooperative.

**(3)** A member of a cooperative who is under 18 is not entitled to vote.

**(4)** This section applies only to individuals.

**Representatives of corporations**

**64.(1)** If a corporation is a member of a cooperative, it may by instrument served on the cooperative appoint a person to represent it in relation to its membership.

**(2)** A corporation must not appoint a person to represent the corporation as a member of a cooperative, if he or she is currently a member of the

cooperative or a representative of another corporation member.

Maximum penalty—10 penalty units.

(3) The power to appoint a representative is subject to any restriction imposed by the rules of the cooperative as to the entitlement of a person to represent a corporation.

(4) A person is not qualified to be appointed the representative of a company that is not a listed corporation (within the meaning of the Corporations Law) unless the person is an officer, member or employee of the company.

### **Notification of shareholders and shareholdings**

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

- (a) a list of the names of all the shareholders of that 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.

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

**66.(1)** A person ceases to be a member of a cooperative in each of the following circumstances and as otherwise provided by this Act—

- (a) if the member's membership is cancelled under part 6;<sup>13</sup>
- (b) if the member is expelled or resigns under the rules of the cooperative;
- (c) if—
  - (i) the member becomes bankrupt; or
  - (ii) the member's property becomes subject to control under the

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<sup>13</sup> Part 6 (Active membership)

law relating to bankruptcy;

unless provision is made to the contrary in the rules of the cooperative;

- (d) on death;
- (e) if the contract of membership is rescinded on the ground of misrepresentation or mistake;
- (f) for a member that is a corporation—if the body 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 some other person is registered in the member's place.

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

**67.** For a cooperative that has a share capital, in addition to the circumstances in section 66, a member ceases to be a member if—

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

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

**68.(1)** A person who is a director of a cooperative must not knowingly allow the cooperative to continue to carry on business with fewer than the minimum number of members allowed for more than 28 days after the

number of members falls below the minimum number.

Maximum penalty—20 penalty units.

(2) Each person who is found guilty of an offence under subsection (1) is also liable to satisfy all obligations of the cooperative incurred after the 28 days mentioned in subsection (1), 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 than 5 is prescribed under a regulation, the prescribed number.

(4) The registrar may, by written 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 in the approved form before the period to be extended ends.

### *Division 2—Rights and liabilities of members*

#### **Rights of membership not exercisable until registered etc.**

**69.(1)** 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 for membership or acquired any share or interest that is provided in the rules of the cooperative.

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

Maximum penalty for subsection (2)—20 penalty units.

#### **Liability of members to cooperative**

**70.(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.

### **Cooperative to give information to person intending to become a member**

**71.(1)** The board of a cooperative must give each person intending to become a member of the cooperative—

- (a) a consolidated copy of the rules of the cooperative; and
- (b) a copy of all special resolutions that apply to the member passed by the members of the cooperative, except special resolutions providing for an alteration of the rules of the cooperative; and
- (c) a copy of the last annual report of the cooperative under section 242.<sup>14</sup>

(2) The board of a non-trading cooperative or, with the consent of the registrar, the board of a trading cooperative may comply with subsection (1) by—

- (a) giving the person intending to become a member notice that the documents mentioned in subsection (1) may be inspected by the person at the registered office of the cooperative and at each other office of the cooperative in or outside Queensland, including outside Australia; and
- (b) making the documents available for inspection.

(3) The registrar's consent may be given on conditions.

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<sup>14</sup> Section 242 (Annual report to be filed with registrar)

**Entry fees and regular subscriptions**

**72.(1)** The rules of a cooperative may—

- (a) require the payment by members of entry fees and regular subscriptions; and
- (b) provide for the repayment of the fees and subscriptions on a person ceasing to be a member.

**(1A)** The calculation of the amount of a particular member's regular subscription may be based on the amount of business the member does with the cooperative.

**(2)** A cooperative must give to any person intending to become a member written notice of entry fees or regular subscriptions payable by a member to the cooperative.

**(3)** A person who becomes a member of the cooperative is not liable to pay entry fees or regular subscriptions except—

- (a) the fees or subscriptions of which the person was given written 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.

**Members etc. may be required to deal with cooperative**

**73.(1)** The rules of a cooperative may contain provisions that require a member to have stated dealings with the cooperative for a fixed period and to enter into a contract for that purpose.

**(2)** A cooperative may, if authorised by its rules, make a contract with a member containing provisions that require the member to have stated dealings with the cooperative for a fixed period.

**(3)** In particular, the provisions of the rules or a contract may require a member—

- (a) to sell products through or to the cooperative; or
- (b) to obtain supplies or services through or from the cooperative; or
- (c) to pay to the cooperative a stated amount as liquidated damages

for any failure to comply with a requirement authorised by this section.

(4) Any amount required to be paid to the cooperative as liquidated damages is, for section 75,<sup>15</sup> a debt payable by the member to the cooperative.

(5) A contract authorised by this section is binding on the cooperative and all other parties even though, apart from this Act, the contract would be invalid as being in restraint of trade.

(6) Rules authorised by this section are authorised even though, apart from this section, the rules might be invalid as being in restraint of trade.

### **Fines payable by members**

**74.(1)** A cooperative may impose a fine on a member for an infringement of the rules of the cooperative if the rules of the cooperative so provide.

(2) A fine imposed under subsection (1) must not be more than the maximum fine fixed by the rules under section 101.<sup>16</sup>

(3) A fine must not be imposed unless—

- (a) notice of intention to impose the 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, to show cause why the fine should not be imposed.

(4) The cooperative may set off the whole or any part of the fine against an amount payable to the member for produce delivered by the member to the cooperative, but no part of the fine is to be set off against any advance payable to the member from the cooperative under the rules against produce so delivered.

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<sup>15</sup> Section 75 (Charge and set-off of cooperative)

<sup>16</sup> Section 101 (Content of rules)

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

**75.(1)** A cooperative has, in relation to any debt payable 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 that 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 thing that is 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 so appropriated must be cancelled.

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

**76.(1)** When a member is expelled from a cooperative under its rules, the cooperative must, within 1 year after the day of expulsion—

- (a) repay to the former member an amount (the “**repayable amount**”) made up of the amount paid up on the shares held by the member at the day of expulsion, less any amount owed by the member to the cooperative at the day of expulsion under the rules of the cooperative or any contract or otherwise; or
- (b) apply the repayable amount under subsection (2) if—
  - (i) the board considers 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—

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- (a) the cooperative may appropriate the amount as a donation to the cooperative, but only if the former member consents 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.<sup>17</sup>

(3) If the balance sheet of the cooperative last issued before the expulsion of a member of the cooperative disclosed a loss or deficiency, there must be a proportionate reduction in the capital to be repaid to the member.

(4) That reduction must be by an amount that bears to the amount of the loss or deficiency so disclosed in the same proportion as the number of shares held by the member bore to the total number of shares held by all members of the cooperative as at the date of expulsion of the member.

(5) Shares for which capital has been repaid must be cancelled.

### *Division 3—Death of member*

#### **Meaning of “interest”**

77. In this division—

“**interest**”, of a deceased member in a cooperative, includes—

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

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<sup>17</sup> See also sections 133 (Interest on deposits and debentures) and 134 (Repayment of deposits and debentures).

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

**78.** Subject to section 167,<sup>18</sup> on the death of a member, the board must transfer the deceased member's share or interest in the cooperative to—

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

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

**79.(1)** If the total value of a deceased member's shares or interest in a cooperative is less than \$10 000 (or a higher amount prescribed under a regulation), the board may, on the basis of evidence that it considers enough, transfer the shares or interest under whichever of the following paragraphs is appropriate—

- (a) if the member dies testate—to the person who appears to the board to be entitled to the shares or interest under the will of the deceased member;
- (b) if the member dies intestate—to any person who appears to the board to be entitled to obtain a grant of administration of the estate of the deceased, and that person must then hold the shares or interest on the same trusts as if he or she had obtained the grant.

**(2)** 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 deceased member.

**(3)** In this section—

**“transfer”**, of an interest, includes the payment of money.

**Value of shares and interests**

**80.** The value of the shares or interest of a deceased member must be decided, for this division, under the rules of the cooperative.

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<sup>18</sup> Section 167 (Transfer on death of member)

**Cooperative protected**

**81.** Any transfer of property made by the board of a cooperative under this division is valid and effectual against any demand made on the cooperative by any other person.

***Division 4—Disputes involving members*****Grievance procedure**

**82.(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 any person to act on behalf of the member in the grievance procedure.

**(3)** The grievance procedure must allow for natural justice to be applied.

**(4)** In this division—

“**member**” includes any person who was a member not more than 6 months before the dispute occurred.

**Application to Supreme Court**

**83.(1)** The Supreme Court may, on the application of a member or the cooperative, make an order declaring and enforcing—

- (a) the rights or obligations of members of the cooperative between themselves; or
- (b) the rights or obligations 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 considers 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 method 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.

### *Division 5—Oppressive conduct of affairs*

#### **Interpretation**

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

#### **Application of division**

**85.** This division does not apply to anything done under part 6.<sup>19</sup>

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

**86.** The following persons may apply to the Supreme Court for an order under this division—

- (a) the registrar;
- (b) a member who believes 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;

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<sup>19</sup> Part 6 (Active membership)

- (c) a member who believes 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 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.

### **Orders the Supreme Court may make**

**87.(1)** On application under this division, the Supreme Court may make any order it considers appropriate including (without being limited to) 1 or more of the following orders—

- (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 of the member's shares under the provisions of this Act for repayment of share capital;
- (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 institute, prosecute, defend or discontinue a stated proceeding, or authorising a member or members of the cooperative to institute, prosecute, defend or discontinue a stated 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 stated conduct or from doing a stated act or thing;
- (i) an order directing a cooperative to become registered as a company under the Corporations Law;

- (j) an order requiring a person to do a stated act or thing;
- (k) an order as to costs.

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

**88.** The Supreme Court may make an order under this division if it considers that—

- (a) 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 (the “**oppressed member**”), whether or not in the capacity of a member; or
  - (ii) contrary to the interests of the members as a whole; or
- (b) 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 members, was or would be—
  - (i) oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member (the “**oppressed member**”), whether or not in the capacity of a member; or
  - (ii) contrary to the interests of the members as a whole.

### **Winding-up need not be ordered if oppressed members prejudiced**

**89.** The Supreme Court need not make an order under this division for the winding-up of a cooperative if it considers the winding-up of the cooperative would unfairly prejudice an oppressed member.

### **Application of winding-up provisions**

**90.** 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 changes that are necessary, as if the order had been made on an application filed in the Supreme Court by the cooperative.

**Changes to rules**

**91.** 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 properly 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.

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

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

Maximum penalty—10 penalty units.

***Division 6—Proceedings on behalf of a cooperative by members and others***

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

**93.(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 that proceeding, or a particular step in that proceeding, (for example, compromising or settling it), 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 94.

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

**Applying for and granting leave**

**94.(1)** A person mentioned in section 93(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 application if it is satisfied that—

- (a) it is probable the cooperative will not itself bring the proceeding, or properly take responsibility for it, or for the step in it; and
- (b) the applicant is acting in good faith; 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 a proceeding—there is a serious question to be tried; and
- (e) either—
  - (i) at least 14 days before making the application, the applicant gave written notice to the cooperative of the intention to apply for leave and the reasons for applying; or
  - (ii) it is appropriate to grant leave even if subparagraph (i) is not satisfied.

**Substitution of another person for the person granted leave**

**95.(1)** Any of the following persons may apply to the Supreme Court for an order that the person be substituted for a person to whom leave has been granted under section 94—

- (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 in good faith; and
- (b) in all the circumstances, it is appropriate to make the order.

(4) An order substituting 1 person for another person 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 that proceeding or to have made that intervention.

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

**96.(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 94<sup>20</sup> 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 94 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 as to damages) to make in a proceeding brought or intervened in with leave under section 94 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.

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<sup>20</sup> Section 94 (Applying for and granting leave)

**Leave to discontinue, compromise or settle proceedings brought, or intervened in, with leave**

**97.** A proceeding brought or intervened in with leave must not be discontinued, compromised or settled without the leave of the Supreme Court.

**General powers of the Supreme Court**

**98.(1)** The Supreme Court may make any order, and give any direction, it thinks just in relation to a proceeding brought or intervened in with leave, or in relation to an application 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, any act; and
- (d) an order appointing an independent person to investigate, and report to the court, on—
  - (i) the financial affairs of the cooperative; or
  - (ii) the facts or circumstances that gave rise to that 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 to the cooperative, to inspect and make copies of any records of the cooperative for any purpose connected with the person's appointment.

**Power of Supreme Court to make costs order**

**99.** At any time, the Supreme Court may, in relation to a proceeding brought or intervened in with leave under section 94<sup>21</sup> or an application for

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<sup>21</sup> Section 94 (Applying for and granting leave)

leave under that section, make any order it thinks just about the costs of the person who applied for or was granted leave, the cooperative or any other party to the proceeding or application, including an order requiring indemnification for costs.

## **PART 5—RULES**

### **Effect of rules**

**100.(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 persons agrees to observe and perform the provisions of the rules as in force for the time being so far as those provisions apply to the person.

### **Content of rules**

**101.(1)** The rules of a cooperative must state or otherwise make provision for the matters included in schedule 1.<sup>22</sup>

**(2)** The rules must be divided into paragraphs numbered consecutively.

**(3)** The rules may state the objects of the cooperative.

**(4)** The rules may incorporate any provision of the model rules approved under section 104.<sup>23</sup>

**(5)** The rules may provide for the imposition of a fine on a member for an infringement of the rules.

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<sup>22</sup> Schedule 1 (Matters for which rules must make provision)

<sup>23</sup> Section 104 (Model rules)

(6) If the rules provide for the imposition of a fine, the rules must state the maximum fine that may be imposed on a member.

(7) The maximum fine fixed by the rules must not be more than any amount prescribed under a regulation as the maximum fine.

(8) The rules may contain other provisions not inconsistent with this Act.

### **Purchase and inspection of copy of rules**

**102.(1)** Any 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 prescribe an amount, on payment of \$5.

(2) The amount required by the rules must not be more than the fee prescribed under a regulation for obtaining a copy of the rules from the registrar.

(3) Any person is entitled to obtain from the registrar a copy of the rules of a cooperative on payment of the fee prescribed under a regulation.

### **False copies of rules**

**103.(1)** A person must not give 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 any alterations of rules, other than those that have been registered, representing that they are binding on the members of the cooperative.

Maximum penalty—10 penalty units.

(2) A person must not alter any of the rules of a cooperative after they have been registered and circulate the altered rules representing that they have been registered when they have not been.

Maximum penalty—10 penalty units.

### **Model rules**

**104.(1)** A regulation may approve model rules for cooperatives.

(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 of the class to which the model rules apply do not provide for that matter, the provision of the model rules relating to that matter is taken to be included in the rules of the cooperative.

### **Rules can only be altered under this Act**

**105.** The rules of a cooperative can not be altered except under this Act.

### **Approval of alteration of rules**

**106.(1)** A proposed alteration of the rules must be approved by the registrar before the resolution altering the rules is passed by a cooperative or the board of a cooperative.

(2) A draft of the proposed alteration must be submitted to the registrar at least 28 days (or the shorter period the registrar may allow in a particular case) before—

- (a) the 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.

(3) The proposed alteration must—

- (a) be in accordance with section 101;<sup>24</sup> and
- (b) be in a form that may reasonably be approved; and
- (c) be accompanied by a statement stating the reasons for the alteration.

(4) The registrar may—

- (a) approve the alteration as submitted; or
- (b) approve a different alteration to that submitted; or
- (c) refuse to approve the alteration.

(5) The registrar approves of the alteration by giving written notice of the approval of the alteration to the person who submitted the alteration to the

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<sup>24</sup> Section 101 (Content of rules)

registrar.

(6) The registrar must give written notice of the refusal to approve the alteration and the reasons for the refusal to the person who submitted the alteration to the registrar.

### **Alteration by special resolution**

**107.** The rules of a cooperative must be altered by special resolution unless this Act otherwise provides.

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

**108.(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 imposed under the authority of this Act.

(2) If the rules of a cooperative are altered under this section, the cooperative must cause the alteration to be notified in writing to its members as soon as practicable after the alteration takes effect and in any event not later than the day when notice of the next annual general meeting of the cooperative after the alteration takes effect is given to the members.

### **Alteration does not take effect until registered**

**109.(1)** An alteration of the rules of a cooperative does not take effect unless and until it is registered by the registrar.

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

- (a) be made in the approved form; and
- (b) be made within 28 days, or a shorter or longer time prescribed under a regulation, after the alteration is made; and
- (c) be accompanied by a consolidated copy of the rules of the cooperative, including the alteration.

(3) The registrar must register the alteration unless—

- (a) the registrar is satisfied the alteration is contrary to this Act; or
- (b) the registrar has other reasonable cause to refuse to register the alteration.

(4) A certificate of registration of an alteration of the rules of a cooperative given by the registrar is, in favour of any person advancing money to the cooperative on the faith of the certificate or a guarantor of that advance, evidence that the alteration in the rules was properly made.

### **Appeal against refusal to approve alteration**

**110.** A cooperative may appeal to the Supreme Court against a failure of the registrar to approve an alteration of its rules.

### **Appeal against refusal to register alteration**

**111.** A cooperative may appeal to the Supreme Court against a failure of the registrar to register an alteration of its rules.

### **Supreme Court's powers on appeal**

**112.** The Supreme Court may make any order it considers appropriate to dispose of an appeal under section 110 or 111.

## **PART 6—ACTIVE MEMBERSHIP**

### *Division 1—Definitions*

#### **Meaning of “primary activity”**

**113.** A “primary activity” of a cooperative is an activity specified in the rules of the cooperative as a primary activity of the cooperative.

#### **What is active membership**

**114.** 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, for carrying on a primary activity of the cooperative, in the way and to the extent the rules of the cooperative provide; or

- (b) maintains any other relationship or arrangement with the cooperative for carrying on a primary activity of the cooperative that a regulation provides.

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

**115.(1)** Active membership provisions in the rules of a cooperative are provisions in the rules that state—

- (a) which of the activities of the cooperative are the primary activities of the cooperative; and
- (b) the way in which and the extent to which a member of the cooperative must use or support an activity of, or maintain a relationship or arrangement with, the cooperative, for carrying on 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 2—Rules to contain active membership provisions*

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

**116.** A cooperative must have at least 1 primary activity.

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

**117.** The board of a cooperative must ensure the rules of the cooperative contain active membership provisions under this part.

**Factors and considerations for deciding primary activities etc.**

**118.(1)** The board of a cooperative must ensure 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) the way and extent to which a member is required to use or support an activity of, or maintain a relationship or arrangement with, a cooperative, for carrying on 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 more than 1) the primary activities taken together must form the basic purpose for which the cooperative exists and a significant contribution to the business of the cooperative; and
- (b) the way and extent of required utilisation, support, relationship or arrangement should be reasonable when considered in relation to the activities of the cooperative as a whole; and
- (c) any other factors and considerations prescribed under a regulation.

**(3)** A regulation may—

- (a) provide for the things to be taken into account in deciding whether an activity makes a significant contribution to the business of the cooperative; and
- (b) state minimum percentages of turnover, minimum amounts of income or minimum amounts of business necessary to constitute that significant contribution.

**(4)** Nothing in this section limits the right of active members other than the board of the cooperative to propose an active membership resolution.

**Active membership provisions—trading cooperatives**

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

- (a) provisions requiring a member to use an activity of the cooperative for carrying on of a primary activity stated in the

provisions to establish active membership; and

- (b) any other active membership provisions the registrar may approve.

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

**120.(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 to a primary activity of the cooperative, is enough to establish active membership of the cooperative.

(2) A member of a cooperative who would, on payment of the subscription, be an active member of a cooperative is taken to be an active member until the subscription is payable.

### ***Division 3—Active membership resolutions***

#### **Notice of meeting**

**121.(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 stated—

- (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 125.<sup>25</sup>

(3) If the notice to a member states that he or she is not eligible to vote on a resolution, the member may, after endeavouring to settle the matter with the cooperative, apply to the registrar for a decision as to the member's eligibility.

(4) The registrar may decide the matter, on the information available to the registrar, by direction in writing to the cooperative and the member.

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<sup>25</sup> Section 125 (Cancellation of membership of inactive member)

(5) The registrar's decision as to eligibility has effect but only if given before the meeting concerned is due to be held.

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

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

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

**123.** If the board of a cooperative 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 the proposal if he or she would be eligible to vote on the resolution at the meeting of the cooperative; or
- (b) if less than 2 directors (whether or not they are present at the meeting of the board of directors) would be eligible to vote on the resolution at the meeting of the cooperative—all the directors are eligible to vote on the proposal at the meeting of the board of directors.

### **Other entitlements of members not affected**

**124.** 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, obligation or duty of the member as a member.

## ***Division 4—Cancellation of membership of inactive members***

### **Cancellation of membership of inactive member**

**125.(1)** The board of a cooperative must declare the membership of a member cancelled if—

- (a) the whereabouts of the member are not presently known to the

cooperative and have not been known to the cooperative for at least the required period before that time; or

- (b) the member is not presently an active member of the cooperative and has not been an active member of the cooperative at any time during the required period immediately before that time.

(2) This section applies to a member only if he or she was a member of the cooperative throughout the required period.

(3) The question of whether a member was an active member at a particular time in the past is to be decided as if the active membership provisions concerned had been in force at that time.

(4) The board's declaration under this section has the effect of cancelling the membership concerned.

(5) A person may apply to the Supreme Court for an order under section 131<sup>26</sup> in relation to the cancellation of the person's membership under this section.

(6) In this section—

**“the required period”**, in relation to a cooperative, means—

- (a) 3 years; or
- (b) if a shorter period is stated in the rules of the cooperative—that period.

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

**126.(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 125.

(2) The board's declaration has the effect of forfeiting the shares concerned.

(3) Nothing in this section affects the operation of section 132.<sup>27</sup>

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<sup>26</sup> Section 131 (Order of Supreme Court against cancellation)

<sup>27</sup> Section 132 (Repayment of amounts owing because of cancelled membership)

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

**127.** 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 proper diligence to prevent the failure commits an offence.

Maximum penalty—20 penalty units.

**Deferral of forfeiture by board**

**128.(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 a member has ceased to be an active member because of unusual circumstances that prevent the member fulfilling his or her active membership obligations; or
- (b) if—
  - (i) the board thinks that during the deferral 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 of whether the member is an active member.

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

**Cancellation of membership prohibited in certain circumstances**

**129.** Unless a regulation otherwise provides, 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 Law, part 5.3A as adopted and applying under 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 purpose of being registered as a company under the Corporations Law, filed with the registrar a copy of the entry made in the minute book of the cooperative under section 193;<sup>28</sup> or
- (g) in other circumstances that may be prescribed under a regulation.

### **Notice of intention to cancel membership**

**130.(1)** The board of a cooperative must ensure that not less than 28 days notice of its intention to declare the membership of a member to be cancelled is given to the member.

**(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) is not more than \$50.

### **Order of Supreme Court against cancellation**

**131.(1)** If the Supreme Court is satisfied the cancellation of a member's membership under section 125<sup>29</sup> was or would be unreasonable, the court may by order direct that the membership should not have been cancelled or should not be cancelled.

**(2)** While an order is in force under this section—

- (a) the membership concerned is not required to be cancelled and any shareholding of the member is not required to be forfeited; and
- (b) the person whose membership was cancelled is entitled to be reinstated as a member of the cooperative with all the rights and

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<sup>28</sup> Section 193 (Postal ballots)

<sup>29</sup> Section 125 (Cancellation of membership of inactive member)

entitlements (including any shareholding) attaching to or arising from the former membership.

(3) Reinstatement of a member under this section is to be effected under the directions of the Supreme Court.

### **Repayment of amounts owing because of cancelled membership**

**132.(1)** If the membership of a member of a cooperative is cancelled under this part, the cooperative must, within 1 year after the date of cancellation—

- (a) repay to the former member the amount owing to the member because of the cancellation; or
- (b) apply the amount under subsection (2) if—
  - (i) the board considers repayment would adversely affect the financial position of the cooperative; or
  - (ii) the board and the former member so agree.

(2) The amount payable 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 133 as to 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 as a donation to the cooperative, but only if the former member consents in writing to the donation.

(3) The amount payable to a former member because of the cancellation of membership includes any amount paid up for 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).

**Interest on deposits and debentures**

**133.(1)** This section applies when the amount payable to a former member under section 76<sup>30</sup> or 132 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 for that period on the share capital of the cooperative; or
  - (ii) if the rate of dividend payable for that period has not been decided—at the rate (or the higher or highest rate) payable for the immediately preceding period for which a rate has been decided; or
  - (iii) if a rate of dividend has never been decided for the share capital of the cooperative—at the rate the board of the cooperative considers reasonable; or
- (b) for a cooperative without share capital—at the rate 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 applicable 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 provisions of the Corporations Law, part 7.12 adopted under section 256<sup>31</sup> do not apply to an allotment or issue of debentures under this section.

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<sup>30</sup> Section 76 (Repayment of shares on expulsion)

<sup>31</sup> Section 256 (Application of Corporations Law to issues of debentures)

**Repayment of deposits and debentures**

**134.(1)** A deposit or debenture to which an amount payable to a former member is transferred under this division or section 76(2) is to 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 within any shorter period the rules of the cooperative may require) after cancellation of the member's membership.

**Register of cancelled memberships**

**135.** A cooperative must keep a register stating the particulars prescribed under a regulation of persons whose membership has been cancelled under this part.

*Division 5—Entitlements of former members of trading cooperatives***Application of division**

**136.** This division only applies to trading cooperatives.

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

**137.(1)** Even though a person's shares in a cooperative have been forfeited under this part, the person is to be taken to be the holder of shares in the cooperative (the same in all respects as those that were forfeited) for the following purposes—

- (a) the entitlement of a shareholder in relation to the purchase of shares in the cooperative under an offer described in section 283(1)(a), (b) or (c)<sup>32</sup> or the purchase of all the shares in the cooperative, if the offer or purchase occurs within 5 years after the person's shares were forfeited;
- (b) the entitlement of a shareholder when the cooperative becomes

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<sup>32</sup> Section 283 (Share offers to which division applies)

registered as a company if the relevant special resolution under section 301<sup>33</sup> is passed within 5 years after 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 starts within 5 years after the person's shares were forfeited.

(2) Subsection (1)(a) does not apply to—

- (a) an offer described in section 283(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 part 12, division 1.<sup>34</sup>

(4) To remove doubt, it is declared that the entitlement under subsection (1)(a) of a person whose shares have been forfeited does not include an entitlement to vote on any matter.

(5) This section does not apply to a forfeited shareholding in a cooperative if section 138 operates to require the forfeited shareholding to be regarded as a forfeited shareholding in another cooperative.

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

**138.(1)** This section applies when a person's shares in a cooperative (the "**original cooperative**") are forfeited under this part and within 5 years after 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 part 12, division 1 involving the original cooperative; or
- (c) the engagements of the original cooperative are transferred to

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<sup>33</sup> Section 301 (Requirements before application can be made)

<sup>34</sup> Part 12, division 1 (Mergers and transfers of engagements)

another cooperative (the “**new cooperative**”) under part 12, division 1.

(2) A person mentioned in subsection (1) is, for section 137 (and the further operation of this section), taken to have held shares in the new cooperative and as having had those 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 is decided as follows—

- (a) if the entitlement of active members of the original cooperative in the circumstances concerned 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) The decision under subsection (3)(a) of 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 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).

### **Set-off of amounts repaid etc. on forfeited shares**

**139.(1)** If a person has an entitlement because of section 138, the entitlement operates to end any liability of the cooperative—

- (a) to repay to the person under section 132<sup>35</sup> any amount for the forfeited shares concerned; or
- (b) for a deposit held by the cooperative, or debentures allotted or issued to the person, under section 132 for the forfeited shares concerned (except a liability to pay interest that is payable but unpaid).

(2) If an amount has been repaid to a person under section 132 or 134,<sup>36</sup> the amount repaid is to be set off against any entitlement of the person under section 137<sup>37</sup> for the forfeited shares concerned.

(3) If the amount repaid can not 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 concerned must—

- (a) give written notice of the matter by post to the person concerned at the person's address last known to the cooperative, stating a period of not less than 28 days after the notice is given within 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 in which the registered office of the cooperative is situated.

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

**140.** 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 person's membership was cancelled.

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<sup>35</sup> Section 132 (Repayment of amounts owing because of cancelled membership)

<sup>36</sup> Section 134 (Repayment of deposits and debentures)

<sup>37</sup> Section 137 (Former shareholders to be taken to be shareholders for certain purposes)

**Regulation may exempt cooperatives from provisions**

**141.** A regulation may exempt a cooperative from a provision of this division.

**PART 7—SHARES***Division 1—Nature of share***Nature of share in cooperative**

**142.(1)** A share or other interest in a cooperative—

- (a) is personal property; and
- (b) is transferable or transmissible as provided by 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 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 2—Disclosure***Disclosure to intending shareholders in trading cooperative**

**143.(1)** The board of a trading cooperative must give a person who intends to acquire shares in the cooperative and is not already a shareholder in the cooperative a current disclosure statement that—

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- (a) has been approved by the registrar under section 17<sup>38</sup>; or
- (b) complies with section 143A 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.<sup>39</sup>

(4) A disclosure statement is current until whichever of the following happens first after the statement is prepared—

- (a) a change in the rights or liabilities attaching to any class of share in the cooperative;
- (b) a significant change in the financial position or prospects of the cooperative;
- (c) any of the next financial, directors' or auditor's reports required to be prepared under section 232(1) become available.

(5) If a disclosure statement stops being a current disclosure statement because of a change mentioned in subsection (4)(a) or (b), the cooperative must, within 14 days after the change—

- (a) give the registrar written notice—
  - (i) that the disclosure statement is no longer current because of a change mentioned in subsection (4)(a); or
  - (ii) that the disclosure statement is no longer current because of a change mentioned in subsection (4)(b); or
- (b) file a current disclosure statement with the registrar that complies with section 143A.

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<sup>38</sup> Section 17 (Approval of disclosure statement)

<sup>39</sup> Part 4 (Membership)

**Content of disclosure statement to intending shareholders**

**143A.** A disclosure statement given to a person under section 143 must contain<sup>40</sup>—

- (a) a statement of the rights and liabilities attaching to shares; and
- (b) a copy of the last annual report of the cooperative under section 242,<sup>41</sup> unless a copy of the report—
  - (i) has already been given to the person under this Act; or
  - (ii) has been made available for inspection under a notice given to the person under section 71(2)<sup>42</sup>; and
- (c) any other relevant information about the financial position and prospects of the cooperative if there has been a significant change since the date of the last annual report; and
- (d) any other information the registrar directs.

**Exemptions for disclosure statements**

**143B.(1)** The registrar may, by gazette notice, exempt the board or boards of a trading cooperative or a class of trading cooperative from a requirement under section 143 or 143A.

**(2)** An exemption under subsection (1) may be given only if the registrar is satisfied that compliance with the requirement would be inappropriate in the circumstances or would impose an unreasonable burden.

**(3)** The gazette notice is subordinate legislation.

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<sup>40</sup> See section 144A (Adoption of certain Corporations Law provisions about shares) for additional requirements relating to disclosure statements and other prospectuses.

<sup>41</sup> Section 242 (Annual report to be filed with registrar)

<sup>42</sup> Section 71 (Cooperative to give information to person intending to become a member)

***Division 3—Issue of shares*****Shares—general**

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

**(2)** Shares are to be of a fixed amount that must be specified in the rules of the cooperative.

**(3)** A cooperative may have more than 1 class of shares if the shareholding and the rights of shareholders comply with the cooperative principles.

**(4)** Subject to this part and part 4,<sup>43</sup> shares must not be issued to a non-member.

**Adoption of certain Corporations Law provisions about shares**

**144A.(1)** The Corporations Law, sections 1025, 1026, 1027, 1032, 1035, 1036 and 1043 are adopted by this section and apply to an offer or intended offer for subscription for shares in a cooperative or an invitation or intended invitation for shares in a cooperative, but only if—

- (a) the shares are offered to persons who are not shareholders in the cooperative; or
- (b) the invitation is made to persons who are not shareholders in the cooperative.

**(2)** To apply the provisions of the Corporations Law mentioned in subsection (1), a reference in the provisions to a prospectus is taken to include a disclosure statement, of any type, under this Act.

**(3)** To apply the Corporations Law, section 1035, a minimum subscription, in relation to a share offer or invitation, means the amount stated in a disclosure statement under section 143 as the minimum amount, that in the opinion of the directors, must be raised by the issue of shares.

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<sup>43</sup> Part 4 (Membership)

**Minimum paid up amount**

**145.(1)** A share must not be allotted unless at least 10% of the nominal value of the share has been paid.

**(2)** Any balance unpaid for shares at the time of allotment must be paid in a way specified in the rules or permitted by this Act.

**(3)** This section does not apply to a bonus share issued under section 150 or 266.<sup>44</sup>

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

**146.** A cooperative must not issue shares at a discount.

**Issue of shares at a premium**

**147.(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 total amount or value of the premiums on the shares must be transferred to a share premium account.

**(4)** The share premium account is to be treated as paid-up share capital of the trading cooperative and may be applied in 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 in part, the balance unpaid on shares previously issued to members of the cooperative;
- (c) in the payment of dividends, if the dividends are satisfied by the issue of shares to members of the cooperative;

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<sup>44</sup> Section 150 (Bonus share issues) or 266 (Distribution of surplus or reserves to members)

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

### **Joint ownership of shares**

**148.** A share may be held by 2 or more persons jointly, unless the rules of the cooperative otherwise provide.

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

**149.(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 under 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 money payable to members for dealings with the cooperative, under a proposal approved by a special resolution of the cooperative.

**(3)** A proposal to require a member to take up or subscribe for additional shares must—

- (a) be accompanied by a disclosure statement, approved 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 informing the member that the member may inform the board by notice on or before the date stated in the statement (being a date before the passing of the special resolution) that the member resigns on the passing of the special resolution.

**(4)** A proposal to deduct amounts in payment for additional shares from amounts payable to members for 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 those deductions.

(5) A proposal approved under this section is binding on—

- (a) all members of the trading cooperative at the date of the passing of the special resolution, other than a member who has given a notice of resignation under subsection (3)(c); and
- (b) all persons who become members of the trading cooperative after that date and before the total number of shares to be issued under the proposal has been issued.

(6) Sections 17 (except subsection (2)) and 29<sup>45</sup> apply to the approval of a disclosure statement under this section with any necessary changes and, in particular, as if a reference in section 17 to a formation meeting were a reference to the special resolution.

(7) To remove any doubt, it is declared that this section does not apply to the issue of bonus shares to a member under section 266.<sup>46</sup>

### **Bonus share issues**

**150.(1)** In addition to section 266, the rules of a trading cooperative may authorise the issue of bonus shares to members of the cooperative if the 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 apply if the assets were acquired for resale at a profit.

### **Restrictions on bonus shares**

**151.** Bonus shares under section 150 may be issued under the rules of

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<sup>45</sup> Sections 17 (Approval of disclosure statement) and 29 (Appeal against refusal to approve disclosure statement)

<sup>46</sup> Section 266 (Distribution of surplus or reserves to members)

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 for 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 in any year must not be more than 20%, or another percentage prescribed under a regulation, of the nominal value of the issued share capital of the cooperative immediately before the date of issue of the bonus shares.

### **Notice about bonus shares**

**152.** Notice of the meeting or postal ballot at which a resolution is to be proposed as a special resolution to approve 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, being a certificate given in relation to a valuation made not more than 1 year before the date of the notice by a person prescribed under a regulation or a person having qualifications prescribed under a regulation; and
- (d) particulars of acquisitions of shares in the cooperative made within the 3 years immediately preceding the date of the notice by or on behalf of each of its directors and his or her spouse and the father, mother, children, brothers and sisters of each director and spouse; 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 no circumstances are known to them as to why the issue should not take place.

#### ***Division 4—Beneficial and non-beneficial interest in shares***

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

**153.(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)** A transferee must ensure this section is complied with when an instrument of transfer of shares is filed by or on behalf of the transferee with the cooperative for registration of the transfer.

Maximum penalty—10 penalty units or 3 months imprisonment.

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

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

**154.(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) 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 shares non-beneficially; and

- (c) state 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 this section is complied with.

Maximum penalty—10 penalty units or 3 months imprisonment.

(5) This section does not apply to any shares for which particulars were given in a non-beneficial ownership notice under section 153 that were included in the instrument of transfer.

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

**155.(1)** If an instrument of transfer of shares filed with a cooperative includes a non-beneficial ownership notice under section 153<sup>47</sup> for particular shares but on registration of the transfer the transferee holds some or all of the 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 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).

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<sup>47</sup> Section 153 (Notice of non-beneficial ownership at time of transfer)

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

Maximum penalty—10 penalty units or 3 months imprisonment.

### **Notification of change in nature of shareholding**

**156.(1)** A person must notify the cooperative under this section of the change in the person's shareholding in the cooperative if the person—

- (a) starts to hold any shares beneficially that the person currently holds non-beneficially; or
- (b) starts to hold any shares non-beneficially that the person currently holds beneficially.

Maximum penalty—10 penalty units or 3 months imprisonment.

(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 state 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 change (even if before the end of that 14 days another change of that type affecting any of the shares occurs).

### **Presumption of awareness**

**157.(1)** For this division, a person is, unless the contrary is established, to be 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) applies only if the employee or agent has duties or acts in relation to the transfer to, or ownership by, the person of a share or shares in the cooperative concerned.

**Presumption that shares held non-beneficially**

**158.(1)** A person is taken to hold particular 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, another person.

**(2)** A person is taken to hold shares beneficially at a particular time unless the person holds the shares non-beneficially at that time.

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

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

**(2)** In deciding for the purposes of 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 153<sup>48</sup> included in an instrument of transfer registered by the cooperative;
- (b) information contained in a notice given to the cooperative under another provision of this division.

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

**160.(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 the 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 consent

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<sup>48</sup> Section 153 (Notice of non-beneficial ownership at time of transfer)

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 the estate.

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

**161.(1)** This section applies to a person (the “**appointed person**”) who is appointed under a law of a State relating to the administration of the estates of persons who, through mental or physical infirmity, are incapable of managing their affairs, to administer the estate of another person (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 the 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 consent of the cooperative and of the registered holder of the share, be registered as the holder of the share as administrator of the estate of the incapable person.

### **Registration as Official Trustee in Bankruptcy**

**162.(1)** This section applies when a share in a cooperative that is the property of a bankrupt vests by force of the *Bankruptcy Act 1966* (Cwlth) in the Official Trustee in Bankruptcy.

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

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

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

**163.(1)** A person registered under section 160, 161 or 162<sup>49</sup> is, while so registered, subject to the same liabilities in relation to the share as the liabilities 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.

**Notice of trusts in register of members**

**164.** Shares held by a trustee under a particular trust may, with the consent of the cooperative, be marked in the register of members in a way that identifies the shares as being held under the trust.

**No notice of trust except as provided by this division**

**165.** 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 5—Sale or transfer of shares***Sale or transfer of shares**

**166.(1)** A share in a cooperative can not be sold or transferred except—

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<sup>49</sup> Section 160 (Registration as trustee etc. on death of owner of shares), 161 (Registration as administrator of estate on incapacity of shareholder) or 162 (Registration as Official Trustee in Bankruptcy)

- (a) on the death of a member—under part 4, division 3<sup>50</sup> and section 167; or
- (b) to a person appointed to administer the estate of a shareholder under a law relating to the administration of the estates of persons who, through mental or physical infirmity, are incapable of managing their affairs; or
- (c) with the consent of the board—to any person, if there are reasonable grounds for believing the person will be an active member of the cooperative.

(2) A share in a cooperative can not be sold or transferred except under the rules of the cooperative.

### **Transfer on death of member**

**167.(1)** On the death of a member, the member's share in the cooperative can not be transferred to a person other than an administrator or executor except with the consent of the board of the cooperative.

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

### **Restriction on total shareholding**

**168.** The board of a cooperative must not consent under section 166 or 167 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 be more than—

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

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<sup>50</sup> Part 4, division 3 (Death of member)

**Transfer not effective until registered**

**169.** 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 for the share.

***Division 6—Repurchase of shares*****Purchase and repayment of shares**

**170.(1)** The rules of a cooperative may authorise the cooperative to—

- (a) purchase any share of a member in the cooperative at the request of the member; and
- (b) repay to a member, with the member's consent, all or any part of the amount paid up on any share held by the member when the amount repaid is not required for the activities of the cooperative.

**(2)** The amount paid by a cooperative under this section in purchasing shares or repaying any amount paid up on shares, or both, in any financial year of the cooperative must not be more than the total of—

- (a) 5% of the nominal value of the issued share capital of the cooperative immediately before the start of the financial year; and
- (b) the amount of any additional share capital of the cooperative subscribed for within that 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 on 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 records of the cooperative disclose that the amount paid is the net shareholder's equity per share in the undertaking of the cooperative; or
- (b) under the rules of the cooperative.

**(4A)** A cooperative must not purchase shares or repay amounts paid up on shares if—

- (a) the cooperative is likely to become insolvent because of the repurchase of the shares or because of the repayment of amounts paid up on the shares; or
- (b) the cooperative is insolvent.

**(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.

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

**171.(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 considers payment of the repurchase price would adversely affect the financial position of the cooperative; or
- (b) the board and the member so 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 for that period on the share capital of the cooperative; or
  - (ii) if the rate of dividend payable for that period has not been decided—at the rate (or the higher or highest rate) payable for the immediately preceding period for which a rate has been decided; or
  - (iii) if a rate of dividend has never been decided for the share capital of the cooperative—at the rate the board of the

cooperative considers reasonable; or

- (b) for a cooperative without share capital—at the rate 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 applicable 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 opinion of the board, adversely affect the financial position of the cooperative.

(5) The deposit or debenture must in any case be repaid within 10 years (or within any shorter period the rules of the cooperative require) after the repurchase of the shares concerned.

### **Cancellation of shares**

**172.** A cooperative must cancel any share purchased by or forfeited to the cooperative under this Act or the rules of the cooperative.

## **PART 8—VOTING AND MEETINGS**

### *Division 1—Voting entitlements*

#### **Application of part to voting**

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

#### **Voting**

**174.(1)** The right to vote attaches to membership and not shareholding.

(2) Except as provided in subsections (3) and (4), each member has only 1 vote at a meeting of the cooperative.

(3) If its rules so provide, a member of an association or federation may have the number of votes (up to 5) at a general meeting that is stated in the

rules.

(4) If the rules so provide, the chairperson has a second vote at a board meeting or general meeting.

(5) For 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 under the rules.

### **Voting by proxy**

**175.(1)** If the rules so provide, voting may be by proxy at a general meeting.

(2) The instrument of proxy may state the way in which a proxy is to vote on a particular resolution.

(3) The proxy must vote in the way authorised by an instrument of proxy mentioned in subsection (2).

(4) A person must not act as a proxy unless he or she—

- (a) is an active member of the cooperative; or
- (b) for an association or a federation—may 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 members (or a lesser number of members stated in the rules of the cooperative) on any 1 occasion.

(6) Subsection (5) does not apply if the proxy acts under an instrument of proxy mentioned in subsection (2).

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

**176.** A person can not exercise, under a power of attorney, the power of a member of the cooperative to vote if the person has that power in relation to another member of the cooperative under another power of attorney.

**Restriction on voting by representatives of corporations**

**177.** A person can not exercise, as the representative of a corporation, the power of a corporation member of a cooperative to vote if the person has that power as the representative of another corporation member of the cooperative.

**Inactive members not entitled to vote**

**178.** A member can not vote if the member is not an active member of the cooperative.

**Control of the right to vote**

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

Maximum penalty—60 penalty units or 6 months imprisonment.

**(2)** If a person controls the exercise of the right to vote of a member at a meeting of a cooperative—

- (a) the vote of the member is invalid; and
- (b) if the person is a member—the vote of the person is invalid.

**(3)** Nothing in this section prevents the exercise of a vote by means of a proxy or power of attorney.

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

**179A.** A member of a cooperative can not vote if the member has sold or transferred, or disposed of the beneficial interest in, the member's shares, or agreed to do so.

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

**180.(1)** A member of a cooperative can not vote if another person (whether or not a member of the cooperative) has a relevant interest in any share held by the member or in the right to vote of the member.

**(2)** A member who can not vote because of this section may apply to the

registrar to review the matter.

(3) The registrar may order that the member may vote if he or she is satisfied in the circumstances of the case that loss of the right to vote would be unjust or unreasonable, and the order of the registrar has effect accordingly.

### **Rights of representatives to vote**

**181.** A person appointed under 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 of directors if the member represented holds the qualifications required for holding office as a director.

### **Other rights and duties of members not affected by ineligibility to vote**

**182.** 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.

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

**183.** Any vote cast by or on behalf of a member of a cooperative when not entitled to vote must be disregarded.

## ***Division 2—Resolutions***

### **Decisions to be by ordinary resolution**

**184.** Unless this Act or the rules of the cooperative otherwise provides, every question for decision by a cooperative must be decided by ordinary resolution.

### **Ordinary resolutions**

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

### **Special resolutions**

**186.(1)** A special resolution is a resolution of a cooperative that is passed—

- (a) by a two-thirds majority at a general meeting of members; or
- (b) by a two-thirds majority in a postal ballot (other than a special postal ballot) of members; or
- (c) by a three-quarters majority in a special postal ballot of members.

**(2)** A special resolution may be passed by a postal ballot only if the rules of the cooperative so permit or this Act requires the special resolution to be passed by postal ballot (including a special postal ballot).

**(3)** A resolution must not be considered to have been passed as a special resolution unless 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 proposing 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.

### **How majority obtained is ascertained**

**187.(1)** A resolution is passed by a particular majority at a meeting if that majority of the members of the cooperative who, being entitled to do so,

vote in person or (if proxies are allowed) by proxy at the meeting vote in favour of the resolution.

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

### **Disallowance by registrar**

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

### **Declaration of passing of special resolution**

**189.(1)** At a meeting of a cooperative for the purpose of passing a special resolution, a declaration by the chairperson of the meeting that the resolution has been passed as a special resolution is evidence of that fact.

(2) A declaration by the returning officer for a postal ballot to pass a special resolution that the resolution has been passed as a special resolution is evidence of that fact.

(3) Subsection (1) does not apply if a poll is taken at the meeting of the cooperative.

### **Effect of special resolution**

**190.(1)** A special resolution has effect from the date it is passed.

(2) However, a special resolution relating to anything for which a special resolution is required to be passed by special postal ballot has no effect until it is registered.

### **Registration of special resolution**

**191.(1)** A cooperative must file 2 copies of each special resolution passed by the cooperative with the registrar under this section for registration.

(2) The copies must—

- (a) be filed within 28 days after the passing of a special resolution or the further period the registrar allows; and
- (b) be signed by a director and the secretary of the cooperative; and
- (c) be accompanied by the filing fee prescribed under a regulation.

(3) A cooperative or an officer of the cooperative must not knowingly fail to file the required copies under this section.

Maximum penalty—20 penalty units.

(4) This section and section 192 do not apply to a special resolution altering the rules of a cooperative.

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

**192.(1)** If the registrar is satisfied the cooperative has complied with this Act and the special resolution is not contrary to this Act, the registrar must register the special resolution.

(2) If the registrar considers the effect of a special resolution filed for registration would be in contravention of this Act or any other law, the registrar—

- (a) may refuse to register the special resolution; and
- (b) must give written notice to the cooperative that the special resolution—
  - (i) for a special resolution mentioned in section 190(2)<sup>51</sup>—has no effect; and
  - (ii) in any other case—has no effect as from the date 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, evidence that the resolution was properly passed.

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<sup>51</sup> Section 190 (Effect of special resolution)

***Division 2A—Resolution by circulated document*****Application of div 2A**

**192A.(1)** This division applies to a resolution of a cooperative, including a resolution appointing an officer or auditor or approving of or agreeing to any act, matter or thing, 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 of a cooperative—

- (a) of which more than 14 days notice is required to be given under this Act; or
- (b) that is required to be passed by a majority other than a simple majority.

**Resolution by circulation of document—fewer than 50 members**

**192B.(1)** If all the members of a cooperative have signed a document that sets out the terms of a 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 meeting is taken to have been held—

- (a) if all the members signed the document on the 1 day—on the day the document was signed, at the time the document was signed by the last member to sign; or
- (b) if the members signed the document on different days—on the day, and at the time, the document was signed by the last member to sign.

**(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 laid before the cooperative at the general meeting.

(5) The document is signed by all members of a cooperative only if the document is signed by each person who was a member of the cooperative at the time the document was signed by the last member to sign.

(6) Nothing in this section affects or limits any rule of law about the effectiveness of the assent of members of a cooperative given to a document, or to an act, matter or thing, otherwise than at a general meeting of the cooperative.

### *Division 3—Postal ballots*

#### **Postal ballots**

**193.(1)** A postal ballot may be held as provided by the rules of a cooperative and must be conducted in the way prescribed under a regulation.

(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 concerned; and
- (b) the number of formal votes cast against the proposal; and
- (c) the number of informal votes cast.

#### **Special postal ballots**

**194.(1)** A special postal ballot is a postal ballot that is conducted as required by this section.

(2) The ballot must not be held less than 21 days after notice of the ballot is given to members so as to enable enough time for a meeting to discuss the proposal the subject of the ballot to be called and held (whether by the board or on the requisition of 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 approved by the registrar and containing 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 connection with the proposal; and
- (d) any other matters the registrar directs.

(4) If the registrar so requires, the statement is to be accompanied by a report made by an independent person approved by the registrar about any matters the registrar directs.

(5) Sections 17 (except subsection (2)) and 29<sup>52</sup> apply to the approval of a disclosure statement under this section with any necessary changes and in particular as if a reference in section 17 to a formation meeting were a reference to the notice of the special postal ballot.

### **When is a special postal ballot required**

**195.** In addition to any requirement of this Act, the rules of a cooperative must require a special postal ballot to be conducted for 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;

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<sup>52</sup> Sections 17 (Approval of disclosure statement) and 29 (Appeal against refusal to approve disclosure statement)

- (c) an acquisition or disposal of assets mentioned in section 268;<sup>53</sup>
- (d) the maximum permissible level of share interest in the cooperative;
- (e) takeover;
- (f) merger;
- (g) transfer of engagements;
- (h) members' voluntary winding-up.

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

**196.(1)** The board of a cooperative must conduct a postal ballot (including a special postal ballot) for the passing of a special resolution on the written requisition of the number of members who together are able to cast at least 20% (or a lesser percentage specified in the rules of the cooperative) of the total number of votes able to be cast at a meeting of the cooperative.

**(2)** A member can not be a requisitioning member unless the member is an active member.

**(3)** The following provisions apply to a requisition for a postal ballot—

- (a) it must 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;
- (b) it must 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);
- (c) it must be served on the cooperative by being filed 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.

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<sup>53</sup> Section 268 (Acquisition and disposal of assets)

(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 payable to the cooperative.

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

**197.(1)** All reasonable expenses incurred by a cooperative in preparing for and holding a special postal ballot are taken to form the expenses of the postal ballot for section 196.

(2) Those 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 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 4—Meetings***

### **Annual general meetings**

**198.(1)** The first annual general meeting of a cooperative must be held within 18 months after the incorporation of the cooperative.

(2) The second or any later annual general meeting of a cooperative must be held within—

- (a) 5 months after the close of the financial year of the cooperative; or
- (b) the further time the registrar may allow or prescribed under a regulation.

### **Special general meetings**

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

**Notice of meetings**

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

**Quorum at meetings**

**201.(1)** The quorum for a meeting of a cooperative must be stated in the rules.

**(2)** An item of business must not be transacted at a meeting of a cooperative unless a quorum of members entitled to vote is present during the transaction of that item.

**Decision at meetings**

**202.(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 provisions of this Act and to the rules of the cooperative.

**(2)** Unless a poll is demanded by at least 5 members, a question for decision at a general meeting must be decided by a show of hands.

**(3)** In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded may exercise a second or casting vote if the rules so provide.

**Calling of general meeting on requisition**

**203.(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 are able to cast at least 20% (or a lower percentage specified in the rules of the cooperative) of the total number of votes able to be cast at a meeting of the cooperative.

**(2)** A member can not be a requisitioning member unless the member is an active member.

**(3)** The following provisions apply to a requisition for a general meeting—

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- (a) it must state the objects of the meeting;
- (b) it must 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);
- (c) it must be served on the cooperative by being filed 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 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 total 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 persons entitled when the requisition was served to receive notice of general meetings of the cooperative;
- (c) the board must send the requested statement to the requisitioning members within 7 days after the request for the statement is made;
- (d) the meeting called by the requisitioning members must be held within 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 retained by the cooperative out of any money due from the cooperative by way of fees or other remuneration for their services to any of the directors that were in default.

**Minutes**

**204.(1)** Minutes of each general meeting, board meeting and subcommittee meeting must be entered in the appropriate records within 28 days after the meeting and confirmed at and signed by the chairperson of the next 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) Minutes must be kept in the English language.

**PART 9—MANAGEMENT AND ADMINISTRATION  
OF COOPERATIVES***Division 1—The board***Board of directors**

**205.(1)** Subject to this Act and the rules of the cooperative, the business of a cooperative is to be managed by a board of directors.

(2) The board of directors may exercise all the powers 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 his or her appointment or qualification.

**Election of directors**

**206.(1)** Except as provided in subsections (2), (3) and (4), the directors of a cooperative are to be elected in the way specified in the rules of the cooperative.

(2) The first directors of—

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- (a) a cooperative formed under this Act are to be elected at its formation meeting; or
- (b) a cooperative that was a corporation incorporated under another Act are to be the directors in office at the date of registration under this Act.

(3) If 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 for election 2 or more persons as directors by a single resolution must not be made at a meeting of a cooperative unless a resolution that it be made has first been agreed to by the meeting without any vote being given 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) This section does 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 give details of the qualifications and experience of the person nominated.

(8) Unless this Act or the rules of a cooperative otherwise provides, a director is eligible for re-election at the end of his or her term of office.

### **Qualification of directors**

**207.(1)** A person is not qualified to be a director of a cooperative unless he or she is—

- (a) a member of the cooperative or a representative of a corporation that is a member of the cooperative (“**member director**”); or
- (b) an employee of the cooperative or a person qualified as provided by the rules (“**independent director**”).

(2) The majority of directors must be member directors.

(3) Subsection (2) does not prevent the rules requiring that a greater number of directors than a majority must be member directors.

### **Disqualified persons**

**208.(1)** A person must not act as a director or directly or indirectly take part in or be concerned with the management of a cooperative if the person—

- (a) is the auditor of the cooperative or a partner, employee or employer of the auditor; or
- (b) has been convicted, whether before or after the commencement of this section, within or outside Queensland—
  - (i) on indictment of an offence relating to the promotion, formation or management of a corporation; or
  - (ii) of an offence involving fraud or dishonesty punishable on conviction by imprisonment for not less than 3 months; or
  - (iii) of an offence under the Corporations Law, section 232, 344, 590, 592, 704, 705 or 996 or under a provision of a law in force in another State that corresponds with any of those sections; or
  - (iv) of an offence under a provision of a previous law of Queensland or another State, with which any of the provisions mentioned in subparagraph (iii) corresponds;

within 5 years after the conviction or, if sentenced to imprisonment, after his or her release from prison, except with the leave of the Supreme Court.

Maximum penalty—240 penalty units or 2 years imprisonment.

(2) A person must not act as a director 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 under this Act, within 5 years after the conviction, except with leave of the Supreme Court; or
- (b) is prohibited from being a director of a company under the Corporations Law, section 599; or
- (c) is an insolvent under administration (as defined in the

Corporations Law); or

- (d) is prohibited from managing a cooperative by an order under the Corporations Law, section 1317EA as adopted under this Act.

Maximum penalty—240 penalty units or 2 years imprisonment.

(3) In a proceeding for an offence against subsection (1), a certificate by an authority prescribed under a regulation for this section stating that a person was released from prison on a stated date is evidence the person was released from prison on that date.

(4) A person who intends to apply for leave of the Supreme Court must give the registrar at least 21 days notice of his or her intention.

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

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

Maximum penalty—240 penalty units or 2 years imprisonment.

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

(8) Subject to this section, the Corporations Law, section 599 is adopted as far as is applicable to cooperatives and applies with any changes that are necessary and any other changes prescribed under a regulation.

### **Meeting of the board of directors**

**209.(1)** Meetings of the board of directors must be held at least once every 3 months and may be held as often as may be necessary.

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

(3) The board of directors may hold meetings, or allow directors to take part in its meetings by telephone, video link, or another form of communication that allows reasonably contemporaneous and continuous communication between the directors taking part in the meeting.

(4) A quorum of a meeting of the board of directors is 50% of the number of directors, or a greater number of directors specified in the rules.

**(4A)** However, for a quorum, the member directors must outnumber the independent directors by at least 1 or, if a greater number is stated in the rules of the cooperative, the greater number.

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

### **Transaction of business outside meetings**

**210.(1)** The board of a cooperative may, if it considers appropriate, 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 to be 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 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 resolution is approved.

**(7)** Papers may be circulated among directors of the board for this section by facsimile or other transmission of the information in the papers concerned.

### **Deputy directors**

**211.(1)** In the absence of a director from a meeting of the board, a person appointed by the board under the rules of the cooperative concerned to act as a deputy for the director may act in the place of the director.

(2) The rules of the cooperative may include provisions regulating the term of office, vacation of or removal from office, and remuneration of a deputy.

### **Delegation by board**

**212.(1)** If authorised by the rules of a cooperative, the board may, by resolution, delegate the board's powers (other than this power of delegation) stated in the resolution—

- (a) to a director; or
- (b) to a committee of 2 or more directors; or
- (c) to a committee of members of the cooperative; or
- (d) to a committee of members of the cooperative and other persons if members form the majority of persons on the committee.

(2) To remove any doubt, it is declared that the *Acts Interpretation Act 1954*, section 27A applies to a delegation under this section.

### **Removal from and vacation of office**

**213.(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 in the rules of the cooperative and in any of the following cases—

- (a) if the director is disqualified from being a director as provided by section 208;<sup>54</sup>
- (b) if the director absents himself or herself from 3 consecutive ordinary meetings of the board without its leave;
- (c) if the director resigns the office of director by written notice given by the director to the cooperative;
- (d) if the director is removed from office by special resolution of the cooperative;

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<sup>54</sup> Section 208 (Disqualified persons)

- (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 part 12, division 5.<sup>55</sup>

### *Division 1A—Secretary*

#### **Secretary**

**213A.(1)** A cooperative must have a secretary.

(2) The board of the cooperative is to appoint the secretary.

(3) The board may appoint a person to act as the secretary during the absence or incapacity of the secretary.

(4) A person is not qualified to be appointed as, or to act as, the secretary unless the person is an adult who ordinarily lives in Australia.

### *Division 2—Duties and liabilities of directors, officers and employees*

#### **Meaning of “officer”**

**214.** 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 another authorised person who enters into possession or assumes control of property of the cooperative for enforcing a charge; or
- (d) an administrator of a deed of arrangement executed by the cooperative; or

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<sup>55</sup> Part 12, division 5 (Appointment of administrator)

- (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 Law, part 5.3A as adopted and applying under this Act; or
- (g) a trustee or other person administering a compromise or arrangement made between the cooperative and another person or other persons.

### **Officers must act honestly**

**215.** An officer of a cooperative must at all times act honestly in the exercise of his or her powers and the discharge of the duties of his or her office, both in the State and elsewhere.

Maximum penalty—

- (a) for a contravention committed with intent to deceive or defraud the cooperative, members or creditors of the cooperative or creditors of another person or for another fraudulent purpose—240 penalty units or 2 years imprisonment; or
- (b) in another case—60 penalty units.

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

**216.(1)** In the exercise of his or her powers and the discharge of his or her functions, an officer of a cooperative must exercise the degree of care and diligence a reasonable person in a like position in a cooperative would exercise in the cooperative's circumstances.

Maximum penalty—20 penalty units.

**(2)** An officer is not liable to be convicted for a contravention of this section if the cooperative has resolved by ordinary resolution to forgive the contravention.

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

**217.(1)** An officer or employee or former officer or employee of a

cooperative or a member of a committee mentioned in section 212(1)<sup>56</sup> must not make improper use of information acquired because 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 any other person or to cause detriment to the cooperative.

(2) An officer or employee of a cooperative or a member of a committee mentioned in section 212(1) 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 any other person or to cause detriment to the cooperative.

Maximum penalty—

- (a) for a contravention committed with intent to deceive or defraud the cooperative, members or creditors of the cooperative or creditors of another person or for another fraudulent purpose—240 penalty units or 2 years imprisonment; or
- (b) in another case—60 penalty units.

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

**218.(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 for the contravention, recover an amount from the person as a debt payable to the cooperative.

(2) The amount the cooperative may recover from the person is—

- (a) if the person or another person 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.

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

**219.** This division has effect in addition to, and does not limit, any rule of law relating to the duty or liability of a person because of the person's office

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<sup>56</sup> Section 212 (Delegation by board)

or employment in relation to a cooperative and does not prevent the institution of any civil proceeding for a breach of a duty or for a liability of that type.

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

**220.(1)** A provision, whether contained in the rules or in a contract with a cooperative or elsewhere, for exempting an officer or auditor of the cooperative from, or indemnifying the officer or auditor against, liability that by law would otherwise attach to the officer or auditor for negligence, default, breach of duty or breach of trust of which the officer or auditor may be guilty in relation to the cooperative is void.

(2) Subsection (1) does not apply in relation to a contract of insurance.

(3) Despite subsection (1), a cooperative may, under its rules or otherwise, indemnify an officer or auditor against liability incurred by the officer or auditor in defending a proceeding, whether civil or criminal, in which judgment is given in the officer's or auditor's favour or in which the officer or auditor is acquitted or an application in relation to a proceeding of that type in which relief is under this section granted to the officer or auditor by the court.

(4) If in a proceeding for negligence, default or breach of duty against an officer or auditor of a cooperative it appears to the court that the person is or may be liable for the negligence, default or breach of duty but acted honestly and reasonably and that, having regard to all the circumstances of the case (including those connected with the person's appointment), the person ought fairly to be excused for the negligence, default or breach of duty, the court may relieve the person, either wholly or partly, from the person's liability on the terms the court considers appropriate.

(5) If an officer or auditor of a cooperative has reason to believe a claim will or might be made against him or her for negligence, default or breach of duty in relation to the cooperative, the person may apply to the Supreme Court for relief, and the court then has the same power to relieve the person as it would have under this section if it had been a court before which a proceeding against the officer or auditor for negligence, default or breach of duty had been brought.

(6) If any case to which subsection (4) applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if satisfied that the

defendant should under that subsection be relieved either wholly or partly from the liability sought to be enforced against him or her, withdraw the case in whole or in part from the jury and direct judgment to be entered for the defendant on the terms as to costs or otherwise that the judge considers appropriate.

(7) In this section—

“**officer**” includes an employee of a cooperative and another person who may under the rules of the cooperative give directions in regard to the business of the cooperative.

### **Adoption of Corporations Law provisions about officers of cooperatives**

**221.(1)** The provisions of the Corporations Law, sections 344, 589 to 598 and 1307 are adopted by this section and apply to a cooperative in the same way as they apply to a company.

(2) The provisions apply with any changes prescribed under a regulation and as if—

- (a) a reference in the provisions to a company were a reference to a cooperative; and
- (b) a reference in the provisions to the Commission were a reference to the registrar.

### *Division 3—Restrictions on directors and officers*

#### **Directors’ remuneration**

**222.** A director of a cooperative must not receive remuneration for services as a director other than fees, concessions and other benefits approved at a general meeting of the cooperative.

Maximum penalty—240 penalty units or 2 years imprisonment.

#### **Certain financial accommodation to officers prohibited**

**223.(1)** 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—240 penalty units or 2 years imprisonment.

(2) For this section, 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.

(3) A cooperative must not give financial accommodation to an officer of the cooperative if—

- (a) by giving the financial accommodation, the officer would contravene this section; and
- (b) the cooperative knows or should reasonably know of the contravention.

Maximum penalty—500 penalty units.

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

**224.(1)** 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 (2); or
  - (ii) given under a scheme approved under subsection (2); or
  - (iii) provided on terms no more favourable to the director or associate than the terms on which it is reasonable to expect the cooperative would give if dealing with the director or

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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 two-thirds of the directors present and voting on the matter.

Maximum penalty—500 penalty units.

(2) For subsection (1)(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 meeting.

(3) A director or an associate of a director must not obtain financial accommodation given in contravention of subsection (1).

Maximum penalty—240 penalty units or 2 years imprisonment.

(4) For this section, a concessional rate of interest for a borrower from a cooperative is a normal term 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.

(5) If a director of a cooperative or an associate of a director 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.

(6) In this section, a reference to—

- (a) the provision of financial accommodation to a director or an associate of a director; or
- (b) the obtaining of financial accommodation by a director or an associate of a director; or
- (c) a debt owed to a director or an associate of a director;

includes a reference to a provision of financial accommodation to, or an obtaining of financial accommodation by, the director or associate, or a debt owed to the director or associate, jointly with another person.

(7) In this section—

**“associate”**, of a director, means—

- (a) the director’s spouse; or
- (b) a person when acting in the capacity of trustee of a trust under which—
  - (i) the director or director’s spouse 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 director’s spouse 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.

**(8)** For this section, 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 conferred on the holder of the share.

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

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

Maximum penalty—240 penalty units or 2 years imprisonment.

**Management contracts**

**226.(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 perform the whole, or a substantial part, of the functions of the cooperative, whether under the control of the cooperative or not; or
- (b) a cooperative agrees to perform the whole or a substantial part of its functions—
  - (i) in a particular way; or
  - (ii) in accordance with the directions of any person; or
  - (iii) subject to stated restrictions or conditions.

**(2)** A cooperative must not enter into a management contract unless the contract has first been approved by special resolution.

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

***Division 4—Declaration of interests*****Declaration of interest**

**227.(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 of directors under this section.

Maximum penalty—240 penalty units or 2 years imprisonment.

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

- (a) at the meeting of the board at which 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

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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 written notice given to the board by a director to the effect that the director—

- (a) is a member of a stated entity; and
- (b) is to be regarded as interested in any contract that may, after the giving of the notice, be made with the entity;

is enough declaration.

(5) A director of a cooperative who holds an office or has an interest in property whereby, whether directly or indirectly, duties or interests might be created that could conflict with the director's duties or interests as director must, under subsection (6), declare at a meeting of the board of directors the fact and the nature, character and extent of the conflict.

Maximum penalty—240 penalty units or 2 years imprisonment.

(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 he or she becomes a director—at the first meeting of the board held after whichever is the later of the following—
  - (i) the person becomes a director;
  - (ii) the relevant facts as to holding the office or having the interest come to the person's knowledge; or
- (b) if the person starts 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 as to 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 decision of the board for the purpose of making the decision; or
- (b) take part in the making by the board of the decision.

### **Declarations to be recorded in minutes**

**228.** Every declaration under this division is to be recorded in the minutes of the meeting at which it was made.

### **Division does not affect other laws or rules**

**229.** Except as provided in section 230, this division is in addition to, and does not limit, the operation of a rule of law or a provision in the rules of the cooperative restricting a director from having an interest in contracts with the cooperative or from holding offices or possessing properties involving duties or interests in conflict with his or her duties or interests as director.

### **Certain interests need not be declared**

**230.** The interest in a contract or proposed contract a director is required by this division to declare does not include 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 under a regulation for this section;

but only if the contract is made in good faith, in the ordinary course of the business of the cooperative, and on the terms that are usual and proper in similar dealings between the cooperative and its members.

### *Division 5—Accounts and audit*

#### **Meaning of “entity” and “control”**

**231.** In this division, “**entity**” and “**control**” have the same meanings in relation to a cooperative as they have under the Corporations Law in relation to a corporation.

#### **Requirements for accounts and financial records**

**232.(1)** A cooperative must—

- (a) keep financial records and prepare accounts and consolidated accounts as required under a regulation; and
- (b) ensure the accounts are audited in accordance with a regulation.

Maximum penalty—20 penalty units.

**(2)** Without limiting the matters for which a regulation under this section may make provision, a regulation may make provision about the following—

- (a) a matter for which provision is made under the Corporations Law, part 2F.3 or chapter 2M<sup>57</sup> (including the conferring of jurisdiction on a court);
- (b) requiring accounts and consolidated accounts to be prepared under accounting standards in force under the Corporations Law, chapter 2M (with or without changes stated under a regulation);
- (c) requiring the submission of accounts or consolidated accounts to the Australian Accounting Standards Board;
- (d) requiring the adoption by a cooperative of the same financial year

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<sup>57</sup> Corporations Law, part 2F.3 (Inspection of books) and chapter 2M (Financial reports and audit)

for each entity the cooperative controls;

- (e) prescribing the qualifications and the functions of auditors of the accounts of a cooperative and providing for the appointment, the holding of office by, the remuneration of and the removal of auditors;
- (f) the duties of directors of a cooperative in relation to the preparation, auditing and tabling at meetings of members of accounts and consolidated accounts, including the reports to be prepared by directors in relation to the accounts and consolidated accounts;
- (g) the sending or making available to members of copies of accounts and reports in relation to accounts.

(3) A regulation may make provision for a matter for which the Corporations Law makes provision by adopting (with or without changes) provisions of the Corporations Law.

### **Power of registrar to grant exemptions**

**233.(1)** The registrar may, by gazette notice, exempt a cooperative, a person or firm proposed to be appointed as an auditor or a director or auditor of a cooperative from compliance with a provision of a regulation made under this part.

(2) A gazette notice under this section is subordinate legislation.

### **Disclosure by directors**

**234.** The directors of a cooperative must make the disclosures about the affairs of the cooperative and of an entity the cooperative controls that are required under a regulation.

Maximum penalty—20 penalty units.

### **Protection of auditors etc.**

**235.(1)** An auditor of a cooperative has qualified privilege in relation to—

- (a) a statement the auditor makes, orally or in writing, in the course

of his or her duties as auditor; or

- (b) the giving of notice, or the sending of a copy of accounts, consolidated accounts or a report, to the registrar under this Act.

(2) A person has qualified privilege in relation to—

- (a) the publishing of a document prepared by an auditor in the course of the auditor's duties and required under this Act to be filed with the registrar, whether or not the document has been so filed; or
- (b) the publishing of a statement made by an auditor as mentioned in subsection (1).

(3) This section does not limit or affect a right, privilege or immunity an auditor or other person has, apart from this section, as defendant in proceedings for defamation.

### **Financial year**

**236.(1)** The financial year of a cooperative is to end on the day in each year that is provided for by 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 more than 18 months after its registration.

(3) On an alteration of the rules of a cooperative altering its financial year, the alteration may provide either that the financial year current at the date of alteration is to be extended for not more than 6 months or that the financial year next following the financial year that is current is to be a period of more than 1 year but not more than 18 months.

## *Division 6—Registers, records and returns*

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

**237.(1)** A cooperative must keep the following registers under this section—

- (a) a register of members, directors and shares, if any;
- (b) a register of loans to, securities given by, debentures issued by, and deposits received by the cooperative;

- (c) a register of names of persons who have given loans or deposits to or hold securities or debentures given or issued by the cooperative;
- (d) a register of loans made by or guaranteed by the cooperative, and of securities taken by the cooperative;
- (e) a register of memberships cancelled under part 6;<sup>58</sup>
- (f) a register of notifiable interests under section 278;<sup>59</sup>
- (g) other registers required by regulation.

Maximum penalty—20 penalty units.

(2) The registers must be kept in the way, and contain the particulars, prescribed under this Act or a regulation.

### **Location of registers**

**238.(1)** A register kept under this division must be kept 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 by the registrar.

(2) The office must be in Queensland.

(3) The cooperative must file with the registrar a notice of the address at which the register is kept within 28 days after the register is—

- (a) established at an office that is not the cooperative's registered office; or
- (b) moved from one office to another.

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<sup>58</sup> Part 6 (Active membership)

<sup>59</sup> Section 278 (Cooperative to keep register)

**Inspection of registers etc.**

**239.(1)** A cooperative must have at the office where the registers are kept and available during all reasonable hours for inspection by a member free of charge the following—

- (a) a copy of this Act and the regulations;
- (b) a copy of the rules of the cooperative and attachments to the rules under section 337;<sup>60</sup>
- (c) a copy of the minutes of each general meeting of the cooperative;
- (d) a copy of the last annual report of the cooperative under section 242;<sup>61</sup>
- (e) the register of directors, members and shares;
- (f) the register of names of persons who have given loans or deposits to or hold securities or debentures given or issued by the cooperative;
- (g) other registers that a regulation may provide are to be open for inspection under this section.

**(2)** If a register is not kept on a computer, the person inspects the register itself.

**(3)** If the register is kept on a computer, the person inspects a hard copy of the information on the register unless the person and the cooperative agree the person can access the information by computer.

**(4)** A member is entitled to make a copy of entries in a register specified in subsection (1) 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 be more than the fee prescribed under a regulation for a copy of any entry in the register.

**(6)** A cooperative must—

- (a) permit a member to inspect a document or make a copy of a document the member may inspect or make under this section;

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<sup>60</sup> Section 337 (Copy of order to be attached to rules)

<sup>61</sup> Section 242 (Annual report to be filed with registrar)

and

- (b) give the member all reasonable help to inspect the document or make the copy.

Maximum penalty—20 penalty units.

(7) A cooperative must have, at the place where the registers are kept and available during all reasonable hours for inspection by any person, the documents in relation to the cooperative prescribed under a regulation.

Maximum penalty—20 penalty units.

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

**240.(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 the information is likely to be used to contact or send material to the person;

unless the use or disclosure of the information is—

- (c) 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
- (d) approved by the board; or
- (e) necessary to comply with a requirement of this Act.

(2) A person who contravenes subsection (1) is liable to compensate anyone else who suffers loss or damage because of the contravention.

(3) A person who makes a profit from a contravention of subsection (1) owes a debt to the cooperative.

(4) The amount of the debt is the amount of the profit.

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

**241.(1)** A cooperative must give notice to the registrar under this section of the appointment of a person as a director, principal executive officer or secretary of the cooperative or a subsidiary of the cooperative, and of the

cessation of the appointment.

(2) The notice must—

- (a) be in the approved form; and
- (b) be given within 28 days after the appointment or cessation of appointment; and
- (c) state the particulars prescribed under a regulation of the appointment or cessation of appointment.

Maximum penalty—20 penalty units.

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

**242.(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 in the approved form listing the secretary, directors and the principal executive officers of the cooperative and of each of its subsidiaries, as at the date the annual report is filed with the registrar;
- (b) if the cooperative is required under section 232(1)<sup>62</sup> to prepare a financial report of the cooperative for its most recently ended financial year—a copy of the financial report;
- (c) a copy of the financial report of each subsidiary of the cooperative for the most recently ended financial year of the subsidiary;
- (d) a copy of any report by the auditor or the directors of the cooperative or subsidiary—
  - (i) prepared under section 232(1); or
  - (ii) on a financial report mentioned in paragraph (b) or (c);
- (e) the other particulars prescribed under a regulation.

Maximum penalty—20 penalty units.

(2) For subsection (1), the required period is—

- (a) 28 days after the annual general meeting of the cooperative; or

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<sup>62</sup> Section 232 (Requirements for accounts and financial records)

- (b) if the annual general meeting of the cooperative is not held within the period stated in section 198(2)(a)<sup>63</sup>—28 days after the end of the period.

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

**243.** A cooperative must, at the written request of the registrar, send to the registrar, within the time and in the way the registrar states, a full list of the members of the cooperative and of each subsidiary of the cooperative, together with the particulars about the members the registrar states in the request.

Maximum penalty—20 penalty units.

### **Special return to be given at request of registrar**

**244.(1)** The registrar may, by written direction, require a cooperative to give 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 direction under subsection (1).

Maximum penalty—20 penalty units.

## ***Division 7—Name and registered office***

### **Name to include certain matter**

**245.(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 the abbreviation ‘co-op’.

(3) The word ‘limited’ or the abbreviation ‘ltd’ must be the last word of the name.

(4) A corporation that is formed or incorporated under an Act other than this Act must not register under the other Act by a name including the word

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<sup>63</sup> Section 198 (Annual general meetings)

‘cooperative’ or the abbreviation ‘co-op’.

Maximum penalty—20 penalty units.

(5) The registrar must not register as the name of a cooperative a name that contains anything a regulation declares is an unsuitable name.

(5A) However, the registrar may register a name that contains a thing declared to be an unsuitable name, if the Minister is satisfied the name is suitable for registration in the particular circumstances.

(6) Subsection (4) does not apply to—

- (a) a society under the *Financial Intermediaries Act 1996*; or
- (b) a corporation that is allowed under another Act to use ‘cooperative’ or the abbreviation ‘co-op’ in its name.

### **Use of abbreviations**

**246.** A description of a cooperative is not inadequate or incorrect merely because of 1 or more of the following—

- (a) the use of the abbreviation ‘co-op’ instead of the word ‘cooperative’ in the cooperative’s name;
- (b) the use of the abbreviation ‘ltd’ instead of the word ‘limited’ in the cooperative’s name;
- (c) the use of the symbol ‘&’ instead of the word ‘and’ in the cooperative’s name;
- (d) the use of any of the words instead of the corresponding abbreviation or symbol in the cooperative’s name;
- (e) the use of any abbreviation or elaboration of the name of the cooperative that is approved in a particular case or for a particular purpose by the registrar in writing.

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

**247.(1)** A cooperative must ensure its name 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 on its behalf must not—

- (a) use a seal of the cooperative; or
- (b) issue or authorise the issue of a notice, advertisement or other official publication of the cooperative; or
- (c) sign or authorise to be signed on behalf of the cooperative a 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 this section.

Maximum penalty—20 penalty units.

(4) In this section—

**“business document”**, of a cooperative, means a document that is issued, signed or endorsed by or on behalf of the cooperative and 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 of a class prescribed under a regulation as a class of business documents.

### **Change of name of cooperative**

**248.(1)** A cooperative may by special resolution change its name to a name approved by the registrar.

(2) A change of name must be advertised as prescribed under a

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 a right, or the enforcement of an obligation, by or against the cooperative or a person; or
- (c) the continuation of a legal proceeding by or against the cooperative.

(5) A legal proceeding that might have been continued or started by or against the cooperative in its former name may be continued or started by or against the cooperative in its new name.

(6) The registrar may refuse to approve a change of name if the registrar thinks the new name is unsuitable.

(7) The registrar may direct a cooperative to change its name if the registrar considers the name is likely to be confused with the name of a corporation or a registered business name.

### **Restriction on use of word “cooperative” or similar words**

**248A.(1)** A person other than a cooperative must not trade, or carry on business, under a name or title containing the word ‘cooperative’, the abbreviation ‘co-op’ or words importing a similar meaning.

Maximum penalty—20 penalty units.

(2) Subsection (1) does not apply to an entity mentioned in section 245(6).<sup>64</sup>

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<sup>64</sup> Section 245 (Name to include certain matter)

**Registered office of cooperative**

**249.(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)** Within 28 days after changing the address of its registered office, a cooperative must give the registrar written notice of the new address.

Maximum penalty—20 penalty units.

**PART 10—FUNDS AND PROPERTY***Division 1—Power to raise money***Meaning of obtaining financial accommodation**

**250.** A reference in this division to the obtaining of financial accommodation includes a reference to the obtaining of credit and the borrowing or raising of money by any means.

**Fund raising to be in accordance with Act and regulations**

**251.** A regulation may impose requirements and restrictions on the obtaining of financial accommodation and the giving of security for obtaining financial accommodation by a cooperative.

**Limits on deposit taking**

**252.** A cooperative must not accept money on deposit unless—

- (a) the cooperative is authorised by its rules to accept money on deposit and was authorised by its rules immediately before the

- commencement of this section to accept money on deposit; 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.

### **Members etc. not required to see to application of money**

**253.** A member or other person from whom a cooperative obtains financial accommodation is not required to see to its application and is not affected or prejudiced by the fact that in doing so the cooperative contravened a provision of this Act or the rules of the cooperative.

### **Registrar's directions about fundraising**

**254.(1)** The registrar may, by written notice served on a cooperative, give a direction to the cooperative as to the way in which it is to 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 1 or more of the following matters—

- (a) requiring the cooperative to stop obtaining financial accommodation or to stop 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) the way in which the cooperative is permitted to invest or use the proceeds of financial accommodation it obtains.

**Subordinated debt**

**255.(1)** A cooperative may incur subordinated debt.

**(2)** Subordinated debt is debt incurred under an agreement under which, in the event of the winding-up of the cooperative, a claim of the creditor against the cooperative for the debt is to rank in priority—

- (a) equally with the claim of another creditor who is a party to a similar agreement; and
- (b) except as provided by paragraph (a)—after the claims of another creditor of the cooperative and before the claims of members to repayment of share capital in the cooperative.

**(3)** An agreement mentioned in subsection (1) has effect despite the provisions of the Corporations Law, part 5.6, division 6 (as adopted under part 12, division 3<sup>65</sup> of this Act).

**Application of Corporations Law to issues of debentures**

**256.(1)** The provisions of the Corporations Law parts 1.2A, 7.11 and 7.12 are adopted by this section and apply to debentures of a cooperative.

**(2)** The provisions apply with the changes prescribed under a regulation and as if—

- (a) a cooperative were a company; and
- (b) a reference in the provisions to a corporation included a cooperative; and
- (c) a reference in the provisions to the Commission were a reference to the registrar.

**(3)** The provisions of the Corporations Law adopted by this section do not apply to a loan to which section 260<sup>66</sup> applies.

**(4)** The provisions of the Corporations Law adopted by this section do not apply to an issue of debentures of a cooperative made—

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<sup>65</sup> Part 12, division 3 (Winding-up and deregistration)

<sup>66</sup> Section 260 (Compulsory loan by member to cooperative)

- (a) solely to members; or
- (b) solely to members and employees of the cooperative; or
- (c) to a person who on becoming an inactive member of the cooperative has had his or her share capital converted to debt.

(5) Expressions used in this section that are not defined in this Act have the same meaning as in the Corporations Law.

(6) The registrar may, by gazette notice, exempt a cooperative from a requirement of the Corporations Law adopted by this section.

(7) A gazette notice under subsection (6) is subordinate legislation.

### **Adoption of certain other Corporations Law provisions**

**256A.(1)** The Corporations Law, sections 1025, 1026, 1027 and 1043<sup>67</sup> are adopted by this section and apply to an issue of debentures to which section 257 applies.

(2) To apply the provisions of the Corporations Law mentioned in subsection (1), a reference in the provisions to a prospectus is taken to include a disclosure statement under section 257.

### **Disclosure statement**

**257.(1)** This section applies to the issue of debentures of a cooperative if 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 give the person a disclosure statement, approved by the registrar, and containing the information that is reasonably necessary to enable a person to make an informed assessment of the financial prospects of the cooperative, including—

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<sup>67</sup> Corporations Law, sections 1025 (Certain notices etc. not to be published), 1026 (Certain reports referring to prospectuses not to be published), 1027 (Evidentiary provisions etc) and 1043 (Application money to be held in trust)

- (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) compensation or consideration to be paid to officers or members of the cooperative in connection with the issue of debentures; and
- (f) other matters the registrar directs.

(3) Sections 17 (except subsection (2)) and 29<sup>68</sup> apply to the approval of a disclosure statement under this section with necessary changes and, in particular, as if reference in section 17 to a formation meeting were a reference to the issue of debentures.

### **Approval of board for transfer of debentures**

**258.** A debenture of a cooperative can not be sold or transferred except with the consent of the board and under the rules of the cooperative.

### **Application of Corporations Law—reissue of redeemed debentures**

**259.** The Corporations Law, section 1051 is adopted by this section and applies in relation to debentures issued by a cooperative to any of its members or employees as if a cooperative were a company.

### **Compulsory loan by member to cooperative**

**260.(1)** If authorised by the rules of the cooperative, the cooperative may require its members to lend money, with or without security, to the cooperative, in accordance with a proposal approved by special resolution of the cooperative.

(2) The proposal must not require a loan to be for a term of more than

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<sup>68</sup> Section 17 (Approval of disclosure statement) and 29 (Appeal against refusal to approve disclosure statement)

7 years or a shorter or longer term prescribed under a regulation.

**(3)** The proposal must—

- (a) be accompanied by a disclosure statement, approved by the registrar, explaining the purpose for which the money raised by the cooperative under the proposal is to be used and including the other information 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 money required to be lent by each member is to be calculated; and
- (c) be accompanied by a statement informing the member that the member may inform the board by notice on or before the date stated in the statement (being a date before the passing of the special resolution) that the member resigns on the passing of the special resolution.

**(4)** If the proposal allows, the board of the cooperative may, under the terms of the proposal, deduct the money required to be lent by a member to the cooperative from money payable from the cooperative to the member for his or her dealings with the cooperative.

**(5)** A proposal to deduct money mentioned in subsection (4) must, in addition, clearly show—

- (a) the basis on which the money is to be deducted; and
- (b) the time and way of making the deductions.

**(6)** When approved, the proposal is binding on—

- (a) all members of the cooperative at the date of passing of the special resolution, other than a member who has given a notice of resignation under subsection (3)(c); and
- (b) all persons who become members of the cooperative after the date and before the total amount of the loan to be raised under the proposal has been raised.

**(7)** Sections 17 (except subsection (2)) and 29<sup>69</sup> apply to the approval of a disclosure statement under this section with necessary changes and, in

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<sup>69</sup> Section 17 (Approval of disclosure statement) and 29 (Appeal against refusal to approve disclosure statement)

particular, as if a reference in section 17 to a formation meeting were a reference to the special resolution.

### **Interest payable on compulsory loan**

**261.(1)** The rate of interest payable by a cooperative for a loan under section 260 during a 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 for the period on the share capital of the cooperative; or
  - (ii) if the rate of dividend payable for the period has not been decided—the rate (or the higher or highest rate) payable for the immediately preceding period for which a rate has been decided; or
  - (iii) if a rate of dividend has never been decided for the share capital of the cooperative—the rate the board of the cooperative considers reasonable; or
- (b) for a cooperative without share capital—the rate 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 applicable under paragraph (a) or (b)—the higher rate.

**(2)** A member may agree to the rate of interest being less than what would otherwise be payable under this section and may agree to no interest being paid.

## ***Division 2—Charges***

### **Registration of charges**

**262.** Schedule 3<sup>70</sup> has effect but does not apply to—

- (a) a mortgage, charge or encumbrance that is over specific land and

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<sup>70</sup> Schedule 3 (Registration etc. of charges)

is registered under the *Land Title Act 1994* or a memorandum that has been registered under the *Property Law Act 1974*; or

- (b) a mortgage, charge or encumbrance registered under a law relating to mining.

### *Division 3—Receivers and other controllers of property of cooperatives*

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

**263.** Schedule 4<sup>71</sup> has effect.

### *Division 4—Disposal of surplus from activities*

#### **Retention of surplus for benefit of cooperative**

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

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

**265.(1)** The rules of a cooperative may authorise the cooperative to apply a part of the surplus arising in a 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 a year from the business of the cooperative for supporting an activity approved by the cooperative.

**(3)** The rules must limit the amount that may be applied under subsection (1) or (2) to a stated proportion of the surplus.

**(4)** A cooperative may apply part of the surplus for a purpose and to the extent authorised by rules under subsection (1) or (2).

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<sup>71</sup> Schedule 4 (Receivers, and other controllers, of property of cooperatives)

**Distribution of surplus or reserves to members**

**266.(1)** The rules of a trading cooperative may authorise the cooperative to apply a part of the surplus arising in a 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 the shares held by the member; or
- (c) the issue to members of a limited dividend for shares held by the member.

**(2)** The amount of a rebate or dividend payable to a member under subsection (1)(a) or (c) may, with the consent of the member, 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 is not more than the amount prescribed under a regulation.

**Application of surplus to other persons**

**267.(1)** If authorised by its rules, part of the surplus arising in a year from the business of a trading cooperative may be credited to a person who is not a member, but is qualified to be a member, by way of rebate in proportion to the business done by him or her with the cooperative, if—

- (a) the person was a member when the business was done and the membership has lapsed; or
- (b) the person has applied for membership after the business was done.

**(2)** Nothing in this section precludes the payment of a bonus to an employee under the terms of his or her employment.

***Division 5—Acquisition and disposal of assets*****Acquisition and disposal of assets**

**268.(1)** A cooperative must not do any of the following things except as approved by special resolution by a special postal ballot—

- (a) sell or lease as a going concern, the undertaking of the cooperative or a part of the undertaking relating to its primary activities, the value of which represents 5% or more 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 Law) of a director or employee of the cooperative or of the spouse of a director or employee of the cooperative, property the value of which represents 5% or more of the total value of all the assets of the cooperative relating to its primary activities;
- (c) acquire an asset the value of which represents 5% or more of the total value of the assets of the cooperative, if the acquisition would result in the cooperative commencing to carry on an activity that is not 1 of its primary activities;
- (d) dispose of an asset, if the disposal would result in the cooperative ceasing to carry on a primary activity of the cooperative, or in the ability of the cooperative to carry on a primary activity of the cooperative being substantially impaired, either generally or in a particular geographical region.

Maximum penalty—60 penalty units.

**(2)** If a cooperative contravenes this section, each person who is a member of the board of the cooperative is taken to have committed the offence, unless the person satisfies the court that he or she used all proper diligence to prevent the contravention by the cooperative.

**(3)** The registrar may, by gazette notice, exempt a cooperative from compliance with a provision of this section and section 194<sup>72</sup> in relation to a

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<sup>72</sup> Section 194 (Special postal ballots)

matter to which this section applies.

(4) A gazette notice under subsection (3) is subordinate legislation.

## **PART 11—RESTRICTIONS ON THE ACQUISITION OF INTERESTS IN COOPERATIVES**

### *Division 1—Restrictions on share and voting interests*

#### **Application of part**

269. This part applies to trading cooperatives.

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

270.(1) A person (whether or not a member of the cooperative) must give notice to a cooperative within 5 business days after becoming aware 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 cooperative must give notice to the cooperative within 5 business days after becoming aware of the fact.

Maximum penalty—20 penalty units.

(3) Section 180<sup>73</sup> provides for the effect of a person having a relevant interest in the right to vote of a member of a cooperative.

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

271.(1) A person must give notice to a cooperative within 5 business

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<sup>73</sup> Section 180 (Effect of relevant share and voting interests on voting rights)

days after becoming aware 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 cooperative must give notice to the cooperative within 5 business days after becoming aware a substantial change has occurred in the share interest.

Maximum penalty—20 penalty units.

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

Maximum penalty—20 penalty units.

(4) A person has a “**substantial share interest**” in a 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 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.

### **Requirements for notices**

272. A notice required under this division must—

- (a) be in the approved form; and
- (b) state the particulars prescribed under a regulation of the interest or change being notified.

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

273.(1) A person must not have a relevant interest in shares of a cooperative the nominal value of which is more than 20% of the nominal value of the issued share capital of the cooperative.

(2) The registrar, by gazette notice, may state a maximum greater than

20% as the maximum for subsection (1) for a particular cooperative.

*Example for subsection (2)—*

An association or federation may not have enough members to allow each member to comply with subsection (1).

(3) A gazette notice under subsection (2) is subordinate legislation.

(4) The maximum of 20% stated by subsection (1) may be increased for a particular person by special resolution of the cooperative concerned passed by a special postal ballot.

(5) A resolution under subsection (4) does not have effect unless—

- (a) it is approved by the registrar; or
- (b) the person concerned is another cooperative.

(6) The registrar's approval of the resolution may be given on conditions.

### **Shares to be forfeited to remedy contravention**

**274.(1)** If a person has a relevant interest in a share of a cooperative in contravention of this division, the board of the cooperative must declare to be forfeited enough 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 that 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 concerned.

(4) Sections 132 to 134<sup>74</sup> apply to shares forfeited under this section as if the shares had been forfeited under part 6.<sup>75</sup>

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<sup>74</sup> Section 132 (Repayment of amounts owing because of cancelled membership) to 134 (Repayment of deposits and debentures)

<sup>75</sup> Part 6 (Active membership)

**Powers of board in response to suspected contravention**

**275.(1)** If the board of a cooperative is satisfied on reasonable grounds a person has contravened section 270<sup>76</sup> in relation to the cooperative, the board may do either or both of the following—

- (a) refuse to register a share transfer involving the person;
- (b) suspend a stated right or entitlement 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 shares of the cooperative to give stated information to the board about the interest.

**(3)** A failure by a person to comply with a request under subsection (2) is a reasonable ground for being satisfied the person has contravened section 270.

**Powers of Supreme Court about contravention**

**276.(1)** If a person has contravened section 270 in relation to a cooperative, the Supreme Court may, on the application of the cooperative or the registrar, make any order it considers appropriate.

**(2)** Without limiting subsection (1), an order may include—

- (a) a remedial order; and
- (b) for securing compliance with any other order made under this section—an order directing the cooperative or another person to do or refrain from doing a stated act.

**(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 cooperative because an associate of the person has a relevant interest in a share; and
- (b) the associate became entitled to the relevant interest within

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<sup>76</sup> Section 270 (Notice required to be given of voting interest)

6 months before the application was filed with 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.

### **Cooperative to inform registrar of interest over 20%**

**277.(1)** A cooperative must inform the registrar in writing within 14 days after the board becomes aware—

- (a) a particular person has a relevant interest in shares of the cooperative the nominal value of which is more than 20% 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 notification must give details of the relevant interest or change concerned.

### **Cooperative to keep register**

**278.(1)** A cooperative must keep a register of notifiable interests.

**(2)** The cooperative must enter in the register in alphabetical order the names of persons 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 a member of the cooperative free of charge; and
- (b) by another person on payment of the fee, if any, the cooperative may require, not more than the maximum fee prescribed under a regulation.

### **Unlisted companies to provide list of shareholders etc.**

**279.(1)** This section applies to a company (within the meaning of the Corporations Law) that is not a listed corporation (within the meaning of the Corporations Law).

**(2)** A company to which this section applies that is a member of a cooperative must give 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 Law) in a share of the company together with details of the interest; and
- (c) the name of each person who is an associate (within the meaning of the Corporations Law) of the company.

(3) A list under subsection (2) must be given within 28 days after the end of each financial year of the company and within 28 days after a written request for the list is made to the company by the registrar.

(4) The details to be shown on the list are the details as at the end of the financial year concerned or, if the list is given 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 considers the company is or may be involved in a suspected contravention of a provision of this division.

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

**280.(1)** This section applies if a 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 the interest payable), the member is liable to make to the cooperative the payments the member would be liable to make if all the shares concerned were lawfully held by the member.

(3) Security for the repayment of the loan is not affected by a contravention of this division.

### **Extent of operation of division**

**281.** This division—

- (a) applies to all individuals, whether resident in Queensland or in Australia or not and whether Australian citizens or not, and to all

bodies corporate or unincorporated, whether incorporated or carrying on business in the State or in Australia or not; and

- (b) extends to acts done or omitted to be done outside the State, whether in Australia or not.

### **Registrar may grant exemption from division**

**282.(1)** The registrar may, by gazette notice, exempt a person from the operation of this division.

- (2) A gazette notice under this section is subordinate legislation.

### *Division 2—Restrictions on certain share offers*

#### **Share offers to which division applies**

**283.(1)** This division applies to the following offers to purchase shares in a cooperative—

- (a) an offer made as part of a proposal for, or that is conditional on, the sale of the undertaking or 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 Law;
- (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 273<sup>77</sup> were the offerer 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 offerer having a substantial share interest in the cooperative, or to a substantial change taking place in a substantial share interest the offerer has in the cooperative, were the offerer to be registered (immediately after the offer is made) as the holder of the shares that are the subject of the offer.

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<sup>77</sup> Section 273 (Maximum permissible level of share interest)

(2) In subsection (1)(e), “**substantial share interest**” and “**substantial change**” have the same meanings as they have in section 271.<sup>78</sup>

### **Requirements to be satisfied before offer can be made**

**284.(1)** A person must not make an offer to which this division applies unless the making of the offer has been approved—

- (a) by special resolution by a special postal ballot; and
- (b) by the registrar.

(2) Despite subsection (1), an offer mentioned in section 283(1)(e) can be made even if it has not been approved as mentioned in subsection (1) if it is made, in circumstances stated in, and in accordance with the requirements of, a regulation.

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

**285.** An offer mentioned in section 283(1)(a) to (d)<sup>79</sup> 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.

### **Offers to be submitted to board first**

**286.(1)** A 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 can not be served unless the board has had a reasonable opportunity to consider the proposed offer concerned.

(5) A period of 28 days is a reasonable opportunity for considering a

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<sup>78</sup> Section 271 (Notice required to be given of substantial share interest)

<sup>79</sup> Section 283 (Share offers to which division applies)

proposed offer but the registrar may extend the period in a particular case, whether before or after the end of the 28 days, by written notice to the cooperative.

### **Announcements of proposed takeovers about proposed company**

**287.(1)** This section applies to an offer to purchase shares in a 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 Law.

(2) A person must not make a public announcement to the effect the person proposes, or the person and another person or other persons 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 the announcement is false or is recklessly indifferent as to whether it is true or false; or
- (b) the person has no reasonable grounds for believing the person, or the person and the other person or persons, will be able to perform obligations arising under the scheme or announcement or under the Corporations Law 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 or 5 years imprisonment.

(3) If a person makes a public announcement to the effect the person proposes, or the person and another person or other persons 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 on which the company is incorporated.

Maximum penalty—100 penalty units or 2 years imprisonment.

(4) A person is not liable to be convicted of more than 1 offence under subsection (3) for any 1 public announcement.

(5) A person who contravenes this section (whether or not the person is convicted of an offence for the contravention) is liable to pay compensation to a person who suffered loss because of entering into a share transaction in

reliance on the public announcement concerned.

(6) The amount of the 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 contravene subsection (3) and is not liable to pay compensation for the contravention if it is proved the person could not reasonably have been expected to make the takeover bid concerned—

- (a) because of circumstances that existed when the public announcement was made 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 announcement was made, other than a change in circumstances caused directly or indirectly by the person.

(8) Expressions used in this section have the same meanings as in the Corporations Law, section 746.

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

**288.** If an offer is part of a proposal for, or is conditional on, the registration of the cooperative as a company under the Corporations Law, 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 by which a director will acquire a relevant interest in a share of the company to be formed;
- (b) other information that is material to the making of a decision by a member whether or not to agree to the making of the offer, being information that is within the knowledge of the directors and has not previously been disclosed to the members;
- (c) other information the registrar directs.

**Consequences of prohibited offer**

**289.(1)** If a person makes an offer to purchase shares in a cooperative in contravention of this division—

- (a) the person can not be registered as the holder of the shares concerned; and
- (b) if the transfer of the shares is registered—the person can not vote at a meeting of the cooperative.

**(2)** A vote cast by or for a member when the member can not vote because of this section must be disregarded.

**Registrar may grant exemptions**

**290.(1)** The registrar may, by gazette notice, exempt a cooperative from compliance with a provision of this division and section 194<sup>80</sup> in relation to a matter to which this division applies.

**(2)** A gazette notice under subsection (1) is subordinate legislation.

## **PART 12—MERGER, TRANSFER OF ENGAGEMENTS, WINDING-UP**

### *Division 1—Mergers and transfers of engagements*

**Application of division**

**291.** This division does not apply to a merger or transfer of engagements to which part 14<sup>81</sup> applies.

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<sup>80</sup> Section 194 (Special postal ballots)

<sup>81</sup> Part 14 (Foreign cooperatives)

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

**292.** 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.

**Requirements before application can be made**

**293.(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.

**Disclosure statement required**

**294.(1)** A resolution of a cooperative is not effective for this division unless this section has been complied with.

**(2)** Each cooperative must send to each of its members a disclosure statement approved by the registrar stating—

- (a) the financial position of each cooperative concerned in the proposed merger or transfer of engagements as shown in financial statements prepared as at a date not more than 6 months before the date of the statement; and
- (b) any interest any officer of each cooperative has in the proposed merger or transfer of engagements; and
- (c) compensation or other consideration proposed to be paid, or 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 or engagements; and

- (e) for a transfer of engagements—whether it is a total or partial transfer of engagements; and
- (f) other information 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 no 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, by gazette notice, exempt a cooperative from complying with this section.

(5) A gazette notice under subsection (4) is subordinate legislation.

(6) The registrar may approve a disclosure statement on any conditions he or she considers appropriate.

### **Making an application**

**295.(1)** An application for approval of a merger or transfer of engagements under this division must be made to the registrar in the approved form.

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

### **Approval of merger**

**296.(1)** The registrar must approve a merger under an application under this division if satisfied—

- (a) this division has been complied with in relation to the application; and
- (b) the proposed rules of the merged cooperative are consistent with this Act and may reasonably be approved; 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.

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

**297.(1)** The registrar must approve a transfer of engagements under an application under this division if satisfied—

- (a) this division has been complied with in relation to the application; 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.

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

**298.(1)** The registrar may, with the approval of the Minister, direct a cooperative—

- (a) to transfer its engagements to a cooperative approved by the registrar; and
- (b) within a period fixed by the registrar when giving the direction, or

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the further period the registrar allows, to enter into an agreement approved by the registrar to give effect to the transfer of engagements directed.

(2) The registrar must not give the direction to a cooperative unless the necessary grounds exist for giving the direction, as mentioned in section 328.<sup>82</sup>

(3) The transfer of engagements must make provision in a way approved by the registrar for the members of the transferor cooperative who wish to do so to become members of the transferee cooperative.

(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 winding-up the cooperative on a certificate of the registrar; or
- (b) for appointing an administrator of the cooperative.

(5) The registrar must notify 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 under the direction to transfer its engagements.

(7) A transfer of engagements directed under this section takes effect on a day notified by the registrar in the gazette.

(8) An officer of a cooperative must not—

- (a) fail to take all reasonable steps to secure compliance by the cooperative with a direction given under this section; or
- (b) by a wilful act or omission be the cause of a failure by the cooperative to comply with a direction given under this section.

Maximum penalty—20 penalty units.

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<sup>82</sup> Section 328 (Grounds for winding-up, transfer of engagements, appointment of administrator)

## ***Division 2—Transfer of incorporation***

### **Meaning of “new body” and “transfer”**

**299.** The registration or incorporation of a cooperative as a corporation because of an application under this division is referred to in this division as its “**transfer**” and the corporation concerned is referred to in this division as “**the new body**”.

### **Application for transfer**

**300.** A cooperative, if approved under this division, may apply to become registered or incorporated as 1 of the following—

- (a) a company under the Corporations Law;
- (b) an incorporated association under the *Associations Incorporation Act 1981*;
- (c) a cooperative housing society under the *Financial Intermediaries Act 1996*;
- (d) a corporation that is incorporated, registered or otherwise established under a law that is a law of a place outside the State and that is prescribed under a regulation for this section.

### **Requirements before application can be made**

**301.(1)** Before an application is made under section 300, 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 a memorandum or articles of association or constitution or replaceable rules or rules that 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 another word importing a similar meaning.

(3) A regulation may exempt a cooperative from compliance with a provision of this section and section 194<sup>83</sup> in relation to a matter to which this section applies.

### **New body ceases to be registered as cooperative**

**302.** On the transfer of a cooperative under this division, it ceases to be registered as a cooperative under this Act.

### **Transfer not to impose greater liability etc.**

**303.(1)** The memorandum or articles of association or constitution or replaceable rules or rules adopted in 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 a member of the new body of preferential rights 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 all persons who were members of the cooperative at the date of transfer becoming members of the new body.

(3) For a transfer of a cooperative having a share capital to a new body having a share capital, the transfer must result in every member of the cooperative at the date of transfer who held shares in the cooperative being 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.

### **Effect of new certificate of registration**

**304.** A certificate of registration or incorporation as the new body issued by the appropriate officer under the law applicable to the new body is

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<sup>83</sup> Section 194 (Special postal ballots)

evidence that all requirements of this division about the registration or incorporation have been complied with.

### **New body must give copy of new certificate of registration or incorporation to registrar**

**304A.** On the transfer of a cooperative under this division, the new body must immediately give the registrar a copy of its new certificate of registration or incorporation.

Maximum penalty—10 penalty units.

### **New body is a continuation of the cooperative**

**305.(1)** When a cooperative transfers to a new body, the corporation constituted by the new body is taken to be the same entity as the corporation constituted by the cooperative.

**(2)** Without limiting subsection (1), division 6<sup>84</sup> applies to a transfer under this division.

## ***Division 3—Winding-up and deregistration***

### **Methods of winding-up**

**306.(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 Law may be wound up.

### **Winding-up on registrar's certificate**

**307.(1)** A cooperative may be wound-up on a certificate of the registrar only if the necessary grounds for taking the action exist, as mentioned in

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<sup>84</sup> Division 6 (Effect of merger etc. on property, liabilities etc.)

section 328.<sup>85</sup>

(2) A winding-up on a certificate of the registrar starts 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 Law.

(5) The liquidator must, within 10 days after appointment, give notice of his or her appointment in the gazette.

(6) The liquidator must give the security prescribed under a regulation and is entitled to receive the fees fixed by the registrar.

(7) A vacancy occurring in the office of liquidator is to be filled by a person appointed by the registrar.

### **Method of deregistration**

**307A.** A cooperative may be deregistered in the same way and in the same circumstances as a company under the Corporations Law may be deregistered.

### **Application of Corporations Law to winding-up and deregistration**

**308.(1)** The Corporations Law, parts 5.4, 5.4A, 5.4B, 5.5, 5.6, 5.7 and chapter 5A are adopted by this section and apply, subject to this division, to—

- (a) the winding-up or deregistration of a cooperative;<sup>86</sup> and
- (b) a deregistered cooperative.

(2) For the application of the provisions to a winding-up on the certificate of the registrar, the winding-up is taken to be a voluntary winding-up (but

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<sup>85</sup> Section 328 (Grounds for winding-up, transfer of engagements, appointment of administrator)

<sup>86</sup> For cooperatives that are being or have been dissolved under the repealed part 5.6, division 8 (Dissolution) of the Corporations Law, see schedule 5 (Transitional and savings), section 14 (Winding-up).

the Corporations Law, section 490 does not apply).

(3) Provisions of the Corporations Law are adopted with any changes prescribed under a regulation and as if—

- (a) a reference in the provisions to a special resolution or an extraordinary resolution were a reference to a special resolution within the meaning of this Act; and
- (b) a reference in the provisions to the Commission or ASIC were a reference to the registrar; and
- (c) section 513B were amended by inserting after paragraph (d)—  
‘(da)if the winding-up is on the certificate of the registrar—on the date the certificate is given; or’; and
- (d) section 516 were amended by inserting after the words ‘past member’ the words ‘together with the charges payable by him or her to the cooperative under the rules’; and
- (e) a reference to a registered liquidator included a reference to a person approved by the registrar as a liquidator of a cooperative; and
- (f) a reference in the provisions to the Corporations Law, section 246AA were a reference to part 4, division 5<sup>87</sup> of this Act.

(4) The provisions of the Corporations Law adopted by this section are to be read subject to sections 70 and 314<sup>88</sup> for deciding the liability of members and former members to contribute on a winding-up of a cooperative.

### **Restrictions on voluntary winding-up**

**309.(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.

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<sup>87</sup> Part 4, division 5 (Oppressive conduct of affairs)

<sup>88</sup> Sections 70 (Liability of members to cooperative) and 314 (Liability of member to contribute in a winding-up if shares forfeited etc.)

(2) A regulation may exempt a cooperative from compliance with a provision of this section or section 194.<sup>89</sup>

(3) When a special postal ballot is held, the members may, by means of the same ballot, by simple majority—

- (a) appoint 1 or more liquidators to wind-up the affairs and distribute the assets of the cooperative; and
- (b) fix the remuneration to be paid to the liquidator.

### **Start of members' voluntary winding-up**

**310.** A members' voluntary winding-up of a cooperative starts when the result of the special postal ballot is noted in the minute book by the secretary of the cooperative.

### **Distribution of surplus-non-trading cooperatives**

**311.(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 for the way in which the surplus property of the cooperative is to be distributed in a winding-up.

(3) In this section—

**“surplus property”** means property of the cooperative remaining after satisfaction of the debts and liabilities of the cooperative and the costs, charges and expenses of the winding-up.

### **Liquidator—vacancy may be filled by registrar**

**312.** If a cooperative is being wound-up voluntarily and a vacancy occurs in the office of liquidator that in the opinion of the registrar is unlikely to be filled in the way provided by the Corporations Law, the registrar may appoint a person to be liquidator.

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<sup>89</sup> Section 194 (Special postal ballots)

**Review of liquidator's remuneration**

**313.** A 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.

**Liability of member to contribute in a winding-up if shares forfeited etc.**

**314.(1)** If a person's membership of a cooperative is cancelled under part 6<sup>90</sup> within 2 years before the start 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 of shares forfeited under that cancellation (being their nominal value immediately before cancellation).

**(2)** If, under section 170,<sup>91</sup> a cooperative—

- (a) purchases a share of a member in the cooperative; or
- (b) repays to a member the whole or part of the amount paid up on a share held by a member;

within 2 years before the start 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 paid by the cooperative to the member or former member for 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, 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.

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<sup>90</sup> Part 6 (Active membership)

<sup>91</sup> Section 170 (Purchase and repayment of shares)

***Division 4—Administration of cooperative—adoption of Corporations Law***

**Adoption of Corporations Law, pts 5.3A and 5.9**

**315.(1)** The provisions of the Corporations Law, part 5.3A and part 5.9, division 3 are adopted by this section and apply to a cooperative as if it were a company.

**(2)** The provisions apply with changes prescribed under a regulation and as if—

- (a) references in the provisions to the Corporations Law, sections 128 and 129 were references to sections 42 to 44 and 46<sup>92</sup> of this Act; and
- (b) references in the provisions to the Commission were references to the registrar.

***Division 5—Appointment of administrator***

**Appointment of administrator**

**316.(1)** The registrar may, by written notice, appoint an administrator to conduct the affairs of a cooperative.

**(2)** A notice of appointment must state—

- (a) the date of 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 written notice of the change to the registrar.

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<sup>92</sup> Sections 42 (Assumptions entitled to be made) to 44 (Person who knows or ought to know can not make assumptions) and 46 (Effect of fraud)

(4) The registrar must not appoint an administrator unless the necessary grounds for taking the action exist, as mentioned in section 328.<sup>93</sup>

### **Effect of appointment of administrator**

**317.(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 must not be appointed or elected while the administrator is in office except as provided by this division.

### **Revocation of appointment**

**318.(1)** An administrator holds office until the administrator's appointment is revoked.

(2) The registrar may, by written notice, revoke the appointment of an administrator.

(3) When a liquidator of a cooperative is appointed, the appointment of an administrator of the cooperative is automatically revoked.

(4) Immediately on the revocation of an administrator's appointment, the administrator must prepare and give to the registrar a report showing how the administration was carried out, and for the purpose an administrator has access to the cooperative's records.

(5) On giving the report and accounting fully for the administration of the

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<sup>93</sup> Section 328 (Grounds for winding-up, transfer of engagements, appointment of administrator)

cooperative to the satisfaction of the registrar, the administrator is released from any further duty to account for the administration of the cooperative other than because of fraud, dishonesty, negligence or wilful failure to comply with this Act.

(6) Before revoking the appointment of an administrator of a cooperative, the registrar must—

- (a) appoint another administrator; or
- (b) appoint a liquidator; or
- (c) ensure directors of the cooperative have been elected under the rules of the cooperative at a meeting called by the administrator under the rules; or
- (d) appoint directors of the cooperative.

(7) Directors elected or appointed under subsection (6)—

- (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 the appointment.

### **Expenses of administration**

**319.(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 service officer or employee—remuneration of the administrator at a rate approved by the registrar; or
- (b) if the administrator is a public service officer or employee—the amount the registrar certifies should be paid to it 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 payable to the State.

(4) An administrator has, in relation to the expenses mentioned in subsection (1), the same priority on the winding-up of a cooperative as the liquidator of the cooperative has.

### **Liabilities arising from administration**

**320.(1)** If a cooperative incurs loss because of fraud, dishonesty, negligence or wilful failure to comply with this Act or the rules of the cooperative by an administrator, the administrator is liable for the loss.

(2) An administrator is not liable for a loss that is not a loss to which subsection (1) applies but must account for the loss in a report given under section 318.<sup>94</sup>

### **Additional powers of registrar**

**321.(1)** If the registrar appoints directors of a cooperative under section 318 the registrar may, by written notice given to the cooperative, state—

- (a) a time during which this section is to apply to the cooperative; and
- (b) the terms 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—

- (a) remove and appoint directors; and
- (b) vary, revoke or state new terms in place of all or any of the terms stated under subsection (1); and
- (c) amend all or any of the rules stated under subsection (1).

(3) The registrar may, by written notice given to the cooperative, extend the time for which this section is to apply to a cooperative.

(4) A rule stated by the registrar under this section to be a rule of a cooperative—

- (a) must not be altered other than in the way set out in this section; and

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<sup>94</sup> Section 318 (Revocation of appointment)

- (b) if it is inconsistent with another rule of the cooperative—prevails over the other rule, and the other rule is to the extent of the inconsistency inoperative; and
- (c) has the same evidentiary value as is by this Act accorded to the cooperative's rules and to copies of them.

### **Stay of proceedings**

**322.(1)** If the registrar appoints an administrator to conduct a cooperative's affairs, a person must not begin or continue a proceeding in a court against the cooperative until the administrator's appointment is revoked other than with the leave of the Supreme Court and, if the court gives leave, in accordance with any terms the 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 application.

### **Administrator to report to registrar**

**323.** On receipt of a request from the registrar, the administrator of a cooperative must, without delay, prepare and give to the registrar a report showing how the administration is being carried out.

### *Division 6—Effect of merger etc. on property, liabilities etc.*

### **How this division applies to a merger**

**324.(1)** This division applies to a merger of cooperatives under this part.

**(2)** In the application of this division to a merger—

**“new body”** means the cooperative resulting from the merger.

**“original body”** means each cooperative that is a party to the merger.

**“relevant day”** means the day on which the merged cooperative is registered under this Act.

**How this division applies to a transfer of engagements**

**325.(1)** This division applies to a transfer of the engagements of a cooperative to another cooperative under division 1.

**(2)** In the application of this division to a transfer of engagements—

**“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 on which the transfer of engagements takes effect.

**How this division applies to a transfer of incorporation**

**326.(1)** This division applies to a transfer of incorporation under division 2.

**(2)** In the application of this division to the transfer—

**“new body”** means the corporation resulting from the transfer.

**“original body”** means the cooperative transferring its incorporation.

**“relevant day”** means the day on which the transfer takes effect.

**Effect of merger etc. on property, liabilities etc.**

**327.(1)** In this section—

**“assets”** means a 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, choses 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 filed or registered under any law), and includes a judgment, order and process of a court.

**“liabilities”** means liabilities, debts and obligations (whether present or future and whether vested or contingent).

**(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 a 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 pending immediately before the relevant day are taken to be proceedings pending by or against the new body; and
  - (d) an act, matter or thing 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 the act, matter or thing 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 a document of any kind to the original body is to be read as, or as including, a reference to the new body.
- (3) The operation of this section must not be regarded—
- (a) as a breach of contract or confidence or otherwise as a civil wrong; or
  - (b) as a breach of a contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or
  - (c) as giving rise to a remedy by a party to an instrument, or as causing or permitting the termination of an instrument, because of a change in the beneficial or legal ownership of an asset, right or liability.

### *Division 7—Miscellaneous*

#### **Grounds for winding-up, transfer of engagements, appointment of administrator**

**328.(1)** This section applies to the following actions—

- (a) a direction by the registrar to a cooperative to transfer its

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engagements under section 298;<sup>95</sup>

- (b) the appointment of an administrator of a cooperative under division 5;<sup>96</sup>
- (c) the winding-up of a cooperative on a certificate of the registrar under section 307.<sup>97</sup>

(2) The necessary grounds for taking action to which this section applies exist if the registrar certifies—

- (a) the number of members is reduced to less than the minimum number of persons allowed under section 68;<sup>98</sup> or
- (b) the cooperative has not started business within 1 year of registration or has suspended business for more than 6 months; or
- (c) the registration of the cooperative has been obtained by mistake or fraud; or
- (d) the cooperative exists for an illegal purpose; or
- (e) the cooperative has wilfully and after notice from the registrar violated the provisions of this Act or the rules of the cooperative; or
- (f) the board of the cooperative has, after notice from the registrar, failed to ensure the rules of the cooperative contain active membership provisions under part 6;<sup>99</sup> or
- (g) 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 under the rules of the cooperative; or
- (h) after an inquiry under this Act into the affairs of a cooperative or the working and financial condition of a cooperative—in the

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<sup>95</sup> Section 298 (Transfer of engagements by directions of registrar)

<sup>96</sup> Division 5 (Appointment of administrator)

<sup>97</sup> Section 307 (Winding-up on registrar's certificate)

<sup>98</sup> Section 68 (Carrying on business with too few members)

<sup>99</sup> Part 6 (Active membership)

interests of members or creditors of the cooperative or the public, the action concerned should be taken.

(3) Alternatively, the necessary grounds for winding-up a cooperative on a certificate of the registrar exist if the registrar certifies—

- (a) the period, if any, fixed for the duration of the cooperative by its rules has ended; or
- (b) an event (to be stated in the certificate) has occurred on the occurrence of which a regulation provides, or the rules provide, the cooperative is to be wound-up.

(4) The registrar must not certify under this section as to a matter unless the matter has been proved to the registrar's satisfaction.

### **Adoption of Corporations Law about reciprocity with other jurisdictions**

**329.(1)** The provisions of the Corporations Law, part 5.7A are adopted by this section and apply to a cooperative in the same way as they apply to a company.

(2) The provisions apply—

- (a) with the changes prescribed under a regulation; and
- (b) as if—
  - (i) a reference in the provisions to a recognised company were a reference to a foreign cooperative; and
  - (ii) a reference to a provision of the Corporations Law of another jurisdiction were a reference to the provision as applying to a foreign cooperative under a law of another jurisdiction under which the foreign cooperative is incorporated.

### **Adoption of Corporations Law about insolvent cooperatives**

**330.(1)** The provisions of the Corporations Law, part 5.7B are adopted by this section and apply to a cooperative in the same way as they apply to a company.

(2) The provisions apply—

- (a) with the changes prescribed under a regulation; and
- (b) as if a reference in the provisions to a provision of the Corporations Law, section 286 were a reference to the equivalent provisions of a regulation under section 232<sup>100</sup> of this Act.

## **PART 13—ARRANGEMENTS AND RECONSTRUCTIONS**

### *Division 1—General requirements*

#### **Requirements for binding compromise or arrangement**

**331.(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 the creditors concerned who are present and voting (in person or by proxy), being a majority whose debts or claims against the cooperative amount to at least 75% of the total of the debts and claims of all 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 the members concerned, 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 give its approval to a compromise or arrangement subject to the alterations or conditions it considers appropriate.

**(4)** An order of the Supreme Court approving a compromise or

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<sup>100</sup> Section 232 (Requirements for accounts and accounting records)

arrangement does not have effect until an office copy of the order is filed with the registrar.

(5) On the copy being filed, the order takes effect from the date of filing or the earlier date the Supreme Court states in the order.

### **Supreme Court ordered meeting of creditors**

**332.(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) a member of the cooperative; or
- (c) 1 of the creditors concerned; 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 State or elsewhere) the Supreme Court directs.

(4) In considering whether to make an order for a meeting to be held in another jurisdiction, the Supreme Court may have regard to where creditors concerned reside.

### **Registrar to be given notice and opportunity to make submissions**

**333.(1)** The Supreme Court may make an order under this division if the court is satisfied—

- (a) at least 14 days notice of the hearing of the application for the order, or a shorter period of notice the 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 court in relation to the proposed compromise or arrangement concerned and a draft explanatory statement relating to it.

(2) In this section—

**“draft explanatory statement”** means a statement—

- (a) explaining the effect of the proposed compromise or arrangement and, in particular, stating—
  - (i) 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 proposed compromise or arrangement in so far as the effect is different from the effect on the like interests of other persons; and
- (b) setting out—
  - (i) information prescribed under a regulation; and
  - (ii) other information that is 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, being information that is within the knowledge of the directors of the cooperative and has not previously been disclosed to the creditors or members of the cooperative.

### **Results of 2 or more meetings**

**334.** 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.

### **Persons disqualified from administering compromise etc.**

**335.(1)** Except with the leave of the Supreme Court, a person must not be appointed to administer, and must not administer, a compromise or arrangement approved under this Act between a cooperative and any of its creditors or members, whether by the terms of the compromise or arrangement or under a power given by the terms of a compromise or

arrangement, if the person—

- (a) is a mortgagee of a 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, unless the person is a corporation authorised under a law of the State to administer the compromise or arrangement concerned; or
- (e) is an officer of a corporation related to the cooperative; or
- (f) unless the registrar directs in writing this paragraph does not apply in relation to the person in relation to the cooperative—has within the last year been an officer or promoter of the cooperative or of a related corporation.

(2) This section does not disqualify a person from administering a compromise or arrangement under an appointment validly made before the commencement.

### **Adoption of provisions of Corporations Law and application to person appointed**

**336.(1)** Schedule 4, sections 16, 18(2) and (4), 19, 23 and 25<sup>101</sup> apply to a person appointed to administer a compromise or arrangement as if the appointment were an appointment of the person as a receiver and manager of property of the cooperative and as if a reference to a receiver were a reference to the person.

(2) The Corporations Law, section 536 is adopted by this subsection and applies to a person appointed to administer a compromise or arrangement as if the appointment were an appointment as a liquidator of the cooperative and as if a reference to a liquidator were a reference to the person.

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<sup>101</sup> Schedule 4 (Receivers, and other controllers, of property of cooperatives), sections 16 (Power of Supreme Court to fix receiver's remuneration), 18 (Notification of matters relating to controller), 19 (Statement that receiver appointed or other controller acting), 23 (Filing controller's accounts) and 25 (Enforcement of controller's duty to make returns)

**Copy of order to be attached to rules**

**337.(1)** A cooperative must ensure 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 compliance with this section or decide the period during which the cooperative must comply.

**Directors to arrange for reports**

**338.(1)** When a compromise or arrangement (whether or not for a scheme for the reconstruction of a cooperative or the merger of 2 or more cooperatives) has been proposed, the directors of the cooperative must—

- (a) if a meeting of the members of the cooperative by resolution directs—instruct the accountants or solicitors or both named in the resolution to report on the proposals and send their report or reports 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—20 penalty units.

**Power of Supreme Court to restrain further proceedings**

**339.(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 an action or other civil proceeding against the cooperative except by leave of the court and on the terms the court imposes.

**(2)** The Supreme Court's power under this section is in addition to any of

its other powers and must not be exercised except on application by the cooperative or a creditor or member of the cooperative.

### **Supreme Court need not approve compromise or arrangement takeovers**

**340.(1)** The Supreme Court need not approve a compromise or arrangement unless—

- (a) it is satisfied the compromise or arrangement has not been proposed for enabling a person to avoid the operation of any provision of part 11, division 2;<sup>102</sup> and
- (b) there is produced to the court a written statement by the registrar stating the registrar has no objection to the compromise or arrangement.

**(2)** The Supreme Court need not approve a compromise or arrangement merely because a statement by the registrar stating the registrar has no objection to the compromise or arrangement has been produced to the court.

### *Division 2—Explanatory statements*

#### **Explanatory statement required to accompany notice of meeting etc.**

**341.(1)** An explanatory statement must accompany every notice sent—

- (a) to a creditor of a cooperative calling the court ordered meeting to obtain agreement to the compromise or arrangement; or
- (b) to a member of a cooperative for 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) given by advertisement, there must be included either a copy of the explanatory statement or notification of the place at which and the way in which creditors entitled to attend the meeting may obtain copies of the explanatory statement.

**(3)** The explanatory statement must—

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<sup>102</sup> Part 11, division 2 (Restrictions on certain share offers)

- (a) explain the effect of the compromise or arrangement and, in particular, state—
  - (i) material interests of the directors, whether as directors, as members or creditors of the cooperative or otherwise; and
  - (ii) the effect on the interests of the compromise or arrangement in so far as the effect is different from the effect on the like interests of other persons; and
- (b) state—
  - (i) the information prescribed under a regulation; and
  - (ii) other information that is material to the making of a decision by a creditor or member whether or not to agree to the compromise or arrangement, is within the knowledge of the directors and has not previously been disclosed to the creditors or members.

(4) Subsection (1)(a) does not apply to a creditor whose debt is not more than \$200 unless the Supreme Court otherwise orders.

(5) The notice calling the meeting sent to a creditor mentioned in subsection (1)(a) must state a place at which 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.

### **Requirements for explanatory statement**

**342.(1)** An explanatory statement must be as approved by the registrar.

(2) If the compromise or arrangement affects the rights of debenture holders, the explanatory statement must state—

- (a) material interests of the trustees for the debenture holders, whether as trustees for the debenture holders, as 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 persons.

(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 give 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 required to be included in the explanatory statement.

### **Contravention of division—offence by cooperative**

**343.(1)** If a provision of this division is contravened, the cooperative concerned and any other person involved in the contravention commits an offence.

Maximum penalty—20 penalty units.

(2) It is a defence to a prosecution for an offence under subsection (1) if it is proved the contravention was because of the failure of a person (other than the defendant), who is a director of the cooperative or a trustee for debenture holders of the cooperative, to supply for the explanatory statement particulars of the person's interests.

### **Provisions for facilitating reconstructions and mergers**

**344.(1)** 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—

- (a) the compromise or arrangement has been proposed for a scheme for the reconstruction of a cooperative or the merger of a cooperative with another cooperative or another corporation; and
- (b) under the scheme all or 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 within the meaning of the Corporations Law.

(2) 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

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- 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 a person;
  - (c) the continuation by or against the transferee of a legal proceeding pending by or against the transferor;
  - (d) the deregistration, without winding-up, of the transferor;
  - (e) provision to be made for persons who, within the time and in the way the court directs, dissent from the compromise or arrangement;
  - (f) the transfer or allotment of an interest in property to a person concerned in the compromise or arrangement;
  - (g) the incidental, consequential and supplemental matters necessary to ensure the reconstruction or merger is fully and effectively carried out.

(3) If an order made under this section provides for the transfer of property or liabilities, then, by virtue of the order—

- (a) the property is transferred to and vests in the transferee free, for a particular property if the order so directs, from a charge that is under the compromise or arrangement to cease to have effect; and
- (b) the liabilities are transferred to and become the liabilities of the transferee.

(4) If an order is made under this section, each body to which the order relates must, within 14 days after the making of the order, file with the registrar an office copy of the order.

(5) In this section—

**“cooperative”** includes foreign cooperative registered, formed or incorporated under a law of another State.

**“liabilities”** includes duties of any description, including duties that are of a personal character or are incapable under the general law of being assigned or performed vicariously.

**“property”** includes rights and powers of any description, including rights

and powers that are of a personal character and are incapable under the general law of being assigned or performed vicariously.

### *Division 3—Acquisition of shares of dissenting shareholders*

#### **Definitions**

**345.** In this division—

**“dissenting shareholder”**, in relation to a scheme or contract, means a shareholder who has not assented to the scheme or contract or who has failed to transfer the shareholder’s shares under 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 the 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 body.

#### **Schemes and contracts to which division applies**

**346.(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% in 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 part 11, division 2<sup>103</sup> applies.

#### **Acquisition of shares pursuant to notice to dissenting shareholder**

**347.(1)** The transferee under the scheme or contract may, within 2 months after the offer is approved, give notice as prescribed under a

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<sup>103</sup> Part 11, division 2 (Restrictions on certain share offers)

regulation (a “**compulsory acquisition notice**”) to a dissenting shareholder that the transferee wishes to acquire the shares held by the shareholder.

(2) If a compulsory acquisition notice is given, the dissenting shareholder may, by written notice given to the transferee within 1 month after the day the compulsory acquisition notice was given, ask for a statement in writing of the names and addresses of all other dissenting shareholders as shown in the register of members and the transferee must give the statement.

(3) Having given the compulsory acquisition notice, the transferee is, unless the Supreme Court orders to the contrary, entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee.

(4) The Supreme Court may give an order to the contrary only on the application of the dissenting shareholder made within the later of 28 days after the compulsory acquisition notice was given or 14 days after any statement asked for under subsection (2) was given.

(5) If alternative terms are offered to the approving shareholders—

- (a) the dissenting shareholder is entitled to elect which of the terms are preferred but must make the election within the time allowed for making an application to the Supreme Court under subsection (4); and
- (b) if the dissenting shareholder fails to make the election within the time—the transferee may, unless the Supreme Court otherwise orders, decide which of the terms is to apply to the acquisition of the shares of the dissenting shareholder.

### **Restrictions when excluded shares are more than 10%**

**348.** If the nominal value of excluded shares is more than 10% of the total nominal value of all the shares (including excluded shares) to be transferred under the scheme or contract, section 347 does not apply unless—

- (a) the transferee offers the same terms 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% in 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 the shares (with joint owners of shares being counted as 1 person).

### **Remaining shareholders may require acquisition**

**349.(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 other shares in the transferor to which the transferee or a corporation related to the transferee is beneficially entitled, comprise or include 90% in nominal value of the shares concerned, then—

- (a) the transferee must, within 28 days after becoming beneficially entitled to the shares, give notice of the fact as prescribed under a regulation to the holders of the remaining shares concerned who, when the notice was given, had not assented to the scheme or contract or been given a compulsory acquisition notice by the transferee under this division; and
- (b) a holder mentioned in paragraph (a) may, within 3 months after being given the notice, by notice to the transferee require the transferee to acquire the holder's share and, if alternative terms were offered to the approving shareholders, elect which of the terms 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 them—

- (a) on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to the transferee and, if alternative terms were offered to the shareholders, on the terms for which the shareholder has elected, or, if no election is made, for whichever of the terms the transferee decides; or
- (b) on other terms that may be agreed or as the Supreme Court, on the application of the transferee or of the shareholder, considers appropriate to order.

**Transfer of shares pursuant to compulsory acquisition**

**350.(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 for the shares the transferee is entitled to acquire under this division and 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 do so within 14 days after whichever of the following happens last—

- (a) the period of 28 days after the day on which 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 supplied 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, orders to the contrary.

**Disposal of consideration for shares compulsorily acquired**

**351.(1)** Amounts received by the transferor under this division must be paid into a separate financial institution account and the amounts, and any other consideration received, are to be held by the transferor in trust for the persons entitled to the shares in relation to which they were respectively received.

**(2)** If an amount or other property 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, and any accretions to it and any property that may become substituted for it

or for part of it, to the registrar.

(3) The registrar must then deal with it under the Corporations Law, part 9.7 which for the purpose is adopted with the necessary changes prescribed under a regulation.

(4) The transferor must comply with subsection (2) before the end of 10 years after the day on which the amount was paid, or the consideration was allotted or transferred, to the transferor.

#### *Division 4—Miscellaneous*

#### **Notification of appointment of scheme manager**

**352.** Within 14 days after being appointed to administer a compromise or arrangement approved under this part, a person must file with the registrar a written notice of the appointment.

Maximum penalty—10 penalty units.

#### **Power of Supreme Court to require reports**

**353.** If an application is made to the Supreme Court under this part in relation to a proposed compromise or arrangement, the court may—

- (a) before making an order on the application, require the registrar or another person to give to the court a report as to—
  - (i) the terms 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 body or bodies concerned; and
  - (iii) any other matters 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 any order as to the payment of the costs of preparing and giving the report as the court considers appropriate.

**Effect of out-of-jurisdiction compromise or arrangement**

**354.(1)** A compromise or arrangement that is binding on any creditors of a foreign cooperative because of a provision of the law of another State that corresponds to this part is also binding on the creditors of the foreign cooperative whose debts are recoverable by action in a court of this State.

**(2)** If a court of another State makes an order under a provision of the law of that State that is prescribed under a regulation as corresponding to a provision of this part, the order is taken to have been made by the Supreme Court of Queensland under the corresponding provision of this Act and has effect and may be enforced accordingly.

**Jurisdiction to be exercised in harmony with Corporations Law jurisdiction**

**355.** The jurisdiction of the Supreme Court under this part is intended to complement the Supreme Court's jurisdiction under the Corporations Law and should be exercised in harmony with the jurisdiction.

**Registrar may appear etc.**

**356.** In a proceeding before the Supreme Court under this part, the registrar is entitled to appear and be heard, either in person or by the registrar's properly appointed representative.

**PART 14—FOREIGN COOPERATIVES***Division 1—Introductory***Definitions for part**

**357.** In this part—

**“cooperatives law”** means a law that under section 358 is declared to be a cooperatives law for this part.

**“non-participating 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.

### **Cooperatives law**

**358.(1)** Subject to subsection (2), a regulation may declare a law of a State other than Queensland is a cooperatives law for this part.

**(2)** A regulation may be made under subsection (1) in relation to the law of another State only if 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.

### *Division 2—Registration of foreign cooperatives*

#### **Operation of foreign cooperatives in Queensland**

**359.** A foreign cooperative must not carry on business in Queensland unless it is registered under this part.

Maximum penalty—240 penalty units.

#### **Meaning of “carrying on business”**

**360.(1)** A foreign cooperative carries on business in Queensland if it—

- (a) solicits for members in Queensland; or
- (b) seeks share capital in Queensland; or
- (c) provides any goods or services within Queensland.

**(2)** A foreign cooperative is not to be regarded as carrying on business in

Queensland only because in Queensland it—

- (a) is or becomes a party to an action, suit or arbitration proceeding or effects settlement of an action, suit or proceeding or of 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 a financial institution account; or
- (d) effects a sale through an independent contractor; or
- (e) solicits or procures an offer that becomes a binding contract only if the offer is accepted outside Queensland; or
- (f) creates evidence of a debt or creates a charge on real and personal property; or
- (g) secures or collects any of its debts or enforces its rights in regard to any securities relating to the debts; or
- (h) conducts an isolated transaction that is completed within a period of 31 days, not being 1 of a number of similar transactions repeated from time to time.

### **Application for registration of participating cooperative**

**361.(1)** A participating cooperative proposing to carry on business as a cooperative in Queensland may apply to the registrar in the way prescribed under a regulation to be registered as a foreign cooperative.

**(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 in which 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 under a regulation for the section of that law that corresponds with section 370;<sup>104</sup> and
- (b) the documents prescribed under a regulation for the section of the

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<sup>104</sup> Section 370 (Cooperative proposing to register as a foreign cooperative)

- cooperatives law of that State that corresponds with section 370;  
and
- (c) a copy of the current rules of the cooperative; and
  - (d) a statement, verified as prescribed under a regulation, specifying—
    - (i) the full name and address of each person who will act as agent of the cooperative in Queensland; and
    - (ii) the address of the proposed registered office of the cooperative in Queensland; and
  - (e) a copy of an instrument appointing a person resident in Queensland (other than a corporation incorporated outside Queensland) as a person on whom all notices and legal process may be served on behalf of the cooperative, verified as prescribed under a regulation; and
  - (f) other documents or information prescribed under a regulation; and
  - (g) the fee prescribed under a regulation.

### **Application for registration of non-participating cooperative**

**362.(1)** A non-participating cooperative proposing to carry on business as a cooperative in Queensland may apply to the registrar in the way prescribed under a regulation to be registered as a foreign cooperative.

**(2)** An application by a non-participating cooperative must be accompanied by—

- (a) a copy of the current rules of the cooperative; and
- (b) a statement, verified as prescribed under a regulation, specifying—
  - (i) the full name and address of each person who will act as agent of the cooperative in Queensland; and
  - (ii) the address of the proposed registered office of the cooperative in Queensland; and
- (c) a copy of an instrument appointing a person resident in

Queensland (other than a corporation incorporated outside Queensland) as a person on whom all notices and legal process may be served on behalf of the cooperative, verified as prescribed under a regulation; and

- (d) other documents or information prescribed under a regulation; and
- (e) the fee prescribed under a regulation.

### **Registrar to approve rules of non-participating cooperative**

**363.** A non-participating cooperative is not eligible for registration unless the registrar is satisfied 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.

### **Name of foreign cooperative**

**364.(1)** A foreign cooperative is eligible for registration under this part if the name under which it proposes to carry on business in Queensland is not likely to be confused with the name of a corporation or a registered business name.

**(2)** If the registrar advises the foreign cooperative the name under which it proposes to carry on business in Queensland 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.

### **Registration of foreign cooperative**

**365.** If, on application, the registrar is satisfied the foreign cooperative is

eligible for registration, the registrar must register the foreign cooperative as a foreign cooperative and issue a certificate of registration.

### **Application of Act to foreign cooperatives**

**366.** The provisions of this Act prescribed under a regulation apply, with all necessary changes and the changes prescribed under the regulation, to a foreign cooperative registered under this part as if the foreign cooperative were a cooperative.

### **Registrar to be notified of certain changes**

**367.** Within 28 days of a change affecting—

- (a) the rules or constitution of a foreign cooperative registered under this part; or
- (b) the directors of the foreign cooperative; or
- (c) the agents (or their addresses) of the foreign cooperative; 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 Queensland of the foreign cooperative; or
- (f) the address of the registered office in the participating State of a participating cooperative registered under this part; or
- (g) the name under which the participating cooperative carries on business in the participating State;
- (h) the address of the registered office of a non-participating cooperative registered under this part in the state or country in which it is registered, incorporated or formed; or
- (i) the name under which a non-participating cooperative registered under this part carries on business in the state or country in which it is registered, incorporated or formed;

the foreign cooperative must file with the registrar particulars of the change accompanied by the documents prescribed under a regulation.

**Balance sheets**

**368.(1)** A foreign cooperative registered under this part must, within 6 months (or the longer period the registrar may allow) 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 the accompanying documents required by the cooperatives law of the participating State concerned; and
- (b) for a non-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 the accompanying documents required by the registrar.

Maximum penalty—20 penalty units.

**(2)** If the registrar considers 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 written 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—60 penalty units.

**Cessation of business**

**369.(1)** A foreign cooperative registered under this part must, within 7 days of ceasing to carry on business as a cooperative in Queensland, give the registrar written notice of that fact.

Maximum penalty—60 penalty units.

**(2)** On notifying the registrar that it has ceased to carry on business as a cooperative in Queensland, a foreign cooperative is no longer obliged to comply with this part.

**(3)** Unless the registrar has been given written notice the foreign cooperative has resumed carrying on business as a cooperative in Queensland, the registrar must, 1 year after receiving a notice under subsection (1), cancel the registration of the foreign cooperative.

**Cooperative proposing to register as a foreign cooperative**

**370.(1)** A cooperative proposing 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 under a regulation including, if the registrar has varied a requirement in relation to the cooperative, the provision as varied.

**(2)** The registrar must issue the certificate to the cooperative unless the registrar considers the cooperative is not complying with the prescribed provisions.

**(3)** If the registrar issues the certificate, the registrar must also give to the cooperative the documents prescribed under a regulation.

***Division 3—Mergers and transfers of engagements*****Who is the appropriate registrar**

**371.** In this division—

**“appropriate registrar”**, in relation to a proposed merger or transfer of engagements, means—

- (a) if the merger is to result in, or the transfer is to, a Queensland cooperative—the Queensland registrar; or
- (b) if the merger is to result in, or the transfer is to, a cooperative under the cooperatives law of a participating State—the registrar for the participating State.

**Authority for merger or transfer of engagements**

**372.(1)** A Queensland cooperative and a participating cooperative may consolidate all or any of their assets, liabilities and undertakings by merger or transfer of engagements approved under this division.

**(2)** A Queensland cooperative and a non-participating cooperative may consolidate all or any of their assets, liabilities and undertakings by merger or transfer of engagements approved under this division if—

- (a) the merger is to result in a Queensland cooperative; or
- (b) the transfer is to a Queensland cooperative.

### **Requirements before application can be made**

**373.(1)** Before a Queensland cooperative and a participating cooperative 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 special postal ballot; or
- (b) if permitted by subsection (3)—
  - (i) a special resolution; or
  - (ii) a resolution of the board of the cooperative.

**(2)** Before a Queensland cooperative and a non-participating cooperative can apply for approval under this division of a merger or transfer of engagements, the proposed merger or transfer of engagements—

- (a) must have been approved—
  - (i) for the non-participating cooperative—by a special resolution of the cooperative; or
  - (ii) for the Queensland cooperative—by a special resolution passed by special postal ballot; or
- (b) if permitted by subsection (3)—must have been approved by—
  - (i) for the non-participating cooperative—a resolution of the board of the cooperative; or
  - (ii) for the Queensland cooperative—a special resolution, or a resolution of the board, of the cooperative.

**(3)** The proposed merger or transfer of engagements may be approved by a special resolution, or by a resolution of the board, of a cooperative if—

- (a) the Queensland registrar consents to the procedure applying in the particular case; and
- (b) for a merger or transfer affecting a participating cooperative—the registrar for the participating State also consents to the procedure

applying in the particular case.

(4) The Queensland registrar's consent may be given on conditions.

### **Disclosure statement required**

**374.(1)** A special resolution of the Queensland cooperative or foreign cooperative is not effective for this division unless this section has been complied with.

(2) Each cooperative must send to each of its members a disclosure statement approved by the appropriate registrar stating—

- (a) the financial position of the Queensland cooperative and the foreign cooperative as shown in financial statements that have been prepared as at a date not more than 6 months before the date of the statement; and
- (b) interests an officer of the Queensland cooperative or the foreign cooperative has in the proposed merger or transfer of engagements; and
- (c) compensation or other consideration proposed to be paid, or other incentive proposed to be given, to an officer or member of the Queensland 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 of 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 Queensland cooperative or a cooperative under the cooperatives law of the participating State; and
- (g) other information the registrar directs.

(3) The disclosure statement must be sent to the members of the Queensland 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 no 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 registrar may, by gazette notice, exempt the Queensland cooperative or foreign cooperative from complying with this section.

(5) A gazette notice under subsection (4) is subordinate legislation.

(6) The registrar for the participating State may exempt the Queensland cooperative or foreign cooperative from complying with this section.

(7) The registrar for the participating State may grant an exemption subject to the conditions the registrar considers appropriate.

(8) The appropriate registrar may approve a disclosure statement subject to the conditions the registrar considers appropriate.

### **Making an application**

**375.(1)** An application for approval of a merger or transfer of engagements under this division must be made to the Queensland registrar and, if the merger or transfer affects a participating cooperative, to the registrar for the participating State in the way and form required by the registrar concerned.

- (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 non-participating cooperative—details of voting on the special resolution, if any, of the cooperative; and
  - (c) other information required by the registrar to whom the application is made.

### **Approval of merger**

**376.(1)** If the Queensland registrar is the appropriate registrar, the Queensland registrar must approve a merger under an application under this division if satisfied—

- (a) this division has been complied with in relation to the application;

and

- (b) the proposed rules of the merged cooperative are adequate; and
- (c) the certificate of registration of the Queensland cooperative has been surrendered to the Queensland 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 participating State; and
- (e) for a merger with a non-participating 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 Queensland registrar is not the appropriate registrar, the Queensland registrar must approve a merger under an application under this division if satisfied the merger has been approved under the provision of the cooperatives law of the participating State that corresponds with subsection (1).

(3) On approving an application for merger, the Queensland registrar must—

- (a) cancel the registration of the Queensland cooperative involved in the merger; and
- (b) if the merger is to result in a Queensland 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 participating State).

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

**377.(1)** If the Queensland registrar is the appropriate registrar, the Queensland registrar must approve a transfer of engagements under an application under this division if satisfied—

- (a) this division has been complied with in relation to the application; 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 participating State concerned; and
- (d) for a total transfer of engagements from a non-participating cooperative—the certificate of registration of the non-participating cooperative has been surrendered to the registrar; and
- (e) for a transfer of engagements by a non-participating 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 Queensland registrar is not the appropriate registrar, the Queensland registrar must approve a transfer of engagements under an application under this division if satisfied the transfer has been approved under the provision of the cooperatives law 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 Queensland registrar.

### **Effect of merger or transfer of engagements**

**378.(1)** In this section—

**“assets”** means a 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, choses 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 filed or registered under any law) and includes a 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.

(2) When a merger or transfer of engagements takes effect under this division (the **“transfer day”**), the following provisions apply to the extent necessary to give effect to the merger or transfer—

- (a) persons who were members of the original cooperative immediately before the transfer day are members of the successor cooperative under its rules;
- (b) the assets of the original cooperative vest in the successor cooperative without the need for a 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 pending immediately before the transfer day are taken to be proceedings pending by or against the successor cooperative;
- (e) an act, matter or thing done or omitted to be done by, to or in relation to the original cooperative before the transfer day is (to the extent to which the act, matter or thing has any force or effect) to be taken to have been done or omitted by, to or in relation to the successor cooperative;
- (f) a reference in an instrument or in a document of any kind to the original cooperative is to be read as, or as including, a reference to the new cooperative.

(3) The operation of this section must not be regarded—

- (a) as a breach of contract or confidence or otherwise as a civil wrong; or
- (b) as a breach of a contractual provision prohibiting, restricting or

regulating the assignment or transfer of assets, rights or liabilities;  
or

- (c) as giving rise to a remedy by a party to an instrument, or as causing or permitting the termination of an instrument, because of a change in the beneficial or legal ownership of an asset, right or liability.

### **Division applies instead of certain other provisions of this Act**

**379.(1)** This division applies instead of part 12, division 1<sup>105</sup> to the merger of a Queensland cooperative with a foreign cooperative.

**(2)** This division applies instead of part 12, division 1 to a transfer of engagements between a Queensland cooperative and a foreign cooperative.

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

### *Division 1—Supervision and inspection*

#### **Definitions for part**

**380.** In this part—

**“cooperative venture”** means—

- (a) a corporation or unit trust formed by a cooperative or in the formation of which a cooperative participated; or
- (b) a partnership, joint venture or association of persons or bodies formed or entered into by a cooperative.

**“place”** includes all or part of a structure, building, aircraft, vehicle, vessel and place (whether built on or not).

**“relevant documents”** means records or other documents relating to the

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<sup>105</sup> Part 12, division 1 (Mergers and transfers of engagements)

promotion, formation, membership, control, transactions, dealings, business or property of a cooperative.

### **“Cooperative” includes subsidiaries, foreign cooperatives and cooperative ventures**

**381.** A reference in this part to a cooperative includes a reference to each of the following—

- (a) a foreign cooperative;
- (b) a subsidiary of a cooperative or foreign cooperative;
- (c) a cooperative venture;
- (d) a cooperative or foreign cooperative, or a subsidiary of either, or a cooperative venture, that is in the course of being wound-up or has been deregistered.

### **Appointment of inspectors**

**382.** The chief executive may appoint a person as an inspector under this Act if—

- (a) the chief executive considers the person has the necessary expertise or experience to be an inspector; or
- (b) the person has satisfactorily finished training approved by the chief executive.

### **Registrar and investigators have functions of inspectors**

**383.** The registrar, and an investigator exercising functions under division 2,<sup>106</sup> have and may exercise all the functions of an inspector and for the purpose are taken to be inspectors.

### **Inspector’s identity card**

**384.(1)** The chief executive must give each inspector an identity card.

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<sup>106</sup> Division 2 (Inquiries)

(2) The identity card must—

- (a) contain a recent photo of the person; and
- (b) be signed by the person; and
- (c) identify the person as an inspector.

(3) A person who stops being an inspector must return the person's identity card to the chief executive as soon as possible (but within 21 days) after the person stops being an inspector, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

(4) This section does not prevent the giving of a single identity card to a person for this and other Acts or for other purposes.

### **Production or display of inspector's identity card**

**385.(1)** An inspector may exercise a power in relation to someone only if—

- (a) the inspector first produces the inspector's identity card for the other person's inspection; or
- (b) the inspector has the inspector's identity card displayed so it is clearly visible to the other person.

(2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the inspector must produce the identity card for inspection by the person at the first reasonable opportunity.

### **Powers of inspector**

**386.(1)** An inspector is subject to the directions of the registrar.

(2) The powers of an inspector may be limited—

- (a) under a regulation; or
- (b) under a condition of appointment; or
- (c) by written notice given by the registrar to the inspector.

### **Inspector's appointment conditions**

**387.(1)** An inspector holds office on the conditions stated in the instrument of appointment.

**(2)** An inspector—

- (a) if the appointment provides for a term of appointment—stops holding office at the end of the term; and
- (b) if the conditions of appointment provide—stops holding office when the inspector stops holding another office stated in the appointment conditions (the “**main office**”); and
- (c) may resign by signed notice of resignation given to the registrar.

**(3)** However, an inspector may not resign from the office under this Act (the “**secondary office**”) if a term of employment to the main office requires the person to hold the secondary office.

### **Entry of place**

**388.(1)** An inspector may enter a place if—

- (a) its occupier consents to the entry; or
- (b) the entry is authorised by a warrant; or
- (c) it is a place on which the affairs or activities of a cooperative are managed or conducted.

**(2)** An inspector, without the occupier's consent or a warrant, may enter the land around the premises to ask its occupier for consent to enter the premises.

### **Consent to entry**

**389.(1)** This section applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place.

**(2)** Before asking for the consent, the inspector must inform the occupier—

- (a) of the purpose of the entry; and
- (b) that the occupier is not required to consent.

(3) If the consent is given, the inspector may ask the occupier to sign an acknowledgment of the consent.

(4) The acknowledgment must state—

- (a) that the occupier was informed—
  - (i) of the purpose of the entry; and
  - (ii) that the occupier is not required to consent; and
- (b) that the occupier gives an inspector consent to enter the place and exercise powers under this Act; and
- (c) the time and date the consent was given.

(5) If the occupier signs an acknowledgment of consent, the inspector must immediately give a copy to the occupier.

(6) Subsection (7) applies to a court if—

- (a) a question arises, in a proceeding in or before the court, whether the occupier of a place consented to an inspector entering the place under this Act; and
- (b) an acknowledgment under this section is not produced in evidence for the entry; and
- (c) it is not proved the occupier consented to the entry.

(7) The court may presume the occupier did not consent.

### **Inspectors may require certain persons to appear, answer questions and produce documents**

**390.(1)** An inspector may, by notice in the approved form—

- (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; and
- (b) require a person 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; and
- (c) require a person who is 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 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 considered 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, financial institution, solicitor, auditor or other person acting in any capacity for, the cooperative; or
- (b) has a relevant document relating to the cooperative in the person's possession or control; or
- (c) was a party to the creation of a relevant document relating to the cooperative.

(3) A person is not subject to any liability for complying with a requirement made or purportedly made under this section.

### **Powers of inspectors on place entered**

**391.** An inspector has the following powers on a place the inspector is authorised to enter—

- (a) power to search for evidence of a contravention of this Act;
- (b) power to search for relevant documents and to require a person on the place to produce to the inspector any relevant document in the person's custody or under the person's control;
- (c) power to require a person on the place 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 392 in relation to a relevant document found on the place or produced to the inspector.

**Functions of inspectors in relation to relevant documents**

**392.(1)** An inspector has the following powers in relation to a relevant document found by an inspector on a place entered by the inspector or produced to the inspector under 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 a person who was party to the creation of the document to make a statement giving any explanation the person is able to give as to any matter relating to the creation of the document or as to any matter to which the document relates;
- (d) power to retain possession of the document for the period necessary to enable the document to be inspected, and copies of, or extracts from, the document to be made or taken.

**(2)** While an inspector retains possession of a document, the inspector must permit a person who would be entitled to inspect the document were it not in the possession of the inspector to inspect the document at a reasonable time and make a copy of, or take extracts from, the document.

**(3)** If an inspector takes possession of or secures against interference a relevant document and a person has a lien on the document, the inspector's actions do not prejudice the lien.

**Protection from incrimination**

**393.(1)** A person is not excused from making a statement under a requirement under this division on the ground the statement might tend to incriminate him or her.

**(2)** However, if the person claims before making a statement that the statement might tend to incriminate him or her, the statement is not admissible in evidence against him or her in a criminal proceeding, other than a proceeding under this division.

**(3)** Except as provided by subsection (2), a statement made by a person in compliance with a requirement under this division may be used in evidence in any criminal or civil proceeding against the person.

**Warrants**

**394.(1)** An inspector may apply to a magistrate for a warrant to enter a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

(4) The magistrate may issue the warrant only if satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against this Act; or
- (b) the evidence is at the place, or may be at the place, within the next 7 days.

(5) The warrant must state—

- (a) that the inspector may, with reasonable and necessary help and force, enter the place and exercise the inspector’s powers under this Act; and
- (b) the offence for which the warrant was issued; and
- (c) any evidence that may be seized under the warrant; and
- (d) the hours when the place may be entered; and
- (e) the date, within 7 days after the warrant’s issue, when the warrant ends.

**Warrants—applications made other than in person**

**395.(1)** An inspector may apply for a warrant by phone, fax, radio or another form of communication if the inspector considers it necessary because of—

- (a) urgent circumstances; or

(b) other special circumstances, including, for example, the inspector's remote location.

(2) Before applying for the warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.

(3) The inspector may apply for the warrant before the application is sworn.

(4) After issuing the warrant, the magistrate must immediately fax a copy to the inspector if it is reasonably practicable to fax a copy.

(5) If it is not reasonably practicable to fax a copy to the inspector—

(a) the magistrate must—

(i) tell the inspector what the terms of the warrant are; and

(ii) tell the inspector the date and time the warrant was issued; and

(b) the inspector must complete a form of warrant (the “**warrant form**”) and write on it—

(i) the magistrate's name; and

(ii) the date and time the magistrate issued the warrant; and

(iii) the warrant's terms.

(6) The facsimile warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the other powers stated by the warrant issued by the magistrate.

(7) The inspector must, at the first reasonable opportunity, send the magistrate—

(a) the sworn application; and

(b) if the inspector completed a warrant form—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the warrant.

(9) Subsection (10) applies to a court if—

(a) a question arises, in a proceeding in or before the court, whether a power exercised by an inspector was authorised by a warrant

issued under this section; and

- (b) the warrant is not produced in evidence.

(10) The court may presume the exercise of the power was not authorised by a warrant issued under this section, unless the contrary is proved.

(12) Before executing a search warrant, the inspector named in the warrant or a person assisting the inspector must announce that he or she is authorised by the warrant to enter the premises and give any person at the premises an opportunity to allow entry to the premises.

(13) The inspector or a person assisting the inspector need not comply with subsection (12) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure the effective execution of the search warrant is not frustrated.

(14) If an occupier or another person who apparently represents the occupier is present at a place when a search warrant is being executed, the inspector must—

- (a) identify himself or herself to the person by producing his or her identity card for inspection by the person; and
- (b) give to the person a copy of the execution copy of the warrant.

### **General powers after entering places**

**396.(1)** This section applies to an inspector who enters a place under this part.

(2) For monitoring or enforcing compliance with this Act, the inspector may—

- (a) search any part of the place; or
- (b) examine, inspect, photograph or film anything on the place; or
- (c) copy a document on the place; or
- (d) take into or onto the place any persons, equipment and materials the inspector reasonably requires for exercising a power under this part; or
- (e) require a person in the place to give the inspector reasonable help

to exercise the powers mentioned in paragraphs (a) to (d).

(3) A person required to give reasonable help under subsection (2)(e) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—120 penalty units or 1 year's imprisonment.

(4) If the help is required to be given to an inspector by—

- (a) answering a question; or
- (b) producing a document (other than a document required to be kept under this Act);

it is a reasonable excuse for the person to fail to answer the question, or produce the document, if complying with the requirement might tend to incriminate the person.

### **Power to seize evidence**

**397.(1)** An inspector who enters a place under this part other than under a warrant may seize a thing in the place if—

- (a) the inspector reasonably believes the thing is evidence of an offence against this Act; and
- (b) seizure of the thing is consistent with the purpose of entry as told to the occupier.

(2) An inspector who enters a place under this part under a warrant may seize the evidence for which the warrant was issued.

(3) An inspector may also seize anything else in a place mentioned in subsection (1) or (2) if the inspector reasonably believes—

- (a) the thing is evidence of an offence against this Act; and
- (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed or used to continue or repeat the offence.

### **Receipt for seized things**

**398.(1)** As soon as possible after an inspector seizes a thing, the inspector must give a receipt for it to the person from whom it was seized.

(2) However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt at the place of seizure, in a reasonably secure way and in a conspicuous position.

(3) The receipt must describe generally each thing seized and its condition.

### **Return of seized things**

**399.(1)** An inspector must return a seized thing to its owner at the end of—

- (a) 6 months; or
- (b) if a proceeding for an offence involving it is started within the 6 months—the proceeding and any appeal from the proceeding.

(2) Despite subsection (1), the inspector must return the seized thing to the person immediately the inspector stops being satisfied its retention as evidence is necessary.

### **Power to require name and address**

**400.(1)** This section applies if—

- (a) an inspector finds a person committing an offence against this Act; or
- (b) an inspector finds a person in circumstances that lead, or has information that leads, the inspector to reasonably suspect the person has just committed an offence against this Act.

(2) The inspector may require the person to state the person's name and address.

(3) When making the requirement, the inspector must warn the person it is an offence to fail to state the person's name or address, unless the person has a reasonable excuse.

(4) The inspector may require the person to give evidence of the correctness of the stated name or address if the inspector reasonably suspects the stated name or address is false.

(5) A person must comply with a requirement under subsection (2)

or (4), unless the person has a reasonable excuse.

Maximum penalty—120 penalty units or 1 year's imprisonment.

- (6) A person does not commit an offence against subsection (5) if—
- (a) the person was required to state the person's name and address by an inspector who suspected the person had committed an offence against this Act; and
  - (b) the person is not proved to have committed the offence.

### **False or misleading statements**

**401.(1)** A person must not state anything to an inspector the person knows is false or misleading in a material particular.

Maximum penalty—120 penalty units or 1 year's imprisonment.

(2) It is enough for a complaint for an offence against subsection (1) to state the statement made was false or misleading to the person's knowledge without stating which.

### **Power to require production of documents**

**402.(1)** An inspector may require a person to produce to the inspector, for inspection, a document this Act requires the person to hold or keep.

(2) The person must produce the document, unless the person has a reasonable excuse for not producing it.

Maximum penalty—120 penalty units or 1 year's imprisonment.

- (3) The inspector may keep a document that is produced—
- (a) to take an extract from the document; or
  - (b) to make a copy of it.

(4) The inspector must return the document to the person as soon as practicable after taking the extract or making the copy.

### **False or misleading documents**

**403.(1)** A person must not give to the registrar or an inspector a

document containing information the person knows is false or misleading in a material particular.

Maximum penalty—120 penalty units or 1 year’s imprisonment.

(2) Subsection (1) does not apply to a person who, when giving the document—

- (a) tells the registrar or inspector, to the best of the person’s ability, how it is false, misleading or incomplete; and
- (b) if the person has, or can reasonably get, the correct information—gives the correct information to the registrar or inspector.

(3) It is enough for a complaint against a person for an offence against subsection (1) to state the document was false, misleading or incomplete to the person’s knowledge without stating which.

### **Obstruction of inspectors**

**404.(1)** A person must not obstruct an inspector, or a person helping an inspector, in the exercise of a power under this Act, unless the person has a reasonable excuse.

Maximum penalty—120 penalty units or 1 year’s imprisonment.

(2) If a person obstructs an inspector in the exercise of a power under this Act and the inspector decides to exercise the power, the inspector must warn the person.

(3) In warning the person, the inspector must tell the person—

- (a) it is an offence to obstruct the inspector, unless the person has a reasonable excuse; and
- (b) the inspector considers the person’s conduct is an obstruction.

(4) In this section—

“**obstruct**” includes hinder and attempt to obstruct.

### **Copies or extracts of records to be admitted in evidence**

**405.(1)** In any legal proceeding (whether 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 not admissible in evidence under subsection (1) unless it is proved the copy or extract is a true copy of the record or of 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.

**Privilege**

**406.(1)** A lawyer is entitled to refuse to comply with a requirement under section 390 or 392<sup>107</sup> relating to a relevant document if—

- (a) the document contains a privileged communication made by or on behalf of or to the lawyer in his or her capacity as a lawyer; or
- (b) the lawyer is not able to comply with the requirement without disclosing a privileged communication made by or 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 he or she is able to 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 under administration under the Corporations Law, part 5.3A as adopted and applying under this Act, or in the course of being wound-up) the administrator or the liquidator agrees to the lawyer complying with the requirement.

**(4)** If the lawyer refuses to comply with the requirement, he or she must immediately give in writing to the registrar—

- (a) the name and address of the person to whom or by or on behalf of whom the communication was made (if known to the lawyer); and
- (b) enough particulars to identify the document containing the communication (if the communication was made in writing).

Maximum penalty—60 penalty units.

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<sup>107</sup> Section 390 (Inspectors may require certain persons to appear, answer questions and produce documents) or 392 (Functions of inspectors in relation to relevant documents)

***Division 2—Inquiries*****Definitions for division**

**408.** 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”**, of an inquiry under this division, includes—

- (a) the expenses of, and incidental to, the inquiry; and
- (b) the expenses payable by the registrar in a proceeding instituted by the registrar under this division in the name of the cooperative the subject of the inquiry; and
- (c) the part of the remuneration of an officer or employee of the State as the Minister decides is attributable to matters connected with the inquiry.

**“investigator”** means a person appointed under section 409.

**“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 financial institution, solicitor, auditor or actuary, or in another capacity, for the cooperative; or
- (c) a person who has, or at any time had, in his or her possession property of the cooperative; or

- (d) a person who is indebted to the cooperative; or
- (e) a person who is capable of giving 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).

### **Appointment of investigators**

**409.(1)** The Minister may appoint a person or persons to hold an inquiry into the affairs of a cooperative if the Minister considers it is desirable to do so for the protection or otherwise in the interests of the public or of members or creditors of the cooperative.

**(2)** The Minister may vary the terms of appointment of an investigator if the investigator agrees to the variation.

**(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.

### **Powers of investigators**

**410.(1)** An investigator inquiring into the affairs of a cooperative may, by giving an involved person a notice in the approved form, 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 help in the inquiry; or
- (c) to appear before the investigator for examination on oath or affirmation.

**(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 retain it for the period the investigator decides is necessary for the inquiry.

(4) While an investigator retains possession of a document, the investigator must permit a person who would be entitled to inspect the document were it not in the investigator's possession to inspect the document at any reasonable time and make a copy of, or take extracts from, the document.

### **Examination of involved person**

**411.(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 the investigator permits, address the investigator and examine the involved person.

(2) An involved person is not excused from answering a question asked by the investigator even if seeking to be excused on the ground of possible self-incrimination.

(3) If an involved person answers a question of an investigator after having claimed possible self-incrimination by doing so, neither the question nor the answer is admissible in evidence in a criminal proceeding other than—

- (a) a proceeding under section 413<sup>108</sup> for giving a false or misleading answer to the question; or
- (b) a proceeding on a charge of perjury in relation to the answer.

(4) An involved person who attends for examination by an investigator is entitled to be paid the allowance and the expenses prescribed under a regulation.

### **Privilege**

**412.(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

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<sup>108</sup> Section 413 (Offences by involved persons)

communication made by or 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 under administration under the Corporations Law, part 5.3A as adopted and applying under this Act, or in the course of being wound-up) the administrator or liquidator agrees to the lawyer producing the document.

(3) If the lawyer refuses to comply with the requirement to produce a document, he or she must immediately give in writing to the investigator—

- (a) the name and address of the person to whom or by or on behalf of whom the communication was made (if known to the lawyer); and
- (b) enough particulars to identify the document.

Maximum penalty—60 penalty units.

### **Offences by involved person**

**413.(1)** An involved person must not—

- (a) fail to comply with a lawful requirement of an investigator without showing reasonable cause for the failure; or
- (b) give an investigator information knowing the information to be false or misleading in a material particular; or
- (c) when appearing before an investigator—
  - (i) make a statement knowing the statement to be false or misleading in a material particular; or
  - (ii) fail to be sworn or to make an affirmation.

Maximum penalty—240 penalty units or 2 years imprisonment.

(2) If an investigator considers a failure by a person to comply with a requirement of the investigator is an offence under subsection (1)(a), the investigator may certify the failure to the Supreme Court and the court may then—

- (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 the order, punish the involved person as for a contempt of the Supreme Court if satisfied there was no lawful excuse for the failure to comply with the requirement of the investigator.

### **Offences relating to documents**

**414.** If an inquiry into the affairs of a cooperative is being held under this division, a person who—

- (a) conceals, destroys, mutilates or alters a document relating to the cooperative; or
- (b) sends, or causes to be sent, out of the State a document or other property belonging to, or under the control of, the cooperative;

commits an offence, unless it is established the person charged did not intend to defeat, delay or obstruct the inquiry.

Maximum penalty—120 penalty units or 1 year's imprisonment.

### **Record of examination**

**415.(1)** Except as provided by section 411,<sup>109</sup> a record of an examination may be used in a proceeding against the person examined, but this does not preclude 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 give a lawyer a copy of a record of examination made by an investigator if the registrar is satisfied the lawyer is conducting, or is in good faith contemplating, a proceeding about 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 for the preparation for, institution of, or conduct of, a proceeding; or

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<sup>109</sup> Section 411 (Examination of involved persons)

- (b) publish or communicate the record or part of it for another purpose.

Maximum penalty—60 penalty units.

### **Report of investigator**

**416.(1)** An investigator may, and if directed by the registrar to do so must, make interim reports to the registrar on any inquiry being held by the investigator.

**(2)** 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.

**(3)** An investigator's report may include a recommendation as to whether—

- (a) an order should be made under section 419(3);<sup>110</sup> or
- (b) an application should be made under section 419(4) or (5); or
- (c) an order and an application should both be made.

**(4)** A report by an investigator may be accompanied by any document of which the investigator has taken possession after being produced under this division, in which case the registrar—

- (a) may retain the document for the period the registrar considers necessary to decide whether a proceeding should be instituted as a result of the inquiry; and
- (b) may retain the document for the further period the registrar considers necessary to enable a proceeding to be instituted and prosecuted; and
- (c) may permit the use of the document for a proceeding instituted as a result of the inquiry; and
- (d) must permit inspection of the document by a person who would

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<sup>110</sup> Section 419 (Costs of inquiry)

be entitled to inspect it if it were returned to its former custody;  
and

- (e) may permit inspection of the document by another person while it is in the possession of the registrar, but only if the registrar considers the person has an interest in the inquiry and, because of the interest, refusal of the inspection would be unjust.

### **Proceedings following inquiry**

**417.(1)** If a proceeding is to be, or has been, instituted by the registrar as a result of an inquiry under this division, the registrar may, by written notice, require a person who, in relation to the inquiry, was an involved person to give all the assistance in the proceeding the person is reasonably able to give.

**(2)** The Supreme Court may, on the application of the registrar, order a person to comply with a notice under subsection (1) if the person has failed to do so.

**(3)** If the registrar considers, as a result of an inquiry under this division, a proceeding should, in the public interest, be instituted by a cooperative for the recovery of—

- (a) damages for fraud or other misconduct in the affairs of the cooperative; or
- (b) property of the cooperative;

the proceeding may be instituted and prosecuted in the name of the cooperative.

### **Admission of investigator's report as evidence**

**418.(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 411.<sup>111</sup>

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<sup>111</sup> Section 411 (Examination of involved person)

**Costs of inquiry**

**419.(1)** The costs of an inquiry under this division are to be paid out of money appropriated by Parliament.

**(2)** At the direction of the Minister, the registrar must act under 1 or more of subsections (3), (4) and (5).

**(3)** The registrar may, by written notice given to a cooperative, direct the cooperative to pay to the State all or part of the costs of an inquiry under this division into the affairs of the cooperative.

**(4)** If a proceeding is instituted by the registrar under section 417<sup>112</sup> in the name of a cooperative, the court may, in the course of the proceeding and on the application of the registrar, order all or part of the costs of the inquiry that led to the proceeding be paid to the State by a stated party to the proceeding.

**(5)** If a person is convicted of an offence in a proceeding certified by the registrar to be the result of an inquiry into the affairs of a cooperative, the court may, on the application of the registrar made at the time of the conviction or within 14 days later, order the convicted person to pay to the State 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) the manner of payment.

**(7)** An amount that has not been paid by a person in accordance with an order under this section is recoverable from the person by the registrar as a debt payable to the State.

***Division 3—Prevention of fraud etc.*****Falsification of records**

**420.** A person must not make, order or allow to be made an entry or

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<sup>112</sup> Section 417 (Proceedings following inquiry)

erasure in, or an omission from—

- (a) a record of a cooperative or a subsidiary of a cooperative; or
- (b) a record required to be sent, kept or delivered under this Act;

with intent to falsify them or it, or to evade a provision of this Act.

Maximum penalty—60 penalty units.

### **Fraud or misappropriation**

**421.(1)** A person must not—

- (a) by false representation or imposition obtain possession of any property of a cooperative; or
- (b) having property of a cooperative in his or her possession, withhold or misapply it or wilfully apply part of it to purposes other than purposes authorised by the rules of the cooperative or this Act.

Maximum penalty—60 penalty units.

**(2)** A person who is found guilty of an offence under subsection (1) must, if ordered to do so by the court, deliver up all the property and repay all money improperly applied.

Maximum penalty—60 penalty units or 6 months imprisonment.

### **Offering or paying commission**

**422.** A person must not offer or pay commission, fee or reward, whether pecuniary or otherwise, to an officer of a cooperative in relation to a transaction or proposed transaction between the person and the cooperative.

Maximum penalty—60 penalty units or 6 months imprisonment.

### **Accepting commission**

**423.(1)** An officer of a cooperative must not accept a commission, fee or reward, whether pecuniary or otherwise, from a person in relation to a transaction or proposed transaction between the person and the cooperative.

Maximum penalty—60 penalty units or 6 months imprisonment.

(2) An officer of a cooperative who is found guilty of an offence under subsection (1) is also liable to make good to the cooperative double the value or amount of the commission, fee or reward.

### **False statements in loan application etc.**

**424.(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 it to be false or misleading in a material particular; or
- (b) proffer to the cooperative or an officer, employee or agent of the cooperative any information or statement provided by another person knowing it to be false or misleading in a material particular.

Maximum penalty—60 penalty units or 6 months imprisonment.

(2) If a person is found guilty of an offence under subsection (1), a cooperative from which money has been obtained by the person in relation to the commission of the offence may exercise all 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 a contract by which the security was given.

(3) The cooperative may exercise the rights whether the mortgage or other security was executed by the person alone or by the person and another person or other persons.

### ***Division 4—Miscellaneous powers of the registrar***

#### **Application for special meeting or inquiry**

**425.(1)** The registrar must, on the application of a majority of the members of the board or of not less than one-third in number 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 to show the applicants have good reason for requiring the meeting or inquiry and 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 security for the expenses of the meeting or inquiry as directed by the registrar.

### **Holding of special meeting**

**426.(1)** The registrar may direct the time and place at which a special meeting is to be held and the matters 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 a provision in the cooperative's rules as to the giving of notice).

(3) The special meeting has all the powers of a meeting called under the rules of the cooperative and has power to appoint its own chairperson (despite a rule of the cooperative to the contrary).

(4) The registrar or another person nominated by the registrar may attend and address the meeting.

### **Expenses of special meeting or inquiry**

**427.** The expenses of and incidental to a meeting called or an inquiry held under this division (including under section 428<sup>113</sup>) must be defrayed in the proportions 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

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<sup>113</sup> Section 428 (Power to hold special inquiry into cooperative)

- (c) by an officer, member, former officer or former member of the cooperative.

### **Power to hold special inquiry into cooperative**

**428.** The registrar may without an 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.

### **Special meeting following inquiry**

**429.(1)** After an inquiry under this division, the registrar may call a special meeting of the cooperative.

- (2) Sections 426 and 427<sup>114</sup> apply to the meeting.

### **Information and evidence**

**430.(1)** On an application for registration of a cooperative or registration or approval of a rule or document under this Act, the registrar may require from the applicant reasonable information and evidence to show the application should be granted.

(2) The registrar may require from a cooperative reasonable information and evidence to show the cooperative is genuinely carrying on business under the provisions of this Act.

(3) The registrar may require from a cooperative evidence the registrar considers appropriate of all matters required to be done and of the entries in a document required to be given to the registrar under this Act.

### **Extension or abridgment of time**

**431.(1)** The registrar may grant an extension of, or may abridge, a time for doing anything required to be done by a cooperative by this Act or the rules of a cooperative on the terms, if any, the registrar decides.

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<sup>114</sup> Sections 426 (Holding of special meeting) and 427 (Expenses of special meeting or inquiry)

(2) The registrar may grant an extension of time even if the time for doing the thing has ended.

### **Power of registrar to intervene in proceedings**

**432.(1)** The registrar may intervene in a proceeding relating to a matter arising under this Act.

(2) When 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 person to whom the registrar has delegated the registrar's functions under this Act or the functions relating to a matter to which the proceeding relates; or
- (b) by a public service officer or employee who is engaged in the administration of this Act; or
- (c) by a lawyer.

## **PART 16—ADMINISTRATION OF THIS ACT**

### *Division 1—The registrar and other staff, and registers*

#### **Appointment of registrar**

**433.** The chief executive is the registrar of cooperatives for this Act.

#### **Registrar's functions**

**434.(1)** Subject to this Act, the registrar is responsible for the general administration of this Act.

(2) The registrar has the functions conferred on the registrar under this Act.

(3) The registrar must have a seal of office.

(4) The registrar may enter into arrangements or agreements with an entity to act as the agent of the registrar in the carrying out of the registrar's functions.

### **Deputy registrar and other staff**

**435.(1)** There is to be appointed under the *Public Service Act 1996* a deputy registrar and the assistant registrars necessary for this Act.

(2) The deputy registrar or an assistant registrar may exercise any of the functions conferred on the registrar.

### **Delegation by registrar**

**436.(1)** The registrar may delegate the registrar's powers, including this power of delegation, to an appropriately qualified public service officer.

(2) A delegation of a power may permit the subdelegation of the power.

(3) In this section—

**“appropriately qualified”**, for a person to whom a power under this Act may be delegated, includes having the qualifications, experience or standing appropriate to exercise the power.

### **Register of cooperatives**

**437.(1)** There is established a register of—

- (a) cooperatives; and
- (b) foreign cooperatives; and
- (c) cooperative charges.

(2) The registrar must record in the register documents relating to an entity or thing, or a proposed entity, mentioned in subsection (1) that are specified by the registrar by gazette notice and anything else required by this Act to be recorded in the register.

**Keeping of registers**

**438.(1)** The registrar must keep the register of cooperatives and any other registers the registrar considers necessary or desirable for the purposes of this Act.

(2) Subject to section 437, a register must be kept in the form and contain the particulars that the registrar considers appropriate.

(3) Subject to section 439, a document filed with, given to or registered by the registrar under this Act must be kept in the office of the registrar.

**Disposal of records by registrar**

**439.** Subject to the *Libraries and Archives Act 1988*, the registrar may, if the registrar considers it is no longer necessary or desirable to retain them, destroy or dispose of any of the following—

- (a) an annual report or balance sheet filed more than 7 years ago;
- (b) a 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 more than 7 years ago;
- (c) another document (other than the rules or a document affecting the rules of a cooperative) filed, given or registered more than 15 years ago;
- (d) a document filed, given or registered in relation to a cooperative that was deregistered or ceased to be registered more than 15 years ago;
- (e) a document of which a transparency or electronic image has been incorporated with a register kept by the registrar or is otherwise kept in the office of the registrar.

**Inspection of register**

**440.(1)** A person may—

- (a) inspect a register on payment of the fee, if any, prescribed under a regulation; and
- (b) inspect documents kept by the registrar relating to a cooperative

and prescribed under a regulation on payment of the fee, if any, prescribed under a regulation; and

- (c) obtain, on payment of the fee prescribed under a regulation, an extract from a register inspected under paragraph (a); and
- (d) obtain, on payment of the fee prescribed under a regulation, a certified copy of a document that the person may inspect under paragraph (b); and
- (e) obtain, on payment of the fee prescribed under a regulation, a copy of a document that the person may inspect under paragraph (b).

**(1A)** The person may do so—

- (a) for subsection (1)(a), (b), (c) and (e)—
  - (i) at an office of the department when the office is open to the public; or
  - (ii) by using a computer; or
- (b) for subsection (1)(d)—at the department's Brisbane office when the office is open to the public.

**(1B)** A person may pay the fee, in advance or in arrears, under an arrangement approved by the chief executive.

**(2)** If a reproduction or transparency of a document or an extract of information contained in a document and recorded in the register is produced for inspection, a person is not entitled under subsection (1) to require the production of the original of the document.

### **Approvals by registrar**

**441.(1)** This section applies to any provision of this Act imposing a requirement for the registrar's approval of an action or thing.

**(2)** The registrar may indicate in writing to an applicant for the approval that the approval is taken to have been granted at the end of a specified period unless the registrar informs the applicant in writing within the period that the approval has not been granted or is still being considered.

**Filing of documents**

**442.** A document is not filed under this Act unless—

- (a) all information required to be provided in or with the document is provided; and
- (b) the fee, if any, prescribed under a regulation has been paid.

**Way of filing**

**443.(1)** Subject to section 442, it is enough 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 facsimile 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 specified by the registrar.

**(3)** If the person does not comply with a requirement of the registrar within the specified time, the person is to be taken not to have filed the document.

**Power of registrar to refuse to register or reject documents**

**444.(1)** The registrar may refuse to register or may reject a document submitted to the registrar if the registrar considers the document—

- (a) contains matter contrary to law; 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 an error, alteration or erasure.

**(2)** If the registrar refuses to register or rejects a document under subsection (1), the registrar may ask that—

- (a) the document be appropriately amended; or

- (b) a fresh document be submitted in its place; or
- (c) if the document has not been properly completed—a supplementary document in the approved form be submitted.

### *Division 2—Protection from liability*

#### **Particular officials protected from liability**

**445.(1)** In this section—

“**official**” means—

- (a) the Minister; or
- (b) the registrar; or
- (c) a deputy or assistant registrar; or
- (d) an officer or employee of the department.

**(2)** An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

**(3)** If subsection (2) prevents a civil liability attaching to an official, the liability attaches instead to the State.

### *Division 3—Evidence*

#### **Certificate of registration**

**446.(1)** A certificate of registration of a cooperative issued under this Act is evidence that the cooperative is incorporated under this Act and that all the requirements of this Act for registration have been complied with.

**(2)** This section does not affect a provision of this Act for the winding-up or deregistration of the cooperative or the cancellation of its registration.

#### **Certificate evidence**

**447.(1)** If a function under this Act is conferred or imposed on the registrar as a consequence of something being done or omitted to be done

within a specified period, the registrar may certify that—

- (a) the thing had or had not been done within that period; or
- (b) the thing had or had not been done by a specified date.

(2) The registrar may issue a certificate stating that a requirement of this Act specified in the certificate—

- (a) had, or had not, been complied with at a date or within a period specified in the certificate; or
- (b) had been complied with at a date specified in the certificate but not before the date.

(3) The registrar may issue a certificate stating that on a date specified in the certificate a body specified 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.

### **Records kept by cooperatives**

**448.(1)** A record kept by a cooperative under a requirement of this Act is admissible in evidence in a proceeding and is evidence of a matter stated or recorded in the record.

(2) A document purporting to be a record kept by a cooperative is, unless the contrary is proved, taken to be a record kept by the cooperative under a requirement of this Act.

(3) A copy of an 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.

### **Minutes**

**449.(1)** Every 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 convened 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.

### **Official certificates**

**450.(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 is to 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.

### **The registrar and proceedings**

**451.(1)** Judicial notice must be taken of the signature or the facsimile of the signature (by whatever process it is produced) and seal of a person who holds or has held the office of registrar, if the signature or facsimile signature or seal purports to be attached to a certificate or other official document.

(2) This section extends to a copy of the rules of a cooperative certified by the registrar to be a true copy of its registered rules.

(3) In a proceeding, no proof is required (until evidence is given to the contrary) of the appointment of the registrar or a former registrar.

### **Rules**

**452.** 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 a proceeding, evidence of the rules.

### **Registers**

**453.** The register of directors, members and shares of a cooperative is

evidence of the particulars directed or authorised under this Act to be inserted in the register.

## **PART 17—OFFENCES AND PROCEEDINGS**

### **Offences by officers of cooperatives**

**454.(1)** If a cooperative contravenes a provision of this Act—

- (a) a person who is a director of the cooperative or concerned in its management is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention; and
- (b) another officer of the cooperative who by a wilful act or omission is the cause of the contravention is taken to have contravened the same provision.

**(2)** A person may be proceeded against and convicted under a provision under subsection (1) whether or not the cooperative has been proceeded against or convicted under the provision.

**(3)** This section does not affect any liability imposed on a cooperative for an offence committed by the cooperative against this Act.

### **Notice to be given of conviction for offence**

**455.** If a cooperative or an officer of a cooperative is convicted of an offence against a provision of this Act, the cooperative must, within 28 days after the conviction is recorded, give to each member of the cooperative notice of—

- (a) the conviction; and
- (b) any penalty imposed; and
- (c) the nature of the offence.

**Secrecy**

**456.(1)** A person who is, or at any time was, engaged in the administration of this Act or a former Act must not, other than as provided by this section, record, make use of or divulge information obtained in the course of the administration.

Maximum penalty—60 penalty units.

**(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 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 of an inquiry authorised by an Act; or
- (c) with the consent of the person to whom the information relates; or
- (d) under a requirement imposed under the *Parliamentary Commissioner Act 1974*; or
- (e) under a reciprocal arrangement under section 465.<sup>115</sup>

**(4)** Information may be divulged to—

- (a) the Minister; or
- (b) the Treasurer; or
- (c) the Commissioner of Stamp Duties; or
- (d) the Auditor-General; or
- (e) the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation holding office under a law of the Commonwealth; or

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<sup>115</sup> Section 465 (Reciprocal arrangements)

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- (f) the Australian Securities and Investments Commission; or
- (g) the person who, under a law of another State, administers a law of the State that relates to taxation or the imposition of a duty; or
- (h) the Criminal Justice Commission if—
  - (i) the registrar has received a written request for information from the commission; and
  - (ii) the Minister has given written approval to the registrar of the communication of the information; and
  - (iii) the registrar has given to the person written approval of the communication of the information; or
- (i) a person seeking information under a reciprocal arrangement under section 465; or
- (j) a police officer exercising functions as a police officer; or
- (k) a person nominated by a person mentioned in paragraphs (a) to (g); or
- (l) a person, to whom the registrar considers 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 or a former Act if the person exercises, or at any time exercised, a function as—

- (a) the registrar holding office under this Act or a former Act; or
- (b) an inspector appointed under this Act or a former Act; or
- (c) an investigator appointed under this Act; or
- (d) a person appointed or employed for this Act or a former Act.

(6) In this section—

“**divulge**”, in relation to information, means—

- (a) communicate the information orally; or
- (b) make available a document containing the information; or
- (c) make available anything from which, by electronic process or otherwise, the information may be obtained; or

(d) communicate the information in another way.

**“former Act”** means—

- (a) the *Cooperative and Other Societies Act 1967*; or
- (b) the *Primary Producers’ Cooperative Associations Act 1923*.

### **False or misleading statements**

**457.(1)** A person must not, in a document required for this Act or filed with the registrar, make, or authorise the making of, a statement knowing it to be false or misleading in a material particular.

Maximum penalty—120 penalty units.

**(2)** A person must not, from a document required for this Act or filed with the registrar, omit, or authorise the omission of, anything knowing that the omission makes the document false or misleading in a material particular.

Maximum penalty—120 penalty units.

**(3)** A person who, in a document required for this Act or filed with the registrar, makes, or authorises the making of, a statement that is false or misleading in a material particular commits an offence, unless it is proved that the person had taken reasonable precautions aimed at avoiding the making or authorising of false or misleading statements in the document.

Maximum penalty—60 penalty units.

**(4)** If an omission makes a document required for this Act or filed with the registrar false or misleading in a material particular, a person who made or authorised the omission commits an offence, unless it is proved that the person had taken reasonable precautions aimed at avoiding the making or authorising of omissions that would make the document false or misleading.

Maximum penalty—60 penalty units.

### **Further offence for failure to do required act**

**458.(1)** If a provision of this Act requires an act to be done, the obligation to do the act continues until the act is done—

- (a) even if the person has been convicted of an offence for 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 the period has ended or the time passed.

(2) If a person is convicted of an offence (a **“primary conviction”**) for a failure to do an act (whether it is the first or a second or subsequent offence in relation to the failure) and the failure to do the act continues after the time of the conviction, the person commits a further offence for the continuing failure.

(3) The further offence is constituted by the failure to do the act during the period (**“the further offence period”**) that starts with the primary conviction and ends when a proceeding for the further offence is started or the act concerned is done (whichever happens first).

(4) A proceeding for a further offence is taken to be started on the day the information for the further offence is laid or an earlier day stated in the information for the purpose.

(5) The maximum penalty for the further offence is the penalty worked out by multiplying \$50 by the number of days in the further offence period.

### **Civil remedies**

**459.(1)** If a cooperative in making, guaranteeing or raising a loan or receiving a deposit contravenes this Act or a rule of the cooperative, the civil rights and liabilities of the cooperative or another person in relation to the recovery of the loan or deposit are not affected or prejudiced by the contravention, but the money becomes immediately payable.

(2) The same remedies may be had 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.

### **Injunctions**

**460.(1)** This section applies to conduct that constituted, constitutes or would constitute—

- (a) a contravention of this Act; or

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- (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)** On the application of—

- (a) the registrar; or
- (b) a person whose interests have been, are or would be affected by conduct that another person has engaged, is engaging or is proposing to engage in;

the Supreme Court, if satisfied that conduct is conduct to which this section applies, may grant an injunction, on the terms the court considers appropriate, restraining a person from engaging in the conduct and, if the court considers it desirable to do so, requiring the person to do any act or thing.

**(3)** If the Supreme Court considers it desirable to do so, the court may grant an interim injunction pending decision of the application.

**(4)** The Supreme Court may discharge or vary an injunction granted under this section.

**(5)** The power of the Supreme Court to grant an injunction restraining a person from engaging in conduct may be exercised—

- (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in the conduct; and
- (b) whether or not the person has previously engaged in the conduct; and
- (c) whether or not there is an imminent danger of substantial damage to a person if the first-mentioned person engages in the conduct.

**(6)** The power of the Supreme Court to grant an injunction requiring a person to do an act or thing may be exercised—

- (a) whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do the act or thing; and
- (b) whether or not the person has previously refused or failed to do the act or thing; and
- (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do the act or thing.

(7) 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 act or thing, the court may, either in addition to or in substitution for the grant of the injunction, order the person to pay damages to another person.

### **Proceedings for offences etc.**

**461.(1)** A proceeding for an offence under this Act may be instituted in a summary way under the *Justices Act 1886* within 3 years after the alleged commission of the offence.

(2) A proceeding for the recovery of a fine or penalty imposed by the rules of a cooperative may be instituted only by the cooperative.

## **PART 18—GENERAL**

### **Cooperative ceasing to exist**

**462.(1)** As soon as practicable after a cooperative ceases to exist, other than on deregistration of the cooperative under section 308,<sup>116</sup> the registrar must deregister the cooperative by registering the cessation and cancelling the registration of the cooperative.

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<sup>116</sup> Section 308 (Application of Corporations Law to winding-up and deregistration)

(2) The registrar may remove from a register kept by the registrar the name of a cooperative that has been deregistered or otherwise ceased to exist.

(3) A cooperative that has transferred its engagements to another cooperative is taken to have ceased to exist.

### **Service of documents on cooperative**

**463.(1)** A document may be served on a cooperative by post or by leaving it at the registered office of the cooperative with a person who appears to be aged 16 or more.

(2) A document may be served on a foreign cooperative—

- (a) by post; or
- (b) by leaving it with a person who appears to be aged 16 or more and is at a place where the foreign cooperative carries on business in Queensland; or
- (c) by leaving it at the registered office in Queensland of the foreign cooperative registered under part 14.<sup>117</sup>

(3) For serving a document under this section by post, it is properly addressed if—

- (a) for a cooperative—it is addressed to the registered office of the cooperative; or
- (b) for a foreign cooperative—it is addressed to a place in Queensland where the foreign cooperative carries on business or to the registered office of the foreign cooperative in its place of registration, incorporation or formation.

(4) This section does not affect the operation of a provision of a law or of the rules of a court authorising a document to be served on a cooperative or a foreign cooperative in another way.

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<sup>117</sup> Part 14 (Foreign cooperatives)

**Service on member of cooperative**

**464.(1)** A notice required under this Act to be given to a member of a cooperative must be in writing.

**(2)** A notice or other document required under this Act to be given to a member of a cooperative may be given—

- (a) personally; or
- (b) by post; or
- (c) by publishing the notice in a newspaper circulating generally in Queensland or in the area served by the cooperative, if—
  - (i) the cooperative is a non-trading cooperative; or
  - (ii) the member's whereabouts are unknown to the cooperative; or
  - (iii) the registrar permits notice to be given to members of the cooperative in that way.

**(3)** This section does not limit the *Acts Interpretation Act 1954*, section 39.

**Reciprocal arrangements**

**465.(1)** If a reciprocal arrangement with another State is in force, the registrar—

- (a) may, at the request of the appropriate official of the State, give the official information or documents relating to a cooperative; and
- (b) may ask the appropriate official of the State to give the registrar documents or information relating to an organisation that, under the arrangement, is an organisation corresponding to a cooperative.

**(2)** A reciprocal arrangement with another State is an arrangement made between the Minister and a representative of the government of the other 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.

### **Translations of documents**

**466.** A requirement imposed under this Act to give or file a document or make a document available for inspection is, for a document that is not in the English language, taken to include a requirement that a translation of the document be given, filed or made available for inspection at the same time.

### **Exemptions may be on conditions**

**466A.** An exemption under section 143B, 233, 256(6), 268(3), 282, 290, 294(4) or 374(4) may be given on conditions.

### **Approval of forms**

**467.** The registrar may approve forms for use under this Act.

### **Regulation making power**

**468.(1)** The Governor in Council may make regulations under this Act.

**(2)** A regulation may provide for any of the following—

- (a) the making of applications for the exercise of a power by the registrar;
- (b) how to file documents with the registrar, including electronic filing and filing by facsimile;
- (c) fees to be paid in relation to the administration of this Act, including—
  - (i) fees for the filing of a document under this Act; and
  - (ii) additional fees for late filing of a document under this Act.

**(3)** A regulation may also create offences and impose penalties of not more than 20 penalty units for an offence.

**PART 19—REPEALS, SAVINGS AND  
TRANSITIONAL**

**Repeal of Cooperative and Other Societies Act 1967**

**469.** The *Cooperative and Other Societies Act 1967* is repealed.

**Repeal of Primary Producers' Cooperative Associations Act 1923**

**470.** The *Primary Producers' Cooperative Associations Act 1923* is repealed.

**Savings and transitional provisions**

**471.** Schedules 5 and 6 have effect.

**SCHEDULE 1****MATTERS FOR WHICH RULES MUST MAKE  
PROVISION**

section 101

**Requirements for all cooperatives**

**1.** The rules of all cooperatives must set out or make provision for each of the following—

- (a) the name of the cooperative;
- (b) active membership provisions (within the meaning of part 6);<sup>118</sup>
- (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 deceased 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) the charges or subscriptions 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, being not more than the maximum amount prescribed under a regulation;

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<sup>118</sup> Part 6 (Active membership)

## SCHEDULE 1 (continued)

- (i) the grievance procedures for settling disputes under the rules between the cooperative and any of its members as defined in section 82,<sup>119</sup> 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 qualification of directors, and the way of electing, remunerating and removing directors and filling a vacancy, the period for which directors are to hold office, and whether directors are to retire by rotation or otherwise, and for the holding of annual elections;
- (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 mode of drawing and signing cheques, drafts, bills of exchange, promissory notes, and other negotiable instruments for the cooperative;
- (o) the custody of securities belonging to the cooperative;
- (p) how debentures may be transferred;
- (q) the date on which the financial year of the cooperative ends;
- (r) the accounts of the cooperative to be audited annually or more frequently and the way of appointment of the auditor;
- (s) how a loss that may result from the transactions of the cooperative is to be provided for;
- (t) the way of calling general and special meetings, the requisite notices of meetings, and the quorum for meetings, of the cooperative;
- (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;

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<sup>119</sup> Section 82 (Grievance procedure)

## SCHEDULE 1 (continued)

- (v) the method of conducting postal ballots, including special postal ballots, including the sending and filing of information and votes by facsimile or electronic means;
- (w) the way of altering the rules;
- (x) how the cooperative may be wound-up;
- (y) a matter prescribed under a regulation for this section;
- (z) another matter that to the cooperative appear necessary or desirable.

**Additional matters—cooperatives with share capital**

2. In addition to the matters specified in section 1, the rules of a cooperative with a share capital must set out or make provision for each of the following—

- (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, not including 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) 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 for them, and the sale or cancellation of forfeited shares;
- (h) how shares may be transferred;
- (i) a matter prescribed under a regulation for this section.

## SCHEDULE 1 (continued)

**Additional matters—non-trading cooperatives**

**3.** In addition to the matters specified in sections 1 and 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) for the way of distribution of the surplus property at winding-up.

**SCHEDULE 2****RELEVANT INTERESTS, ASSOCIATES, RELATED BODIES**

section 5

**PART 1—RELEVANT INTERESTS****Terminology used in this part**

- 1.(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 persons jointly is taken to be exercisable by either or any of the persons.
- (6)** A reference to a controlling interest includes a reference to an interest that gives control.

**Basic rules—relevant interests**

- 2.(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.

## SCHEDULE 2 (continued)

**Control of corporation having power in relation to a share**

3. 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;

a person is taken for this part to have in relation to the right to vote or share the same power as the body has, or is taken to have, if—

- (c) the body is, or its directors are, accustomed or under an obligation, whether formal or informal, to act under the directions, instructions or wishes of the person in relation to the exercise of the power mentioned in paragraph (a) or (b); or
- (d) the person has a controlling interest in the body.

**Control of 20% of voting power in corporation having power in relation to a share**

4. 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;

a person is taken for this part to have in relation to the right to vote or share the same power as the body or associate has, or is taken to have, if—

- (c) the person has; or
- (d) an associate of the person has; or
- (e) associates of the person together have; or
- (f) 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 body.

## SCHEDULE 2 (continued)

**Deemed relevant interest in advance of performance of agreement that will give rise to a relevant interest****5.** If a person—

- (a) has entered into an agreement with another person with respect to an issued share or right to vote in which the other person has a relevant interest; or
- (b) has a right enforceable against another person 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
- (c) has an option granted by another person, or has granted to another person an option, with respect to an issued share or right to vote in which the other person has a relevant interest;

and, on performance of the agreement, enforcement of the right, or exercise of the option, the first-mentioned person would have a relevant interest in the share or right to vote, the first-mentioned person is taken for this part to have that relevant interest in the share or right to vote.

**Control of corporation having a relevant interest by virtue of s 5**

**6.** If a corporation is by section 5 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 under 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.

## SCHEDULE 2 (continued)

**Matters not affecting application of part**

**7.(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 persons; or
- (c) can not 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 merely because of either or both of the following—

- (a) its remoteness;
- (b) how it arose.

**Corporation may have a relevant interest in its own shares**

**8.** A corporation may, by virtue of this part, be considered to have a relevant interest in a share in or right to vote arising from membership of the body itself.

**Exclusions—money-lenders**

**9.** A relevant interest of a person in a share or right to vote is to 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 connection with lending money, other than a transaction entered into with an associate of the person.

**Exclusions—certain trustees**

**10.** A relevant interest of a person in a share or right to vote is to be disregarded if—

- (a) the share or right is subject to a trust; and

## SCHEDULE 2 (continued)

- (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 5<sup>120</sup> taken to have a relevant interest in the share or right because the beneficiary has a presently enforceable and unconditional right mentioned in section 5(b); or
  - (ii) the person is a bare trustee.

**Exclusions—instructions to securities dealer to dispose of share**

**11.** A relevant interest of a person in a share or right to vote is to 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 another person, to dispose of the share on the other person's behalf in the ordinary course of the business.

**Exclusions—honorary proxies**

**12.** A relevant interest of a person in a share or right to vote is to 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.

**Exclusions—holders of prescribed offices**

**13.** A relevant interest of a person in a share or right to vote is to be disregarded if the person has it because of holding an office prescribed under a regulation.

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<sup>120</sup> Schedule 2, section 5 (Deemed relevant interest in advance of performance of agreement that will give rise to a relevant interest)

## SCHEDULE 2 (continued)

**Prescribed exclusions**

**14.** A regulation may provide that a relevant interest in a share is, in specified circumstances and subject to specified conditions, if any, to be disregarded for a provision of this Act.

**Effect of schedule**

**15.(1)** Nothing in this schedule limits the generality of 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 schedule.

**Relevant interest—corporation other than cooperative**

**16.** A reference in this Act (including 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 is to be construed under the Corporations Law.

**PART 2—ASSOCIATES****Effect of part**

**17.** A person is not an associate of another person except as provided by this part.

**Associates of a corporation**

**18.** The associates of a corporation include the following—

- (a) a director or secretary of the body;
- (b) a related corporation;
- (c) a director or secretary of a related corporation.

## SCHEDULE 2 (continued)

**Matters relating to voting rights**

**19.(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 purchase shares to which part 11, division 2<sup>121</sup> applies;

the reference includes a reference to another person with whom the person has, or proposes to enter into, an agreement mentioned in subsection (2).

**(2)** Subsection (1) applies to an agreement—

- (a) because of which 1 of the persons 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 body; or
- (b) for the purpose of controlling or influencing—
  - (i) the composition of the body's board; or
  - (ii) the conduct of affairs of the body; or
- (c) under which one of the persons—
  - (i) will or may acquire; or
  - (ii) may be required by the other to acquire;  
shares in the body in which the other has a relevant interest; or
- (d) under which 1 of the persons may be required to dispose of shares in the body in accordance with the other's directions.

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<sup>121</sup> Part 11, division 2 (Restrictions on certain share offers)

## SCHEDULE 2 (continued)

(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 body and the body may be an associate of a person.

**General**

**20.(1)** A reference to an associate of a person includes a reference to—

- (a) another person in concert with whom the person is acting or proposes to act; and
- (b) another person who, under a regulation, is, for the purposes of the provision in which the reference occurs, an associate of the person; and
- (c) another person 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, an act or thing, in order to become associated with another person as mentioned in an applicable provision of this part, a reference to an associate of the person includes a reference to the other person.

**Exclusions**

**21.** A person is not an associate of another person by virtue of section 19 or 20(1),<sup>122</sup> or by virtue of section 20(2) as it applies in relation to section 19 or 20(1), merely because of 1 or more of the following—

- (a) one gives advice to the other, or acts on the other's behalf, in the proper performance of the functions attaching to a professional capacity or a business relationship;

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<sup>122</sup> Schedule 2, section 19 (Matters relating to voting rights) or 20 (General)

## SCHEDULE 2 (continued)

- (b) one, a client, gives specific instructions to the other, whose ordinary business includes dealing in securities, to acquire shares on the client's behalf in the ordinary course of that business;
- (c) one has made, or proposes to make, to the other an offer to which part 11, division 2<sup>123</sup> applies, in relation to shares held by the other;
- (d) one has appointed the other, otherwise than for valuable consideration given by the other or by an associate of the other, to vote as a proxy or representative at a meeting of members, or of a class of members, of a corporation.

**PART 3—RELATED CORPORATIONS****Related corporations**

**22.** For this Act, a corporation is to be taken to be related to—

- (a) another corporation that is its subsidiary; and
- (b) another corporation of which it is a subsidiary; and
- (c) another corporation if both it and that other corporation are subsidiaries of the same corporation.

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<sup>123</sup> Part 11, division 2 (Restrictions on certain share offers)

**SCHEDULE 3****REGISTRATION ETC. OF CHARGES**

section 262

**PART 1—PRELIMINARY****Interpretation**

1. In this part—

**“cooperative”** includes a foreign cooperative registered under part 14.<sup>124</sup>

**“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; or
- (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 storer’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.

**“marketable security”** see the Corporations Law.

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<sup>124</sup> Part 14 (Foreign cooperatives)

## SCHEDULE 3 (continued)

**“present liability”**, in relation to a charge, means a liability that has arisen, being a liability the extent or amount of which is fixed or capable of being ascertained, whether or not the liability is immediately due to be met.

**“property”**, in relation to a cooperative, means property within Queensland 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, by virtue of section 4,<sup>125</sup> the provisions of this schedule mentioned in section 4(1) apply.

**Application to charges mentioned in s 17**

**2.(1)** A charge mentioned in section 17<sup>126</sup> 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 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 17 does not prejudice any priority that would have been accorded to the charge under another law (whether or not a law of a place in Australia) if the charge had not been registered.

**Filing of documents**

**3.** 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.

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<sup>125</sup> Schedule 3, section 4 (To which charges does schedule apply)

<sup>126</sup> Schedule 3, section 17 (Acquisition of property subject to charge)

## SCHEDULE 3 (continued)

**PART 2—REGISTRATION***Division 1—Charges***To which charges does schedule apply**

**4.(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 other charges.

**(2)** Subsection (1) applies to the following charges—

- (a) a floating charge on the whole 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 for 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, but not including a ship registered in an official register kept under a law of a place in Australia 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, not being—
  - (i) a charge created in whole or in part by the deposit of a document of title to the marketable security; or

## SCHEDULE 3 (continued)

- (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.

**Excluded charges**

5. The provisions of this schedule mentioned in section 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, being a charge 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 a profession or the carrying on of any trade or business; or
- (e) a dealing, in the ordinary course of the practice of a profession or the carrying on of a trade or business, for goods outside Australia.

**Personal chattels**

6. The reference in section 4(2)(d)<sup>127</sup> to a charge on a personal chattel is a reference to a charge on an 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 affixed or on which it is growing, but does not include a reference to a charge on—

- (a) a document evidencing title to land; or

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<sup>127</sup> Schedule 3, section 4 (To which charges does schedule apply)

## SCHEDULE 3 (continued)

- (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.

**Book debts**

7. The reference in section 4(2)(f)<sup>128</sup> to a charge on a book debt—

- (a) is a reference to a charge on a debt payable or to become payable to the cooperative at some future time on account of or in connection with 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 for a mortgage, charge or lease of land.

**Crops or stock**

8. The reference in section 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 prescribed under a regulation.

**Deposit of documents of title**

9. For this division, a cooperative is taken to have deposited a document of title to property with another person (the “**chargee**”) in a case where the

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<sup>128</sup> Schedule 3, section 4 (To which charges does schedule apply)

**SCHEDULE 3 (continued)**

document of title is not in the possession of the cooperative if—

- (a) 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
- (b) 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.

**Charges on land or fixtures on land**

**10.(1)** The provisions of this schedule mentioned in subsection 4(1)<sup>129</sup> do not apply in relation to a charge on land.

**(2)** The provisions of this schedule mentioned in section 4(1) do not apply in relation to a charge on fixtures given by a charge on the land to which they are affixed.

**What if other property is also charged**

**11.** For this division, a charge is taken to be a charge on property of a kind to which a particular paragraph of section 4(2) applies even though the instrument of charge also charges other property of the cooperative, including other property that is of a kind to which none of the paragraphs of section 4(2) applies.

**Effect of failure to file or give notice or document**

**12.** A charge on property of a cooperative is not invalid merely because of the failure to file with the registrar, or give to the cooperative or another person, a notice or other document that is required by this part to be so filed or given.

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<sup>129</sup> Schedule 3, section 4 (To which charges does schedule apply)

## SCHEDULE 3 (continued)

*Division 2—Notice of charge***Filing of notice of charge and copy of instrument**

**13.(1)** If a cooperative creates a charge, the cooperative must ensure that there is filed with the registrar, within 45 days after the creation of the charge, a notice in the approved form 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 a 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) other information that is prescribed under a regulation.

**(2)** If, under a resolution or 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 resolution or resolutions and the debentures, the notice under subsection (1) must be accompanied by—

- (a) a copy of the resolution or of each of the resolutions verified by a

## SCHEDULE 3 (continued)

statement in writing to be a true copy; and

- (b) a copy of the first debenture issued in the series and a statement in writing 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 or instruments, the notice under subsection (1) must be accompanied by—

- (a) the instrument or each of the instruments; or
- (b) a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy, and a statement in writing verifying the execution of the instrument or of each of the instruments.

**Series of debentures**

**14.** In a case to which section 13(2) applies—

- (a) the charge is, for section 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 the resolution, verified by a statement in writing to be a true copy of the resolution, is filed within 45 days after the passing of the resolution.

**Operation of priority provisions in relation to issue of debentures**

**15.** If a notice with respect to an instrument creating a charge has been filed under section 13(1),<sup>130</sup> being a charge in relation to an issue of several debentures the holders of which are entitled under the instrument in equal priority to the benefit of the charge, sections 46 to 49<sup>131</sup> have effect as if any

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<sup>130</sup> Schedule 3, section 13 (Filing of notice of charge and copy of instrument)

<sup>131</sup> Schedule 3, sections 46 (Priorities of charges) to 49 (Special priority rules)

**SCHEDULE 3 (continued)**

charges constituted by the debentures were registered at the time when the charge to which the notice relates was registered.

**Discounts**

**16.(1)** If a payment or discount has been made or allowed, either directly or indirectly, by a cooperative to a person in consideration of the person's subscribing or agreeing to subscribe, whether absolutely or conditionally, for debentures, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for debentures, the notice required to be filed under section 13(1)<sup>132</sup> must include particulars as to the amount or rate per cent of the payment or discount.

**(2)** If a cooperative issues debentures as security for a debt of the cooperative, the cooperative is not taken, for subsection (1), to have allowed a discount in relation to the debentures.

**Acquisition of property subject to charge**

**17.(1)** If a cooperative acquires property subject to a charge, being a charge that would have been registrable when it was created if it had been created by a cooperative, the cooperative must, within 45 days after the acquisition of the property—

- (a) ensure that there is filed with the registrar a notice in the approved form in relation to the charge, setting out—
  - (i) the name of the cooperative; and
  - (ii) the date on which the property was so acquired; and
  - (iii) other particulars required by section 13(1); and
- (b) give to the chargee notice that it has acquired the property and the date on which it was so acquired.

**(2)** If the charge mentioned in subsection (1) was created or evidenced as mentioned in section 13(2), the notice under subsection (1)(a) must be accompanied by—

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<sup>132</sup> Schedule 3, section 13 (Filing of notice of charge and copy of instrument)

## SCHEDULE 3 (continued)

- (a) a copy of the resolution or of each of the resolutions mentioned in section 13(2) verified by a statement in writing to be a true copy; and
- (b) a copy of the first debenture issued in the series mentioned in section 13(2) verified by a statement in writing to be a true copy.

**(3)** If the charge mentioned in subsection (1) was created or evidenced by an instrument or instruments (otherwise than as mentioned in section 13(2)), the notice under subsection (1)(a) must be accompanied by—

- (a) the instrument or each of the instruments; or
- (b) a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy.

*Division 3—Registration***Register of cooperative charges**

**18.** The registrar must keep a register to be known as the register of cooperative charges.

**Registration of documents relating to charge**

**19.(1)** If a notice is filed with the registrar under division 2,<sup>133</sup> the registrar must as soon as practicable cause to be entered in the register the time and date when the notice was filed and the following particulars in relation to 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 on which the property was so acquired;
- (c) a short description of the liability (whether present or prospective)

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<sup>133</sup> Schedule 3, division 2 (Notice of charge)

## SCHEDULE 3 (continued)

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 for debenture holders, 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 of a charge are entered in the register under subsection (1), the charge is taken to be registered, and to have been registered, from and including the time and date entered in the register under the subsection.

(5) The registrar may enter in the register in relation to a charge, in addition to the particulars expressly required by this division to be entered, other particulars the registrar considers appropriate.

**Provisional registration if stamp duty not paid****20.(1) If—**

- (a) a notice in relation to a charge on property of a cooperative is filed under division 2;<sup>134</sup> 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 cause to be entered in the register the time and date when the notice was filed and the particulars mentioned in section 19(1)(a) to (e), but must cause the word ‘provisional’ to be entered in the register next to the entry specifying that time and date.

(2) Subsection (1) applies whether the notice was filed during or after the period within which the notice was required to be filed.

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<sup>134</sup> Schedule 3, division 2 (Notice of charge)

## SCHEDULE 3 (continued)

(3) The registrar must delete the word ‘provisional’ entered in the register under subsection (1) from an entry relating to a charge if a certificate to the effect set out in subsection (1)(b) has been produced to the registrar—

- (a) within a period of 28 days after the notice was filed or, if a longer period is prescribed under a regulation, the period; or
- (b) within the further period the registrar, if the registrar considers it appropriate in a particular case, allows.

(4) The registrar must delete from the register all the particulars that were entered in relation to a charge if—

- (a) the word ‘provisional’ is entered in the register under subsection (1) in relation to an entry relating to the charge; and
- (b) a certificate to the effect set out in subsection (1)(b) is not produced within the period, or the further period, mentioned in subsection (3).

**Provisional registration if required particulars not supplied**

**21.(1)** If a defective notice in relation to a charge on property is filed with the registrar under section 19,<sup>135</sup> the registrar must cause to be entered in the register—

- (a) the time and date when the document was filed; and
- (b) the particulars mentioned in section 19(1)(a) to (e) that are ascertainable; and
- (c) the word ‘provisional’ next to the entry specifying the time and date.

(2) If a defective notice in relation to a charge is filed under section 19, the registrar must, by written notice to the person who filed the defective notice, direct the person to ensure that there is filed, on or before the day specified in the notice, a notice in relation to the charge that complies with

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<sup>135</sup> Schedule 3, section 19 (Registration of documents relating to charge)

## SCHEDULE 3 (continued)

the requirements of division 2.<sup>136</sup>

(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 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 day specified in the notice containing the direction, the registrar must—

- (a) delete from the register the word ‘provisional’ that was inserted under subsection (1); and
- (b) cause to be entered in the register in relation to the charge any particulars mentioned in section 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 day specified in the notice, the registrar must delete from the 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 day specified in the notice, the registrar must cause to be entered in the register in relation to the charge—

- (a) the time at which and day on which the direction was complied with; and
- (b) the particulars mentioned in section 19 (1)(a) to (e).

(8) In this section—

**“defective notice”** means a document that—

- (a) purports to be a notice of a charge on property of a cooperative for the purposes of division 2; and

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<sup>136</sup> Schedule 3, division 2 (Notice of charge)

**SCHEDULE 3 (continued)**

(b) contains the name of the cooperative concerned and the particulars mentioned in section 13(1)(g) or (h);<sup>137</sup>

but does not contain some or all of the other particulars required to be included in the notice or is otherwise defective.

**Effect of provisional registration**

**22.(1)** Subject to this section, if the word ‘provisional’ is entered in the register next to an entry specifying a time and day in relation to a charge, the charge is taken not to have been registered.

**(2)** If the word ‘provisional’ is deleted from the register under section 20 or 21(5),<sup>138</sup> the charge is taken to be registered and to have been registered from and including the time and day specified in the register under section 20 or 21(1).

**(3)** If the particulars in relation to the charge are deleted from the register under section 21(6) and the particulars and a time and day are subsequently entered in the register in relation to the charge under section 21(7), the charge is taken to be registered from and including the last-mentioned time and day.

**What if 2 or more charges relate to the same property**

**23.(1)** If, under section 17,<sup>139</sup> a cooperative files notices relating to 2 or more charges on the same property acquired by the cooperative (being charges that are not already registered under this division), the time and day to be entered in the register in relation to each of the charges are the time and day when the first notice was filed.

**(2)** If, under subsection (1), the time and day that are entered in the register are the same in relation to 2 or more charges on property acquired by a cooperative, the charges are to have, as between themselves, the

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<sup>137</sup> Schedule 3, section 13 (Filing of notice of charge and copy of instrument)

<sup>138</sup> Schedule 3, section 20 (Provisional registration if stamp duty not paid) or 21 (Provisional registration if required particulars not supplied)

<sup>139</sup> Schedule 3, section 17 (Acquisition of property subject to charge)

## SCHEDULE 3 (continued)

respective priorities that they would have had if they had not been registered under this division.

**Registration of assignment or variation of charge**

**24.(1)** If a notice is filed under section 36,<sup>140</sup> the registrar must as soon as practicable cause to be entered in the register the time and day when the notice was so filed and the particulars set out in the notice.

**(2)** Subsection (1) applies whether the notice was filed during or after the period within which the notice was required to be filed.

**Standard time for the purposes of this division**

**25.(1)** The registrar may, by gazette notice, declare a specified standard time to be the standard time for this division.

**(2)** If a notice 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 the time as expressed in terms of the standard time specified in the notice.

***Division 4—Certain charges void against liquidator or administrator*****Definitions**

**26.** In this division—

“**critical day**”, in relation to a cooperative, means—

- (a) if the cooperative is being wound-up—the day when 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

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<sup>140</sup> Schedule 3, section 36 (Assignment and variation of charges)

## SCHEDULE 3 (continued)

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 on which the winding-up is taken because of the Corporations Law, part 5.6, division 1A (as adopted and applying under this Act) to have begun; or
- (b) otherwise—the day on which the administration began.

**Certain charges void against liquidator or administrator**

**27.(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 307<sup>141</sup> for the winding-up of the cooperative; or
- (c) an administrator of a cooperative is appointed under the Corporations Law, part 5.3A as adopted and applying under this Act; or
- (d) a 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 deed’s administrator, as the case may be.

**(2)** A charge is not void under subsection (1) if—

- (a) a notice of the charge was filed under section 13 or 17<sup>142</sup>—
  - (i) within the relevant period; or
  - (ii) at least 6 months before the critical day; or

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<sup>141</sup> Section 307 (Winding-up on registrar’s certificate)

<sup>142</sup> Schedule 3, section 13 (Filing of notice of charge and copy of instrument) or 17 (Acquisition of property subject to charge)

## SCHEDULE 3 (continued)

- (b) the period within which a notice of the charge (other than a notice under section 36<sup>143</sup>) is required to be filed, being the period specified in the relevant section or the period as extended by the Supreme Court under section 29,<sup>144</sup> has not ended at the start of the critical day and the notice is filed before the end of the period; or
- (c) for a charge to which section 17 applies—the period of 45 days after the chargee becomes aware that the property charged has been acquired by a cooperative has not ended at the start of the critical day and the notice is filed before the end of the period.

(3) The reference in subsection (2)(a) to the relevant period is to be construed as a reference to—

- (a) for a charge to which section 13 applies—the period of 45 days specified in section 13, or the period as extended by the Supreme Court under section 29; or
- (b) for a charge to which section 17 applies—the period of 45 days after the chargee becomes aware that the property has been acquired by a cooperative.

**Certain varied charges void against liquidator or administrator**

**28.(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 a cooperative is appointed under the Corporations Law, part 5.3A (as adopted and applying under this Act); or

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<sup>143</sup> Schedule 3, section 36 (Assignment and variation of charges)

<sup>144</sup> Schedule 3, section 29 (Supreme Court may extend required period)

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 SCHEDULE 3 (continued)

- (c) a 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) A charge is not void under subsection (1) if—

- (a) a notice of the variation was filed under section 36<sup>145</sup>—
- (i) within the period of 45 days specified in section 36(2), or the period as extended by the Supreme Court under section 29; or
  - (ii) within 6 months before the critical day; or
- (b) the period of 45 days specified in section 36(2), or the period as extended by the Supreme Court under section 29, has not ended at the start of the critical day and the notice is filed before the end of the period.

**Supreme Court may extend required period**

**29.** If the Supreme Court is satisfied that—

- (a) the failure to file a notice of a charge, or of a variation in the terms of a charge, as required by a provision of this schedule—
- (i) was accidental or due to inadvertence or some other sufficient cause; or
  - (ii) is not of a nature to prejudice the position of creditors or shareholders; or
- (b) on other grounds it is just and equitable to grant relief;

the court may, on the application of the cooperative or a person interested and on the terms and conditions the court considers just and expedient, by order, extend the period for the further period stated in the order.

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<sup>145</sup> Schedule 1, section 36 (Assignment and variation of charges)

## SCHEDULE 3 (continued)

**Certain later charges void**

**30.(1)** Subject to subsection (3), 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 same liability as is 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 same liability or part, and so far as it relates to the property comprised in the earlier charge, 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 of the later charge was filed under section 13<sup>146</sup> within the period mentioned in section 27(2)(a).<sup>147</sup>

**(3)** Subsection (1) does not apply if it is proved to the satisfaction of the Supreme Court that the later charge was given in good faith for the purpose of correcting some material error in the earlier charge or under other proper circumstances and not for the purposes of avoiding or evading the provisions of this division.

**Effect of provisions on purchaser in good faith**

**31.(1)** Nothing in section 27(1) or (2) or 28<sup>148</sup> operates to 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 conferred by the charge or implied by law if the person purchased the property in good faith

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<sup>146</sup> Schedule 3, section 13 (Filing of notice of charge and copy of instrument)

<sup>147</sup> Schedule 3, section 27 (Certain charges void against liquidator or administrator)

<sup>148</sup> Schedule 3, section 27 (Certain charges void against liquidator or administrator) or 28 (Certain varied charges void against liquidator or administrator)

## SCHEDULE 3 (continued)

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 Law, part 5.3A (as adopted and applying under this Act); or
- (d) the cooperative executing a deed of arrangement.

(2) The onus of proving that a person purchased property in good faith 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 5—Certain charges in favour of persons void*

## Definitions

32. 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; or
- (b) for a charge that is an agreement to give or execute a charge in favour of a person or persons, whether on demand or otherwise—the person, or all or any of the persons.

“**officer**”, of a cooperative, includes, for a foreign cooperative, 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 at the time when the charge is created, or who has been at any time during the period of 6 months ending at the time,

**SCHEDULE 3 (continued)**

an officer of the cooperative; or

- (b) a person associated, in relation to the creation of the charge, with a person of a kind mentioned in paragraph (a).

**Charges in favour of certain persons void in certain cases**

**33.(1)** If—

- (a) a cooperative creates a charge on property of the cooperative in favour of a person who is, or in favour of persons 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 34, given leave for the charge to be enforced;

the charge, and any powers purported to be conferred by an instrument creating or evidencing the charge, are, and are taken always to have been, void.

**(2)** Without limiting the generality of subsection (1), a person who—

- (a) appoints a receiver of property of a cooperative under powers conferred 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 property of a cooperative for the purposes of enforcing a charge created by the cooperative;

is to be taken, for subsection (1), to take a step in the enforcement of the charge.

**Supreme Court may give leave for enforcement of charge**

**34.** 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

## SCHEDULE 3 (continued)

- (b) in all the circumstances of the case, it is just and equitable for the court to do so.

**Certain transactions excluded**

**35.(1)** Nothing in section 33<sup>149</sup> affects a debt, liability or obligation of a cooperative that would, if section 33 had not been enacted, have been secured by a charge created by the cooperative.

(2) Nothing in section 33 operates to affect the title of a person to property (other than the charge concerned or an interest in the charge concerned) purchased for value from a chargee under a charge, from an agent of a chargee under a charge, or from a receiver appointed by a chargee under a charge in the exercise of powers conferred by the charge or implied by law, if the person purchased the property in good faith and without notice that the charge was created in favour of a person who is, or in favour of persons at least 1 of whom is, as the case may be, a relevant person in relation to the charge.

(3) The onus of proving that a person purchased property in good faith 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 6—Assignment, variation or satisfaction of charges*****Assignment and variation of charges**

**36.(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 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

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<sup>149</sup> Schedule 3, section 33 (Charges in favour of certain persons void in certain cases)

## SCHEDULE 3 (continued)

(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 variation occurs, 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 under the terms of the charge is not to be taken, for subsection (2), 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) A reference in this section to the chargee in relation to a charge is, if the charge is constituted by a debenture and there is a trustee for debenture holders, to be construed as a reference to the trustee for debenture holders.

(5) Nothing in section 13<sup>150</sup> requires the filing of a notice under section 13 in relation to a charge merely because of the fact that the terms of the charge are varied only in a way mentioned in this section.

**Satisfaction of, and release of property from, charges**

**37.(1)** If, in relation to a charge registered under this part—

- (a) the debt or other liability, the payment or discharge of which was secured by the charge, has been paid or discharged in whole or in part; or
- (b) the property charged or part of the property is released from the

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<sup>150</sup> Schedule 3, section 13 (Filing of notice of charge and copy of instrument)

## SCHEDULE 3 (continued)

charge;

the person who was the holder of the charge at the time when the debt or other liability was so paid or discharged or the property or part of the property was released must, within 14 days after receipt of a request in writing made by the cooperative on whose property the charge exists, give to the cooperative a memorandum in the approved form acknowledging that the debt or other liability has been paid or discharged in whole or in part, or that the property or the part of it is no longer subject to the charge, as the case may be.

(2) The cooperative may file the memorandum with the registrar and, on the memorandum being filed, the registrar must enter in the register particulars of the matters stated in the memorandum.

(3) The reference in subsection (1) to the person who was the holder of a charge at the time when the debt or other liability was so paid or discharged or the property or part of the property was released is, if the charge was constituted by a debenture or debentures and there was a trustee for debenture holders, to be construed as a reference to the person who was, at the time, the trustee of debenture holders.

*Division 7—General***Filing of notices**

**38.(1)** If a notice of a charge on property of a cooperative is required to be filed under section 13, 17 or 36(2),<sup>151</sup> the notice may be filed by the cooperative or by an interested person.

(2) If a document required by this part (other than section 36(1)) to be filed with the registrar is filed by a person other than the cooperative concerned, that person—

(a) must, within 7 days after the filing of the document, give to the

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<sup>151</sup> Schedule 3, section 13 (Filing of notice of charge and copy of instrument), 17 (Acquisition of property subject to charge) or 36 (Assignment and variation of charges)

## SCHEDULE 3 (continued)

cooperative a copy of the document; and

- (b) is entitled to recover from the cooperative the amount of any fees properly paid by the person on the filing of the document.

**Filing offences**

**39.(1)** If section 13, 17 or 36(2)<sup>152</sup> is contravened in relation to a registrable charge on property of a cooperative, the cooperative and an 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 36(1), the person and, if the person is a corporation, an officer of the corporation who is in default, each contravene this subsection.

**Cooperative to keep documents relating to charges**

**40.** A cooperative must, at the place where the register mentioned in section 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.

**Cooperative to keep register**

**41.(1)** A cooperative must keep a register.

(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

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<sup>152</sup> Schedule 3, section 13 (Filing of notice of charge and copy of instrument), 17 (Acquisition of property subject to charge) or 36 (Assignment and variation of charges)

## SCHEDULE 3 (continued)

(whether registrable or not), the cooperative must as soon as practicable enter in the register particulars of the charge, giving in each case—

- (a) if the charge is a charge created by the cooperative, the date of its creation or, if the charge was a charge existing on property acquired by the cooperative, the date on which the property was so acquired; and
- (b) a short description of the liability (whether present or prospective) secured by the charge; and
- (c) a short description of the property charged; and
- (d) the name of the trustee for debenture holders or, if there is no trustee for debenture holders, the name of the chargee; and
- (e) 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—

- (a) by a creditor or member of the cooperative, without charge; and
- (b) by another person, on payment for each inspection of the amount, not more than the amount prescribed under a regulation, the cooperative requires or, if the cooperative does not require the payment of an amount, without charge.

**(4)** A person may ask a cooperative to give the person a copy of the register or part of the register.

**(5)** If a person makes a request under subsection (4), the cooperative must send the copy to the person—

- (a) if the cooperative requires payment of an amount not more than the amount prescribed under a regulation—within 21 days after payment of the amount is received by the cooperative or within the longer period the registrar approves; or
- (b) if paragraph (a) does not apply—within 21 days after the request is made or within a longer period that the registrar may approve.

**(6)** If default is made in complying with a provision of this section, the

## SCHEDULE 3 (continued)

cooperative commits an offence.

Maximum penalty—10 penalty units.

**Certificates**

**42.(1)** If particulars of a charge are entered in the register under this part, the registrar must, on request by a person, issue to the person a certificate—

- (a) setting out the particulars; and
- (b) stating the time and day when a notice of the charge containing the particulars was filed with the registrar; and
- (c) if the word ‘provisional’ appears in the register next to the reference to the time and day—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 register under this part, and the word ‘provisional’ does not appear in the register next to the reference to the time and day when a notice of the charge was filed, the registrar must, on request by any person, issue to the person a certificate stating that particulars of the charge are entered in the register under this part.

**(4)** A certificate issued under subsection (3) is evidence that the requirements of this part as to registration (other than the requirements relating to the period after the creation of the charge within which notice of the charge is required to be filed) have been complied with.

**Power of Supreme Court to rectify register**

**43.** If the Supreme Court is satisfied—

- (a) that a particular in relation to a registrable charge on property of a cooperative has been omitted from, or misstated in, the register or a memorandum mentioned in section 37;<sup>153</sup> and
- (b) that the omission or misstatement—

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<sup>153</sup> Schedule 3, section 37 (Satisfaction of, and release of property from, charges)

## SCHEDULE 3 (continued)

- (i) was accidental or due to inadvertence or to some other sufficient cause; or
- (ii) is not of a nature to prejudice the position of creditors or shareholders;

or that on other grounds it is just and equitable to grant relief, the court may, on the application of the cooperative or a person interested and on terms and conditions that may seem to the court just and expedient, order that the omission or misstatement be rectified.

**Registrar may exempt from compliance with certain requirements of part**

**44.(1)** The registrar may, by gazette notice, exempt a person from compliance with the requirements of section 13, 17 or 36<sup>154</sup> relating to—

- (a) the particulars to be contained in a notice under the relevant section; or
- (b) the documents (other than the notice) to be filed under the relevant section; or
- (c) the verification of a document required to be filed under the relevant section.

**(2)** A gazette notice under subsection (1) is subordinate legislation.

**(3)** A person who is exempted under this section from compliance with a requirement of section 13, 17 or 36 subject to a condition must not contravene the condition.

**(4)** If a person has contravened a condition to which an exemption under this section is subject, the Supreme Court may, on the application of the registrar, order the person to comply with the condition.

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<sup>154</sup> Schedule 3, section 13 (Filing of notice of charge and copy of instrument), 17 (Acquisition of property subject to charge) or 36 (Assignment and variation of charges)

## SCHEDULE 3 (continued)

**PART 3—ORDER OF PRIORITY***Division 1—General***Definitions**

**45.(1)** 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 register in relation to the charge, being a time and day entered in the register under part 2, division 3;<sup>155</sup> and
- (b) if a notice has been filed under section 17<sup>156</sup> in relation to a charge on property, being a charge that, at the time when the notice was filed, was already registered under part 2<sup>157</sup>—the earlier or earliest time and day appearing in the register in relation to the charge, being a time and day entered in the register under section 17; and
- (c) to the extent that the charge has effect as varied by a variation, notice of which was required to be filed under section 36(2)<sup>158</sup>—the time and day entered in the register in relation to the charge under section 24.<sup>159</sup>

**“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 2.

**“subsequent registered charge”**, in relation to another registered charge, means a charge the priority time of which is later than the priority time

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<sup>155</sup> Schedule 3, part 2, division 3 (Registration)

<sup>156</sup> Schedule 3, section 17 (Acquisition of property subject to charge)

<sup>157</sup> Schedule 3, part 2 (Registration)

<sup>158</sup> Schedule 3, section 36 (Assignment and variation of charges)

<sup>159</sup> Schedule 3, section 24 (Registration of assignment or variation of charge)

## SCHEDULE 3 (continued)

of the other registered charge.

**“unregistered charge”** means a charge that is not registered under part 2, but does not include a charge that is not a registrable charge.

(2) 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) If, by virtue of the definition of **“priority time”** in subsection (1), a registered charge has 2 or more priority times each of which relates to a particular liability secured by the charge, each of the liabilities is, for this part, to be taken to be secured by a separate registered charge, the priority time of which is the priority time of the first-mentioned registered charge that relates to the liability concerned.

**Priorities of charges**

**46.(1)** Subject to this section, division 2<sup>160</sup> has effect on 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 2, is subject to—

- (a) any consent (express or implied) that varies the priorities in relation to each other of the charges, being a consent given by the holder of 1 of the charges, being a charge that would otherwise be entitled to priority over the other charge; and
- (b) any agreement between the chargees that affects the priorities in relation to each other of the charges in relation to which those persons are the chargees.

(3) The holder of a registered charge, being a floating charge, on property of a cooperative is taken, for subsection (2), to have consented to the charge being postponed to a subsequent registered charge, being a fixed charge that is created before the floating charge becomes fixed, on any of the property unless—

- (a) the creation of the subsequent registered charge contravened a

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<sup>160</sup> Schedule 3, division 2 (Priority rules)

## SCHEDULE 3 (continued)

provision of the instrument or resolution creating or evidencing the floating charge; and

- (b) a notice of the floating charge indicating the existence of the provision mentioned in paragraph (a) was filed with the registrar under section 13, 17 or 36<sup>161</sup> before the creation of the subsequent registered charge.

(4) If a charge relates to property of a kind to which a particular paragraph of section 4(2)<sup>162</sup> applies and also relates to other property, division 2 applies so as to affect the priority of the charge only in so far as it relates to the first-mentioned property and do not affect the priority of the charge in so far as it relates to the other property.

*Division 2—Priority rules***General priority rules in relation to registered charges**

**47.(1)** A registered charge on property of a cooperative has priority over—

- (a) a subsequent registered charge on the property, unless the subsequent registered charge was created before the creation of the prior registered charge and 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 at the time 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 at the time

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<sup>161</sup> Schedule 3, section 13 (Filing of notice of charge and copy of instrument), 17 Acquisition of property subject to charge) or 36 (Assignment and variation of charges)

<sup>162</sup> Schedule 3, section 4 (To which charges does schedule apply)

## SCHEDULE 3 (continued)

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 the subsequent registered charge was created before the creation of the prior registered charge and 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 at the time 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 at the time when the registered charge was created.

**General priority rule in relation to unregistered charges**

**48.** An unregistered charge on property of a cooperative has priority over—

- (a) a registered charge on the property that was created after the creation of the unregistered charge and does not have priority over the unregistered charge under section 47(1); and
- (b) another unregistered charge on the property created after the first-mentioned unregistered charge.

**Special priority rules**

**49.(1)** Except as provided by this section, priority given by this part to a charge over another charge does not extend to a liability that, at the priority time in relation to the first-mentioned charge, is not a present liability.

(2) If a registered charge on property of a cooperative secures—

- (a) a present liability and a prospective liability of an unspecified

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 SCHEDULE 3 (continued)

amount; or

- (b) a prospective liability of an unspecified amount;

priority given by this part to the charge over another charge of which the chargee in relation to the first-mentioned charge does not have actual knowledge extends to the prospective liability, whether the prospective liability became a present liability before or after the registration of the first-mentioned charge.

- (3) If a registered charge on property of a cooperative 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 the notice filed under section 13 or 17<sup>163</sup> in relation to the charge sets out the nature of the prospective liability and the amount so specified, then priority given by this part to the charge over another charge extends to prospective liability secured by the first-mentioned charge to the extent of the maximum amount so specified.

(4) Subsection (3) applies whether the prospective liability became a present liability before or after the registration of the first-mentioned charge and despite the fact that the chargee in relation to the first-mentioned charge had actual knowledge of the other charge at the time when the prospective liability became a present liability.

- (5) Subsection (6) applies if—

- (a) a registered charge on property of a cooperative 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;

but the notice filed under section 13 or 17 in relation to the charge does not set out the nature of the prospective liability or the maximum amount so specified; or

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<sup>163</sup> Schedule 3, section 13 (Filing of notice of charge and copy of instrument) or 17 Acquisition of property subject to charge)

## SCHEDULE 3 (continued)

- (b) a registered charge on property of a cooperative secures a prospective liability of an unspecified amount.

**(6)** In relation to a charge mentioned in subsection (5)—

- (a) priority given by this part to the charge over another charge of which the chargee in relation to the first-mentioned charge has actual knowledge extends to prospective liability secured by the first-mentioned charge that had become a present liability at the time when the chargee in relation to the first-mentioned charge first obtained actual knowledge of the other charge; and
- (b) priority given by this part to the charge over another charge of which the chargee in relation to the first-mentioned charge has actual knowledge extends to prospective liability secured by the first-mentioned charge that became a present liability, as the result of the making of an advance, after the time when the chargee in relation to the first-mentioned charge first obtained actual knowledge of the other charge if, at the time, the terms of the first-mentioned charge required the chargee in relation to the charge to make the advance after the time.

**(7)** Subsection (6)(b) extends to the prospective liability whether the advance was made before or after the registration of the first-mentioned charge and despite the fact that the chargee in relation to the first-mentioned charge had actual knowledge of the other charge at the time when the advance was made.

**SCHEDULE 4****RECEIVERS, AND OTHER CONTROLLERS, OF  
PROPERTY OF COOPERATIVES**

section 263

**Interpretation**

1. In this schedule—

**“administrator”**, in relation to a deed of arrangement, means an administrator of the deed appointed under the Corporations Law, part 5.3A, as adopted and applying under 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 when the receiver, or receiver and manager, was appointed; or
- (ii) for another person who is in possession, or has control, of the property for the purpose of enforcing a charge—the day when the person entered into possession, or took control, of property of the cooperative for the purpose of enforcing the charge; 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 has died or ceased to be a controller of the property;

the day that is, because of another application or applications of this definition, the control day in relation to the controller mentioned in subparagraph (i) or (ii).

## SCHEDULE 4 (continued)

**“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.<sup>164</sup>

**“daily newspaper”** means a newspaper that is ordinarily published on each day that is a business day in the place where the newspaper 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) another controller of the property who has functions or powers in relation to managing the cooperative.

**“national newspaper”** means a daily newspaper circulating generally in each State.

**“officer”**, of a cooperative that is 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—within or outside Australia; or
- (b) for a cooperative that is a foreign cooperative—within Australia or an external Territory.

**“receiver”**, of property of a cooperative, includes a receiver and manager.

### **Application of schedule**

2. Except in so far as the contrary intention appears, this schedule applies in relation to a receiver of property of a cooperative who is appointed after

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<sup>164</sup> Part 14 (Foreign cooperatives)

## SCHEDULE 4 (continued)

the commencement, even if the appointment arose out of a transaction entered into, or an act or thing done, before the commencement.

**Persons not to act as receivers**

**3.(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 Law; or
- (e) is an officer of a corporation related to the cooperative; or
- (f) has at any time within the last 12 months been an officer or promoter of the cooperative or of a related corporation, unless the registrar directs in writing that this paragraph does not apply in relation to the person in relation to the cooperative.

**(2)** In subsection (1)—

“**officer**”, of a corporation, does not include a receiver, appointed under an instrument whether before or after the commencement, of property of the body.

**(3)** Subsection (1)(d) does not apply in relation to a corporation authorised under a law of the Commonwealth or of a State to act as receiver of property of the cooperative.

**(4)** Nothing in this section prevents a person from acting as receiver of property of a cooperative under an appointment validly made before the commencement.

**Supreme Court may declare whether controller is validly acting**

**4.(1)** If there is doubt, on a specific ground, about—

- (a) whether a purported appointment of a person, after the

## SCHEDULE 4 (continued)

commencement, as receiver of property of a cooperative is valid;  
or

- (b) whether a person who has entered into possession, or assumed control, of property of a cooperative after the commencement 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;

as the case may be, on the ground specified in the application or on some other ground.

**Liability of controller**

**5.(1)** A receiver, or another authorised person, who, whether as agent for the cooperative or not, enters into possession or assumes control of a property of a cooperative for the purpose of enforcing any charge is, despite an agreement to the contrary, but without prejudice to the person's rights against the cooperative or another person, 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.

(2) Subsection (1) does not constitute the person entitled to the charge a mortgagee in possession.

(3) If—

- (a) a person (the “**controller**”) enters into possession or assumes control of property of a cooperative; and
- (b) the controller purports to have been properly appointed as a receiver of the property under a power contained in an instrument, but has not been properly so appointed; and

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 SCHEDULE 4 (continued)

- (c) civil proceedings in a federal court or a court of a State arise out of an act alleged to have been done by the controller;

the court may, if it is satisfied that the controller believed on reasonable grounds that the controller had been properly so appointed, order that—

- (d) the controller be relieved in whole or in part of a liability that the controller has incurred but would not have incurred if the controller had been properly so appointed; and
- (e) a person who purported to appoint the controller as receiver be liable for an act, matter or thing in so far as the controller has been relieved under paragraph (d) of liability for that act, matter or thing.

**Liability of controller under pre-existing agreement about property used by cooperative**

**6.(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 the control day to use or occupy, or to be in possession of, property (“**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

## SCHEDULE 4 (continued)

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 the 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) merely 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 in 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 adopted the agreement; or
- (b) to be liable under the agreement otherwise than as mentioned in subsection (2).

**Powers of receiver**

7.(1) Subject to this section, a receiver of property of a cooperative has power to do, in Australia and elsewhere, all things necessary or convenient

## SCHEDULE 4 (continued)

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), but subject to any provision of the court order by which, or the instrument under which, the receiver was appointed, being a provision that limits the receiver's powers in any way, a receiver of property of a cooperative has, in addition to any powers conferred by the order or instrument, as the case may be, or by another law, 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 under the terms of the order or instrument; 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 conditions that 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 a business of the cooperative; and
- (i) to take on lease or on hire, or to acquire, property necessary or convenient in connection with the carrying on of a business of the cooperative; and
- (j) to execute a document, bring or defend a proceeding or do any other act or thing 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 a seal of the cooperative; and
- (m) to engage or discharge employees on behalf of the cooperative; and

## SCHEDULE 4 (continued)

- (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 is unable to do, or that it is unreasonable to expect the receiver to do, in person; 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) in the name of the cooperative, to make a call for 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 an adequate indemnity to a liquidator of the cooperative, in the name of the liquidator, to make a call for money unpaid on account of the nominal value of shares in the cooperative; and
- (r) to enforce payment of a call that is due and unpaid, 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 a question affecting the cooperative.

**(3)** The conferring by this section on a receiver of powers in relation to property of a cooperative does not, in relation to the property, affect a right of another person other than the cooperative.

**(4)** In this section, a reference, in relation to a receiver, to property of a cooperative is, unless the contrary intention appears, a reference to the property of the cooperative in relation to which the receiver was appointed.

## SCHEDULE 4 (continued)

**Controller's duty of care in exercising power of sale**

**8.(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 the market value; or
- (b) otherwise—the best price that is reasonably obtainable, having regard to the circumstances existing when the property is sold.

**(2)** Nothing in subsection (1) limits anything in part 9, division 2.<sup>165</sup>

**Supreme Court may authorise managing controller to dispose of property despite prior charge**

**9.(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 some other specified way, specified 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 the 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 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 the 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.

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<sup>165</sup> Part 9, division 2 (Duties and liabilities of directors, officers and employees)

## SCHEDULE 4 (continued)

(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 would be sold or disposed of together with other property that is 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 first-mentioned 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 first-mentioned 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 first-mentioned property.

(5) Nothing in subsection (3) or (4) limits the matters to which the Supreme Court may have regard for subsection (2).

(6) An order may be made subject to conditions, for example (but without limitation)—

- (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 may be specified in the condition and is subject to the controller's charge;or a specified part of the net proceeds, be applied in payment of specified amounts secured by the prior charge; or
- (b) a condition that the controller apply a specified amount in payment of specified amounts secured by the prior charge.

## SCHEDULE 4 (continued)

**Receiver's power to carry on cooperative's business during winding-up**

**10.(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 specified in the approval; and

(b) do whatever is necessarily incidental to carrying on the business under paragraph (a).

**(2)** Subsection (1) does not—

(a) affect a power that the receiver has otherwise than under subsection (1); or

(b) empower the receiver to do an act 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, but are not limited to, the following—

(a) for section 5(1)—a debt that the receiver incurs in carrying on the business as mentioned in subsection (3) 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.

**Controller's duties in relation to financial institution accounts and accounting records**

**11.(1)** A controller of property of a cooperative must—

## SCHEDULE 4 (continued)

- (a) open and maintain an account with a financial institution, bearing—
  - (i) the controller's own name; and
  - (ii) for a receiver of the property—the title 'receiver'; and
  - (iii) otherwise—the title 'controller'; and
  - (iv) the cooperative's name; and
- (b) within 3 business days after money of the cooperative comes under the control of the controller, pay the money into an account maintained under subsection (1); and
- (c) ensure that no account that the controller maintains under subsection (1) contains money other than money of the cooperative that comes under the control of the controller; and
- (d) keep the accounting records that correctly record and explain all transactions the controller enters into as the controller.

(2) A director, creditor or member of a cooperative may, unless the Supreme Court otherwise orders, personally or by an agent, inspect records kept by a controller of property of the cooperative for subsection (1)(d).

**Managing controller to report within 2 months about cooperative's affairs**

**12.(1)** A managing controller of property of a cooperative must prepare a report about the cooperative's affairs in the approved form and made up to a day not later than 28 days before the day when it is prepared.

(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 cause to be published in a national newspaper, or in each State in a daily newspaper that circulates generally in that State, a notice stating—

- (a) that the report has been prepared; and
- (b) that a person can, on paying the fee prescribed under a regulation,

## SCHEDULE 4 (continued)

inspect the report at specified offices 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 property of the cooperative, as the case requires;

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 permitted 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.

**Reports by receiver**

**13.(1)** 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 under a law of the Commonwealth or of a State 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 retained, or may have become liable or accountable for, money or property (whether the property is within or outside Australia) of the cooperative; or
  - (ii) may have been guilty of negligence, default, breach of duty or breach of trust in relation to the cooperative;

the receiver must—

## SCHEDULE 4 (continued)

- (c) file with the registrar as soon as practicable a report about the matter; and
- (d) give to the registrar the information, and the access to and facilities for inspecting and taking copies of any documents, the registrar requires.

(2) The receiver may also file further reports specifying any other matter that, in the receiver's opinion, it is desirable to bring to the notice of the registrar.

(3) If it appears to the Supreme Court—

- (a) that 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 under a law mentioned in subsection (1)(a) in relation to the cooperative; or
- (b) that 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 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 of its initiative, direct the receiver to file the report.

**Supervision of controller**

**14.(1)** If—

- (a) it appears to the Supreme Court or to the registrar that a controller of property of a cooperative has not faithfully performed, or is not faithfully performing, 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) otherwise—an instrument under which the controller entered into possession, or took control, of the property; or

## SCHEDULE 4 (continued)

- (iii) in any case—the Supreme Court; or
- (iv) in any case—this Act or rules of court; 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 connection with performing or exercising any of the controller's functions and powers—

the Supreme Court or the registrar, as the case may be, may inquire into the matter and, if the Supreme Court or registrar so inquires, the Supreme Court may take the action as it thinks appropriate.

(2) The registrar may report to the Supreme Court any matter that in the registrar's opinion is a misfeasance, neglect or omission on the part of a controller of property of a cooperative and the Court may—

- (a) order the controller to make good any loss the estate of the cooperative has sustained because of the misfeasance, neglect or omission; and
- (b) make another order or orders that it thinks appropriate.

(3) The Supreme Court may at any time—

- (a) require a controller of property of a cooperative to answer questions about the performance or exercise of any of the controller's functions and powers as controller; or
- (b) examine a person about the performance or exercise by the controller of any of the controller's functions and powers as controller; or
- (c) direct an investigation to be made of the controller's records.

**Controller may apply to Supreme Court**

**15.(1)** A controller of property of a cooperative may apply to the Supreme Court for directions in relation to any matter arising in connection with the performance or exercise of any of the controller's functions and powers as controller.

## SCHEDULE 4 (continued)

(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.

**Power of Supreme Court to fix receiver's remuneration**

**16.(1)** The Supreme Court may by order fix the amount to be paid by way of remuneration to a person 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 a 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 retained for the receiver's remuneration for a period before the making of the order an amount in excess of that fixed for the period—extends to requiring the receiver or the receiver's personal representatives to account for the excess or the part of the excess that is specified in the order.

(3) The power conferred by subsection (2)(c) must not be exercised in relation to a period before the making of the application for the order unless, in the opinion of the Supreme Court, there are special circumstances making it proper for the power to be so exercised.

(4) The Supreme Court may from time to time vary or amend an order under this section.

(5) An order under this section may be made, varied 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

## SCHEDULE 4 (continued)

(d) the registrar.

(6) An order under this section may be varied or amended on the application of the receiver.

(7) An order under this section may be made, varied or amended only as provided in subsections (5) and (6).

**Controller has qualified privilege in certain cases**

**17.** A controller of property of a cooperative has qualified privilege in relation to—

- (a) a matter contained in a report that the controller files under section 12 or 13;<sup>166</sup> or
- (b) a comment that the controller makes under section 20(2)(c).<sup>167</sup>

**Notification of matters relating to controller**

**18.(1)** A person who obtains an order for the appointment of a receiver of property of a cooperative, or who appoints a receiver of property of a cooperative under a power contained in an instrument, must—

- (a) within 7 days after obtaining the order or making the appointment, file notice that the order has been obtained, or that the appointment has been made, as the case requires; and
- (b) within 21 days after obtaining the order or making the appointment, cause notice that the order has been obtained, or that the appointment has been made, as the case requires, to be published in the gazette.

**(2)** A person who appoints another person to enter into possession, or take control, of property of a cooperative (whether or not as agent for the cooperative) for the purpose of enforcing a charge otherwise than as receiver

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<sup>166</sup> Schedule 4, section 12 (Managing controller to report within 2 months about cooperative's affairs) or 13 (Reports by receiver)

<sup>167</sup> Schedule 4, section 20 (Officers to report to controller about cooperative's affairs)

## SCHEDULE 4 (continued)

of the property must—

- (a) within 7 days after making the appointment, file notice of the appointment with the registrar; and
- (b) within 21 days after making the appointment, cause notice of the appointment to be published in the gazette.

**(3)** A person who enters into possession, or takes control, as mentioned in subsection (2) must—

- (a) within 7 days after entering into possession or taking control, file notice with the registrar that the person has done so; and
- (b) within 21 days after entering into possession or taking control, cause to be published in the gazette, notice that the person has done so;

unless another person—

- (c) appointed the first-mentioned person to enter into possession or take control; and
- (d) complies with subsection (2) in relation to the appointment.

**(4)** Within 14 days after becoming a controller of property of a cooperative, a person must file with the registrar notice in the approved form of the address of the person's office.

**(5)** A controller of property of a cooperative must, within 14 days after a change in the situation of the controller's office, file with the registrar notice in the approved form of the change.

**(6)** A person who ceases to be a controller of property of a cooperative must—

- (a) within 7 days after so ceasing, file with the registrar notice that the person has so ceased; and
- (b) within 21 days after so ceasing, cause notice that the person has so ceased to be published in the gazette.

## SCHEDULE 4 (continued)

**Statement that receiver appointed or other controller acting**

**19.(1)** If a receiver of property (whether within or outside this State or within or outside 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 within Australia or elsewhere) 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.

**Officers to report to controller about cooperative's affairs**

**20.(1)** In this section—

**“reporting officer”**, in relation to a cooperative for property of which a person is controller, 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)** If a person becomes a controller of property of a cooperative—

- (a) the person must serve on the cooperative as soon as practicable notice that the person is a controller of property of the cooperative; and
- (b) within 14 days after the cooperative receives the notice, the reporting officers must make out and submit to the person a report in the approved form about the affairs of the cooperative as at the control day; and
- (c) the person must, within 28 days after receipt of the report—
  - (i) file with the registrar a copy of the report and a notice setting out the comments the person considers appropriate to make relating to the report or, if the person does not consider it

## SCHEDULE 4 (continued)

appropriate to comment, a notice stating that the receiver does not consider it appropriate to comment; and

- (ii) send to the cooperative a copy of the notice filed under subparagraph (i); and
- (d) the person must, within 28 days after receipt of the report, if the person became a controller of the property—
  - (i) because of an appointment as receiver of the property that was made by or on behalf of the holder of debentures of the cooperative; or
  - (ii) by entering into possession, or taking control, of the property for the purpose of enforcing a charge securing the debentures;

and there are trustees for the holders of the debentures, send to the trustees a copy of the report and a copy of the notice filed under paragraph (c)(i).

**(3)** If notice has been served on a cooperative under subsection (2)(a), the reporting officers may apply to the controller or to the Supreme Court to extend the period within which the report is to be submitted and—

- (a) if application is made to the controller—if the controller believes that there are special reasons for so doing, the controller may, by written notice given to the reporting officers, extend the period until a specified day; and
- (b) if application is made to the Supreme Court—if the court believes that there are special reasons for so doing, the court may, by order, extend the period until a specified day.

**(4)** As soon as practicable after granting an extension under subsection (3)(a), the controller must file a copy of the notice with the registrar.

**(5)** As soon as practicable after the Supreme Court grants an extension under subsection (3)(b), the reporting officers must file a copy of the order with the registrar.

## SCHEDULE 4 (continued)

(6) Subsections (2), (3) and (4) do not apply in a case where 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.

(7) However, if subsection (2) applies in a case where a controller of property of a cooperative dies, or ceases to be a controller of property of the cooperative, before subsection (2) is fully complied with, then—

- (a) the references in subsections (2)(b), (c) and (d) to the person; and
- (b) the references in subsections (3) and (4) to the controller;

include references to the controller's successor and to a continuing controller.

(8) If a cooperative is being wound-up, this section (including subsection (7)) and section 21 apply even if the controller and the liquidator are the same person, but with the necessary changes arising from that fact.

**Controller may require reports**

**21.(1)** A controller of property of a cooperative may, by notice given to the person or persons, require 1 or more persons included in 1 or more of the following classes of persons to make out as required by the notice, verify by a written statement in the approved form, and submit to the controller, a report, containing the information that is specified in the notice as to the affairs of the cooperative or as to the affairs specified in the notice, as at a date specified in the notice—

- (a) persons who are or have been officers of the cooperative;
- (b) if the cooperative was incorporated within 1 year before the control day—persons who have taken part in the formation of the cooperative;
- (c) persons who are employed by the cooperative or have been so employed within 1 year before the control day and are, in the opinion of the controller, capable of giving the information required;

## SCHEDULE 4 (continued)

- (d) persons who are, or have been within 1 year before the control day, officers of, or employed by, a cooperative that is, or within the year was, an officer of the cooperative.

(2) Without limiting subsection (1), a notice under subsection (1) may specify the information that the controller requires as to 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 a regulation, 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 and about 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 comply with a requirement made under subsection (1).

(5) A reference in this section to the controller's successor includes a reference to a continuing controller.

**Controller may inspect books**

**22.** A controller of property of a cooperative is entitled to inspect at any reasonable time any records of the cooperative relating to the property and a person must not fail to allow the controller to inspect the records at any reasonable time.

**Filing controller's accounts**

**23.(1)** A controller of property of a cooperative must file with the registrar an account—

- (a) within 28 days after the end of—
- (i) 6 months, or the shorter period the controller decides, after the day when the controller became a controller of property of the cooperative; and

## SCHEDULE 4 (continued)

- (ii) each subsequent period of 6 months throughout which the controller is a controller of property of the cooperative; and
  - (b) within 28 days after the controller ceases to be a controller of property of the cooperative.
- (2)** An account must be in the approved form and show—
- (a) the controller's receipts and payments during—
    - (i) for an account under subsection (1)(a)—the 6 months or shorter period, as the case requires; or
    - (ii) for an account under subsection (1)(b)—the period beginning at the end of the period to which the last account related, or on the control day, as the case requires and ending on the day when the controller so ceased; and
  - (b) except for an account filed under subsection (1)(a)(i)—the respective aggregates of the controller's receipts and payments since the control day.
- (3)** For—
- (a) a receiver appointed under a power contained in an instrument; or
  - (b) anyone else who is in possession, or has control, of property of the cooperative for the purpose of enforcing a charge;
- the accounts must also show the following—
- (c) the amount, if any, owing under the instrument or charge—
    - (i) for an account filed under subsection (1)(a)(i)—at the end of the control day and at the end of the period to which the account relates; or
    - (ii) otherwise—at the end of the period to which the account relates; and
  - (d) 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 that is subject to the instrument or charge.
- (4)** The registrar may, of the registrar's own initiative or on the application of the cooperative or a creditor of the cooperative, cause the

## SCHEDULE 4 (continued)

accounts filed under subsection (1) to be audited by a registered company auditor appointed by the registrar.

(5) For the audit, the controller must give the auditor any records and information that the auditor requires.

(6) If the registrar causes the accounts to be audited on the request of the cooperative or a creditor, the registrar may require the cooperative or creditor, as the case may be, to give security for the payment of the cost of the audit.

(7) The costs of an audit under subsection (3) are to be fixed by the registrar.

(8) The registrar may, if the registrar thinks it is appropriate, make an order declaring that, for section 5(1), the costs of the audit are taken to be a debt incurred by the controller as mentioned in section 5(1) and, if the order is made, the controller is liable accordingly.

(9) A person must comply with a requirement made under this section.

**Payment of certain debts, out of property subject to floating charge, in priority to claims under charge**

**24.(1)** This section applies if—

- (a) a receiver is appointed on behalf of the holders of 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 debentures of a cooperative, of 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 commenced 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 into his,

## SCHEDULE 4 (continued)

her or its hands, the following debts or amounts in priority to a claim for principal or interest for the debentures—

- (a) first, an amount that in a winding-up is payable in priority to unsecured debts under the Corporations Law, section 556 (as adopted and applying under this Act);
- (b) next, if an auditor of the cooperative had applied to the registrar for consent to his, her or its resignation as auditor and the registrar had refused that 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, a debt or amount that in a winding-up is payable in priority to other unsecured debts under the Corporations Law, section 556(1)(e), (g) or (h) or 560 (as adopted and applying under 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 prescribed by the Corporations Law, part 5.6, division 6 (as adopted and applying under this Act) for the debts and amounts.

**(4)** If an auditor of the cooperative had applied to the registrar for consent to his, her or its resignation as auditor and the registrar had, before the relevant date, refused consent, a receiver must, when property comes to the receiver's hands, before paying a debt or amount mentioned in subsection (2)(c), make provision out of the property for the reasonable fees and expenses of the auditor incurred after the relevant date but before the date on which the property comes into the receiver's hands, being fees and expenses for which provision has not already been made under this subsection.

**(5)** If an auditor of the cooperative applies to the registrar for consent to his, her or its resignation as auditor and, after the relevant date, the registrar refuses consent, the receiver must, in relation to property that comes into the receiver's hands after the refusal, before paying any debt or amount mentioned in subsection (2)(c), make provision out of the property for the reasonable fees and expenses of the auditor incurred after the refusal and

## SCHEDULE 4 (continued)

before the date on which the property comes into the receiver's hands, being fees and expenses for which provision has not already been made under this subsection.

(6) A receiver must make provision for reasonable fees and expenses of an auditor for a particular 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.

(7) For this section, the references in the Corporations Law, part 5.6, division 6 (as adopted and applying under this Act) to the relevant date are to be read as references to the date of the appointment of the receiver, or of possession being taken or control being assumed, as the case may be.

**Enforcement of controller's duty to make returns**

**25.(1)** If a receiver of property of a cooperative—

- (a) who has defaulted in making or lodging a return, account or other document or in giving notice required by law fails to make good the default within 14 days after the service on the controller, by a member or creditor of the cooperative or trustee for debenture holders, of a notice requiring the controller to do so; or
- (b) who has become a controller of property of the cooperative otherwise than by being appointed a receiver of the property by a court and who has, after being required at any time by the liquidator of the cooperative so to do, failed to render proper accounts of, and to vouch, the controller's receipts and payments and to pay over to the liquidator the amount properly payable to the liquidator;

the Supreme Court may make an order directing the controller to make good the default within the time specified in the order.

## SCHEDULE 4 (continued)

- (2) An application under subsection (1) may be made—
- (a) if subsection (1)(a) applies—by a member or creditor of the cooperative or by a trustee for debenture holders; and
  - (b) if subsection (1)(b) applies—by the liquidator of the cooperative.

**Supreme Court may remove controller for misconduct**

26. 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 connection with performing or exercising any of the controller's functions and powers, the court may order that, on and after a specified day, the controller cease to act as receiver or give up possession or control, as the case requires, of property of the cooperative.

**Supreme Court may remove redundant controller**

27.(1) The Supreme Court may order that, on and after a specified day, a controller of property of a cooperative—

- (a) cease to act as receiver, or give up possession or control, as the case requires, of property of the cooperative; or
- (b) act as receiver, or continue in possession or control, as the case requires, only of specified 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, as the case requires, have been achieved, so far as is reasonably practicable, except in relation to property specified 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) another relevant matter.

## SCHEDULE 4 (continued)

(4) The Supreme Court may make an order under subsection (1) on the application of a liquidator appointed for the purposes of winding-up the cooperative in insolvency.

(5) An order under subsection (1) may also prohibit the holder of the charge from doing any or all of the following, except with the leave of the Supreme Court—

- (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 to enter into possession or take control (whether as agent for the chargee or for the cooperative).

**Effect of ss 26 and 27**

**28.(1)** Except as expressly provided in section 26 or 27,<sup>168</sup> an order under section 26 or 27 does not affect a charge on property of a cooperative.

(2) Nothing in section 26 or 27 limits another 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 14).

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<sup>168</sup> Schedule 4, section 26 (Supreme Court may remove controller for misconduct) or 27 (Supreme Court may remove redundant controller)

**SCHEDULE 5****SAVINGS AND TRANSITIONAL**

section 471

**Definitions**

1. In this schedule—

“repealed Acts” means—

- (a) the *Cooperative and Other Societies Act 1967*; or
- (b) the *Primary Producers’ Cooperative Associations Act 1923*.

“transferred cooperative” means a corporation that is taken under this schedule to be a cooperative, association or federation registered under this Act.

**General savings**

2. Subject to this Act, each person, thing and circumstance appointed or created under the *Cooperative and Other Societies Act 1967* or the *Primary Producers’ Cooperative Associations Act 1923* or existing or continuing under those Acts immediately before the commencement of this Act continues to have the same status, operation and effect as it would have had if this Act had not been enacted.

**Saving of existing cooperatives**

3.(1) Each existing corporation that was either of the following is taken to be an association registered under this Act—

- (a) on the repeal of the *Cooperative and Other Societies Act 1967*—a federation or league of societies and primary producers associations;
- (b) on the repeal of the *Primary Producers’ Cooperative Associations Act 1923*—a federation.

## SCHEDULE 5 (continued)

(2) Each existing corporation that was either of the following is taken to be a cooperative registered under this Act—

- (a) on the repeal of the *Cooperative and Other Societies Act 1967*—a society (other than a federation or league of societies and primary producers associations);
- (b) on the repeal of the *Primary Producers' Cooperative Associations Act 1923*—an association.

(3) Each transferred cooperative under this section is the same legal entity as it was before the commencement with the same name, rules, directors and membership as it had immediately before the commencement of this Act.

**Society, association or federation started to be formed**

4.(1) If, before the repeal of the *Cooperative and Other Societies Act 1967* a meeting to form a society had been held under section 27 of that Act but the society had not been registered as a society under that Act—

- (a) that Act continues to apply to the formation of the society as if it had not been repealed; and
- (b) on registration of the society under section 31 of that Act, the society is taken to be a cooperative registered under this Act.

(2) If, before the repeal of the *Primary Producers' Cooperative Associations Act 1923* a meeting to form an association had been held under section 8 of that Act but the association had not been registered as an association under that Act—

- (a) that Act continues to apply to the formation of the association as if it had not been repealed; and
- (b) on the registration of the association under section 10 of that Act, the association is taken to be a cooperative registered under this Act.

(3) If, before the repeal of the *Primary Producers' Cooperative Associations Act 1923* an application to form a federation had been filed under section 19 or 19A of that Act but the federation had not been

## SCHEDULE 5 (continued)

registered as a federation under that Act—

- (a) that Act continues to apply to the formation of the body as a federation as if it had not been repealed; and
- (b) on the registration of the body as a federation under section 10 of that Act, the federation is taken to be an association registered under this Act.

(4) Each transferred cooperative under this section is the same legal entity as it was before it became a cooperative under this Act with the same name, rules, directors and membership as it had immediately before it became a cooperative under this Act.

(5) A certificate issued under the *Cooperative and Other Societies Act 1967*, section 31 as continued in force under this section is taken to be a certificate issued under section 21 of this Act.

(6) A certificate issued under the *Primary Producers' Cooperative Associations Act 1923*, section 10 as continued in force under this section is taken to be a certificate issued under section 21 of this Act.

**Amalgamation between societies or associations**

5.(1) If, before the repeal of the *Cooperative and Other Societies Act 1967* an application by 2 or more societies to amalgamate under section 30 of that Act was made, that Act continues to apply to the application as if that Act had not been repealed.

(2) On registration of the amalgamated society under the *Cooperative and Other Societies Act 1967*, the society is taken to be a cooperative registered under this Act.

(3) If, before the repeal of the *Primary Producers' Cooperative Associations Act 1923* an application by 2 or more associations under part 4A of that Act was made, that Act continues to apply to the application as if that Act had not been repealed.

(4) On registration of the amalgamated association under the *Primary Producers' Cooperative Associations Act 1923*, the association is taken to be a cooperative registered under this Act.

## SCHEDULE 5 (continued)

(5) Each transferred cooperative under this section is the same legal entity as it was immediately before it became a cooperative under this Act with the same name, rules, directors and membership as it had immediately before it became a cooperative under this Act.

(6) A certificate issued under the *Cooperative and Other Societies Act 1967*, section 31 as continued in force under this section is taken to be a certificate issued under section 296 of this Act.<sup>169</sup>

(7) A certificate issued under the *Primary Producers' Cooperative Associations Act 1923*, section 10 as continued in force under this section is taken to be a certificate issued under section 296 of this Act.

**Amalgamation between societies and associations**

6.(1) If, before the repeal of the *Cooperative and Other Societies Act 1967* an application is made by a society and an association under section 36B of that Act, that Act continues to apply as if it had not been repealed.

(2) If, before the repeal of the *Primary Producers' Cooperative Associations Act 1923* an application is made by a society and an association under section 25D of that Act, that Act continues to apply to the application as if that Act had not been repealed.

(3) On the registration of the amalgamated body under the relevant Act, the body is taken to be a cooperative registered under this Act.

(4) Each transferred cooperative under this section is the same legal entity as it was immediately before it became a cooperative under this Act with the same name, rules, directors and membership as it had immediately before it became a cooperative under this Act.

(5) A certificate issued under the *Cooperative and Other Societies Act 1967*, section 36B as continued in force under this section is taken to be a certificate issued under section 296 of this Act.

(6) A certificate issued under the *Primary Producers' Cooperative*

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<sup>169</sup> Section 296 (Approval of merger)

## SCHEDULE 5 (continued)

*Associations Act 1923*, section 25D as continued in force under this section is taken to be a certificate issued under section 296 of this Act.

**Conversion of association or company into a society or society or company into an association**

**7.(1)** If, before the repeal of the *Cooperative and Other Societies Act 1967* an application is made by an association under section 36A or a company under section 37 of that Act, that Act continues to apply to the application as if that Act had not been repealed.

**(2)** If, before the repeal of the *Primary Producers' Cooperative Associations Act 1923* an application is made by an association or company under section 25C of that Act, that Act continues to apply to an application as if that Act had not been repealed.

**(3)** On registration of the converted body under the *Cooperative and Other Societies Act 1967* or the *Primary Producers' Cooperative Associations Act 1923*, the body is taken to be a cooperative registered under this Act.

**(4)** Each transferred cooperative under this section is the same legal entity as it was immediately before it became a cooperative under this Act with the same name, rules, directors and membership as it had immediately before it became a cooperative under this Act.

**(5)** A certificate issued under the *Cooperative and Other Societies Act 1967*, section 36A or 37 as continued in force under this section is taken to be a certificate issued under section 21 or 26<sup>170</sup> of this Act, as the case requires.

**(6)** A certificate issued under the *Primary Producers' Cooperative Associations Act 1923*, section 25C as continued in force under this section is taken to be a certificate issued under section 21 or 26 of this Act, as the case requires.

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<sup>170</sup> Section 21 (Incorporation and certificate of registration) or 26 (Certificate of registration)

## SCHEDULE 5 (continued)

**Rules to conform with Act**

**8.(1)** A transferred cooperative must bring its rules into conformity with this Act within 2 years after the commencement or, if the registrar approves a further period for a particular cooperative, the further period approved by the registrar.

**(2)** The rules of the transferred cooperative are taken to be valid until whichever of the following first happens—

- (a) the cooperative complies with subsection (1);
- (b) the relevant period under subsection (1) ends.

**(3)** If there is an inconsistency between a provision of this Act and the rules of the cooperative about the procedure for altering the cooperative's rules, the provision of this Act prevails to the extent of the inconsistency.

**(4)** This section does not affect the operation of part 3, division 2<sup>171</sup> in relation to the rules of a transferred cooperative.

**Changes to certain rules**

**9.(1)** This section applies if, in the registrar's opinion, the rules of a transferred cooperative should be altered to achieve conformity with this Act.

**(2)** The registrar may, by written notice given to the transferred cooperative, require it to alter its rules within a stated period and in a way stated in the notice or another way approved by the registrar.

**(3)** If, within the stated period, the cooperative does not alter its rules as required by the notice, the registrar may alter the rules by notation on the registered copy of the rules.

**(4)** The registrar must give written notice to the cooperative of an alteration of its rules made by the registrar under subsection (3).

**(5)** An alteration to rules made by the registrar under this section is as

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<sup>171</sup> Part 3, division 2 (Doctrine of vires abolished)

## SCHEDULE 5 (continued)

valid and effective as an alteration made and registered under part 5<sup>172</sup> of this Act.

**Rules to contain active membership provisions**

**10.** The board of directors of a transferred cooperative must comply with part 6, division 2<sup>173</sup> within 2 years after the commencement or, if the registrar approves a further period for a particular cooperative, the further period approved by the registrar.

**Special resolutions**

**11.(1)** A special resolution of a transferred cooperative under the *Cooperative and Other Societies Act 1967* or the *Primary Producers' Cooperative Associations Act 1923* that is not registered under the relevant Act before the commencement of this Act may be registered by the registrar under this Act.

**(2)** Anything else necessary to be done because of a special resolution to give effect to the resolution but not done before the commencement of this Act may continue to be done after the commencement of this Act.

**Documents**

**12.** A certificate or other document about a transferred cooperative and issued or registered by, or filed with or given to, a registrar under the *Cooperative and Other Societies Act 1967* or the *Primary Producers' Cooperative Associations Act 1923* has effect as a certificate or document issued or registered by, or filed with or given to, the registrar under this Act.

**Existing accounts provisions apply to transferred cooperatives**

**13.(1)** Despite this Act, the *Cooperative and Other Societies Act 1967*, sections 54 to 56 and 85 to 88 or the *Primary Producers' Cooperative*

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<sup>172</sup> Part 5 (Rules)

<sup>173</sup> Part 6, division 2 (Rules to contain active membership provisions)

## SCHEDULE 5 (continued)

*Associations Regulation 1987*, schedule 4, sections 9, 11 and 12 continues to apply to a transferred cooperative for the financial year for the cooperative in which this section commences.

(2) Part 9, divisions 5 and 6<sup>174</sup> of this Act do not apply to a financial year of a transferred cooperative to which subsection (1) applies.

**Winding-up**

**14.(1)** If, before the repeal of the repealed Act, a transferred cooperative had started to be wound-up or dissolved under—

- (a) the *Cooperative and Other Societies Act 1967*, part 8; or
- (b) the *Primary Producers' Cooperative Associations Regulation 1987*, schedule 4, sections 50 and 51;

the provisions of that Act or regulation continue to apply to the winding-up or dissolution as if that Act had not been repealed.

(2) A cooperative mentioned in subsection (1) whose registration has been cancelled is taken to be a deregistered cooperative.

(3) A provision of the Corporations Law dealing with a matter arising out of the repeal of part 5.6, division 8<sup>175</sup> of the Corporations Law is adopted by this section and applies for the provisions of the Corporations Law adopted under part 12, division 3.<sup>176</sup>

(4) A cooperative that is being or has been dissolved under the repealed part 5.6, division 8 of the Corporations Law is taken to be a cooperative that is being or has been deregistered under this Act.

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<sup>174</sup> Part 9, divisions 5 (Accounts and audit) and 6 (Registers, records and returns)

<sup>175</sup> Corporations Law, repealed part 5.6 (Winding-up generally), division 8 (Dissolution)

<sup>176</sup> Part 12 (Merger, transfer of engagements, winding-up), division 3 (Winding-up and deregistration)

## SCHEDULE 5 (continued)

**Inspection or inquiry**

**15.** If, before the repeal of the repealed Acts, an inspection or inquiry was started under the *Cooperative and Other Societies Act 1967*, part 10 or the *Primary Producers' Cooperative Associations Regulation 1987*, schedule 4 in relation to a transferred cooperative, those provisions continue to apply to the inspection or inquiry as if those Acts had not been repealed.

**Registrar**

**16.(1)** The person holding office as registrar under a repealed Act immediately before the commencement of this Act is taken, on the commencement, to be appointed as deputy registrar under this Act.

**(2)** The person holding office as registrar under the repealed *Primary Producers' Cooperative Associations Act 1923* immediately before the repeal is taken to be appointed as assistant registrar under this Act.

**(3)** Subject to this Act, anything of a continuing nature done or started before the repeal of the repealed Acts by, for or in relation to a person mentioned in subsection (1) or (2) is not affected by this Act and continues to have the same status, operation and effect as it would have had if the relevant Act had not been repealed.

**(4)** A reference in a provision of the *Cooperative and Other Societies Act 1967* or the *Primary Producers' Cooperative Associations Regulation 1987* to a registrar continued in operation by this schedule is taken, for the continued operation of the provision, to be a reference to the registrar under this Act.

**Superseded references**

**17.(1)** A reference in another Act or document to the *Cooperative and Other Societies Act 1967* may, if the context permits, be taken to be a reference to this Act.

**(2)** A reference in another Act or document to the *Primary Producers' Cooperative Associations Act 1923* may, if the context permits, be taken to be a reference to this Act.

## SCHEDULE 5 (continued)

(3) A reference in any other Act or document to—

- (a) a society under the *Cooperative and Other Societies Act 1967*; or
- (b) an association or federation under the *Primary Producers' Cooperative Associations Act 1923*;

may, if the context permits, be taken to be a reference to a cooperative or association registered under this Act.

**Capital reserve fund**

**18.** The amount standing to the credit of a capital reserve fund under the *Cooperative and Other Societies Act 1967*, section 48 is taken to form part of the general reserves of a transferred cooperative.

**Application for certificate of registration**

**19.(1)** On the written application of a transferred cooperative, the registrar must issue to the applicant a certificate of registration under this Act.

**(2)** The registrar may issue a certificate of registration to a transferred cooperative under subsection (1) only if the transferred cooperative surrenders to the registrar its certificate of registration under the previous law or satisfies the registrar that the certificate has been lost or destroyed.

**Securities**

**20.** A security registered under the *Primary Producers' Cooperative Associations Act 1923*, section 28 before the commencement of this Act is taken to be a charge registered under section 262<sup>177</sup> of this Act.

**Conversion to a company**

**21.(1)** If, before the commencement of this Act, a society under the *Cooperative and Other Societies Act 1967* had passed a special resolution

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<sup>177</sup> Section 262 (Registration of charges)

## SCHEDULE 5 (continued)

under section 38 of that Act to convert itself into, or to amalgamate with, a company under the Corporations Law but the society had not been registered as, or amalgamated with, a company under the Corporations Law, that Act continues to apply to the conversion or amalgamation.

(2) If, before the commencement of this Act, an association under the *Primary Producers' Cooperative Associations Act 1923* had passed a special resolution under section 25A of that Act to apply to be registered as a company under the Corporations Law but the association had not been registered as a company, that Act continues to apply to the application by the association to be registered as a company.

**Cooperative companies**

**22.(1)** This section applies to a corporation exempted from the operation of the *Primary Producers' Cooperative Associations Act 1923*, section 22 immediately before the repeal of that Act that is a foreign cooperative under this Act.

(2) Despite part 14,<sup>178</sup> a corporation to which this section applies may carry on business in Queensland as a foreign cooperative without registration but must become registered as a foreign cooperative under this Act within 2 years after the commencement of this Act.

**Transferred cooperatives maximum permissible level of share interest**

**23.** If, before the repeal of the repealed Acts, a person has a relevant interest in shares of the cooperative the nominal value of which is more than 20% of the nominal value of the issued share capital of the cooperative, the person may, despite section 273, continue to have a relevant interest in the shares.

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<sup>178</sup> Part 14 (Foreign cooperatives)

## SCHEDULE 6

### TRANSITIONAL PROVISIONS FOR TRADING COOPERATIVES WITHOUT SHARE CAPITAL

section 471

#### **Purpose of schedule**

1. The purpose of this schedule is to make additional transitional provision for certain trading cooperatives that do not have share capital.

#### **Application of schedule**

2.(1) This schedule applies despite sections 137 and 138.<sup>179</sup>

(2) However, this schedule does not apply to the Tablelands' Co-operative Artificial Stock Breeding Association Limited.

#### **Definitions**

3. In this schedule—

“**cooperative without share capital**” means a transferred cooperative under schedule 5<sup>180</sup> that, immediately before the commencement of this Act, was registered under the *Primary Producers' Cooperative Associations Act 1923* and has no issued share capital.

#### **Cooperative without share capital taken to be trading cooperative**

4. A cooperative without share capital is taken to be a trading cooperative.

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<sup>179</sup> Sections 137 (Former shareholders to be taken to be shareholders for certain purposes) and 138 (Entitlements of former shareholders on mergers etc.)

<sup>180</sup> Schedule 5 (Savings and transitional)

## SCHEDULE 6 (continued)

**Certain provisions do not apply to cooperatives without share capital**

5. Section 14(1) and (2)<sup>181</sup> do not apply to a cooperative without share capital.

**Additional matters for rules**

6. In addition to the matters specified in schedule 1<sup>182</sup> for the rules of cooperatives, the rules of a trading cooperative without share capital must set out or make provision for each of the following—

- (a) how a surplus may be distributed;
- (b) the allocation of a deficiency on the winding-up of the cooperative;
- (c) matters that may be prescribed under a regulation.

**Application of ss 137 and 138 to trading cooperatives without share capital**

7.(1) Sections 137 and 138<sup>183</sup> apply with changes to a trading cooperative without share capital.

(2) The changes to section 137 are as follows—

- (a) section 137(1), ‘shares in a cooperative have’—  
*omit, insert—*  
‘membership in a cooperative has’;
- (b) section 137(1), ‘the holder of shares in’—  
*omit, insert—*  
‘a member of’;

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<sup>181</sup> Section 14 (Trading cooperatives)

<sup>182</sup> Schedule 1 (Matters for which rules must make provision)

<sup>183</sup> Sections 137 (Former shareholders to be taken to be shareholders for certain purposes) and 138 (Entitlements of former shareholders on mergers etc.)

## SCHEDULE 6 (continued)

- (c) section 137(1)(b) and (c), ‘shareholder’—  
*omit, insert*—  
‘member’;
- (d) section 137(1)(c), ‘shares were’—  
*omit, insert*—  
‘membership was’.
- (3)** The changes to section 138 are as follows—
- (a) section 138(1) and (4)(b), ‘shares’—  
*omit, insert*—  
‘membership’;
- (b) section 138(1), ‘are’—  
*omit, insert*—  
‘is’;
- (c) section 138(2), ‘held shares’—  
*omit, insert*—  
‘membership’;
- (d) section 138(2), ‘those shares’—  
*omit, insert*—  
‘membership’;
- (e) section 138(2) and (3)(a), ‘person’s shares’—  
*omit, insert*—  
‘person’s membership’;
- (f) section 138(3), ‘The extent of the forfeited shareholding’—  
*omit, insert*—  
‘The forfeited membership’.

**SCHEDULE 8****DICTIONARY**

section 5

**“accounts”** means profit and loss accounts and balance sheets and includes statements, reports and notes (other than auditors’ reports and directors’ reports) attached to, or intended to be read with, the accounts or balance sheets.

**“administrator”** for schedule 4 see section 1 of that schedule.<sup>184</sup>

**“affairs”** for part 15, division 2 see section 408.<sup>185</sup>

**“agreement”** means an agreement, arrangement or understanding—

- (a) whether formal or informal or partly formal and partly informal;  
or
- (b) whether written or oral or partly written and partly oral; or
- (c) whether or not having legal or equitable force and whether or not based on legal or equitable rights.

**“alter”**, the rules of a cooperative, includes add to, substitute and rescind.

**“appropriate registrar”** for part 14, division 3 see section 371.<sup>186</sup>

**“approved form”** see section 467.<sup>187</sup>

**“associate”** see schedule 2, section 18.<sup>188</sup>

**“association”** means an association registered under this Act.

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<sup>184</sup> Schedule 4, section 1 (Interpretation)

<sup>185</sup> Section 408 (Definitions for division)

<sup>186</sup> Section 371 (Who is the appropriate registrar)

<sup>187</sup> Section 467 (Approval of forms)

<sup>188</sup> Schedule 2, section 18 (Associates of a corporation)

## SCHEDULE 8 (continued)

**“board”** means the board of directors of a cooperative and includes a committee of management of a cooperative.

**“carrying on business”** see section 360.<sup>189</sup>

**“chargee”** for schedule 3, part 2, division 5 see section 32 of that schedule.

**“component cooperative”** means a member of an association.

**“control”** for part 9, division 5 see section 231.<sup>190</sup>

**“control day”** for schedule 4 see section 1 of that schedule.<sup>191</sup>

**“controller”** for schedule 4 see section 1 of that schedule.<sup>192</sup>

**“cooperative”** means—

- (a) for this Act other than schedule 3 or 4—a body registered under this Act as a cooperative and includes an association or federation; or
- (b) for schedule 3, part 1—see section 1 of that schedule;<sup>193</sup> or
- (c) for schedule 4—see section 1 of that schedule.

**“cooperative venture”** for part 15 see section 380.<sup>194</sup>

**“cooperatives law”** for part 14 see section 357.<sup>195</sup>

**“costs”** for part 15, division 2 see section 408.<sup>196</sup>

**“critical day”** for schedule 3, part 2, division 4 see section 26 of that schedule.<sup>197</sup>

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<sup>189</sup> Section 360 (Meaning of “carrying on business”)

<sup>190</sup> Section 231 (Meaning of “entity” and “control”)

<sup>191</sup> Schedule 4, section 1 (Interpretation)

<sup>192</sup> Schedule 4, section 1 (Interpretation)

<sup>193</sup> Schedule 3, section 1 (Interpretation)

<sup>194</sup> Section 380 (Definitions for part)

<sup>195</sup> Section 357 (Definitions for part)

<sup>196</sup> Section 408 (Definitions for division)

<sup>197</sup> Schedule 3, section 26 (Definitions)

## SCHEDULE 8 (continued)

**“daily newspaper”** for schedule 4 see section 1 of that schedule.<sup>198</sup>

**“debenture”** means a document issued by a cooperative that evidences or acknowledges indebtedness of the cooperative for money that is or may be deposited with or lent to the cooperative (whether 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) another document of a class prescribed under a regulation as exempt from this definition.

**“deed of arrangement”** means a deed of arrangement executed under the Corporations Law, part 5.3A (as adopted and applying under this Act) or a deed of that type as varied and in force from time to time.

**“deposit-taking cooperative”** means a cooperative permitted under section 252<sup>199</sup> to accept money on deposit.

**“deregistration”** means deregistration under section 308 or 462(1) or schedule 5, section 14.

**“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 under whose directions or instructions the directors or members of the board of directors of the cooperative are accustomed to act.

**“dissenting shareholder”**, for part 13, division 3 see section 345.<sup>200</sup>

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<sup>198</sup> Schedule 4, section 1 (Interpretation)

<sup>199</sup> Section 252 (Limits on deposit taking)

<sup>200</sup> Section 345 (Definitions)

## SCHEDULE 8 (continued)

**“document of title”** for schedule 3, part 1 see section 1 of that schedule.<sup>201</sup>

**“entity”** for part 9, division 5 see section 231.<sup>202</sup>

**“excluded shares”**, for part 13, division 3 see section 345.<sup>203</sup>

**“federation”** means a federation registered under this Act.

**“financial records”** include—

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers; and
- (b) documents of prime entry; and
- (c) working papers and other documents needed to explain—
  - (i) the methods by which financial statements are made up; and
  - (ii) adjustments to be made in preparing financial statements.

**“foreign cooperative”** means a corporation registered, incorporated or formed under, or subject to, a law in force outside Queensland (including outside Australia), that regulates cooperatives or organisations having attributes the same as or similar to cooperatives but does not include—

- (a) a body incorporated under the Corporations Law; or
- (b) a financial institution.

**“function”** includes a power.

**“inspector”** means a person appointed as an inspector under part 15.<sup>204</sup>

**“interest”** for part 4, division 3 see section 77.<sup>205</sup>

**“investigator”** for part 15, division 2 see section 408.<sup>206</sup>

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<sup>201</sup> Schedule 3, section 1 (Interpretation)

<sup>202</sup> Section 231 (Meaning of “entity” and “control”)

<sup>203</sup> Section 345 (Definitions)

<sup>204</sup> Part 15 (Supervision and protection of cooperatives)

<sup>205</sup> Section 77 (Meaning of “interest”)

<sup>206</sup> Section 408 (Definitions for division)

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 SCHEDULE 8 (continued)

**“involved person”** for part 15, division 2 see section 408.

**“managing controller”** for schedule 4 see section 1 of that schedule.<sup>207</sup>

**“marketable security”** for schedule 3, part 1 see section 1 of that schedule.<sup>208</sup>

**“member”** for part 4, division 4 see section 82.<sup>209</sup>

**“model rules”** means model rules approved by regulation under part 5.<sup>210</sup>

**“mortgage”** includes lien, charge or other security over property.

**“national newspaper”** for schedule 4 see section 1 of that schedule.

**“new body”** for part 12, division 2 see section 299.<sup>211</sup>

**“non-participating cooperative”** for part 14 see section 357.<sup>212</sup>

**“non-trading cooperative”** means a non-trading cooperative under section 15.<sup>213</sup>

**“officer”**, of a cooperative, other than for part 9, division 2 and schedule 3 and 4 means—

- (a) a director, secretary or employee 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 and manager, appointed under a power contained in an instrument, of property of the cooperative; or
- (d) an administrator of a deed of arrangement executed by the cooperative; or

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<sup>207</sup> Schedule 4, section 1 (Interpretation)

<sup>208</sup> Schedule 3, section 1 (Interpretation)

<sup>209</sup> Section 82 (Grievance procedure)

<sup>210</sup> Part 5 (Rules)

<sup>211</sup> Section 299 (Meaning of “new body” and “transfer”)

<sup>212</sup> Section 357 (Definitions for part)

<sup>213</sup> Section 15 (Non-trading cooperatives)

## SCHEDULE 8 (continued)

- (e) a liquidator or provisional liquidator appointed in a voluntary winding-up of the cooperative; or
- (f) an administrator of the cooperative appointed under—
  - (i) the Corporations Law, part 5.3A as adopted and applying under this Act; or
  - (ii) part 12, division 5;<sup>214</sup> or
- (g) a trustee or other person administering a compromise or arrangement made between the cooperative and another person.

**“officer”** means—

- (a) for part 9, division 2 see section 214;<sup>215</sup> or
- (b) for schedule 3, part 2, division 5 see section 32 of that schedule;<sup>216</sup> or
- (c) for schedule 4 see section 1 of that schedule.<sup>217</sup>

**“participating cooperative”** for part 14 see section 357.<sup>218</sup>

**“participating State”** for part 14 see section 357.

**“place”** for part 15 see section 380.<sup>219</sup>

**“present liability”** for schedule 3, part 1 see section 1 of that schedule.<sup>220</sup>

**“primary activity”** see section 113.<sup>221</sup>

**“principal executive officer”**, of a cooperative or a subsidiary of a cooperative, means the principal executive officer of the cooperative or

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<sup>214</sup> Part 12, division 5 (Appointment of administrator)

<sup>215</sup> Section 214 (Meaning of “officer”)

<sup>216</sup> Schedule 3, section 32 (Definitions)

<sup>217</sup> Schedule 4, section 1 (Interpretation)

<sup>218</sup> Section 357 (Definitions for part)

<sup>219</sup> Section 380 (Definitions for part)

<sup>220</sup> .Schedule 3, section 1 (Interpretation)

<sup>221</sup> Section 113 (Meaning of “primary activity”)

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 SCHEDULE 8 (continued)

subsidiary for the time being, by whatever name called, and whether or not the officer is a director or the secretary.

**“priority time”** for schedule 3, part 3, division 1 see section 45 of that schedule.<sup>222</sup>

**“prior registered charge”** for schedule 3, part 3, division 1 see section 45 of that schedule.

**“property”** means—

(a) for schedule 3, part 1 see section 1 of that schedule.<sup>223</sup>

(b) for schedule 4 see section 1 of that schedule.<sup>224</sup>

**“prospective liability”** for schedule 3, part 1 see section 1 of that schedule.

**“receiver”** means—

(a) for schedule 3, part 2, division 5 see section 32 of that schedule.<sup>225</sup>

(b) for schedule 4 see section 1 of that schedule.

**“records”** includes books, accounts, accounting records, 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 another way.

**“register”** means—

(a) for a cooperative—the register under section 437<sup>226</sup> as it relates to cooperatives; or

(b) for a foreign cooperative—the register under section 437 as it relates to foreign cooperatives; or

(c) for a cooperative charge—the register under section 437 as it

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<sup>222</sup> Schedule 3, section 45 (Definitions)

<sup>223</sup> Schedule 3, section 1 (Interpretation)

<sup>224</sup> Schedule 4, section 1 (Interpretation)

<sup>225</sup> Schedule 3, section 32 (Definitions)

<sup>226</sup> Section 437 (Register of cooperatives)

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 SCHEDULE 8 (continued)

relates to cooperative charges under schedule 3, section 18.<sup>227</sup>

**“registered charge”** for schedule 3, part 3, division 1 see section 45 of that schedule.<sup>228</sup>

**“registrable charge”** for schedule 3, part 1 see section 1 of that schedule.<sup>229</sup>

**“registrar”** see section 433.<sup>230</sup>

**“related”** (in the context of related corporations) see schedule 2, part 3.<sup>231</sup>

**“relevant day”** for schedule 3, part 2, division 4 see section 26 of that schedule.<sup>232</sup>

**“relevant documents”** for part 15 see section 380.<sup>233</sup>

**“relevant interest”** see schedule 2, part 1.<sup>234</sup>

**“relevant person”** for schedule 3, part 2, division 5 see section 32 of that schedule.<sup>235</sup>

**“repealed Acts”** for schedule 5 see section 1 of that schedule.<sup>236</sup>

**“rule”** means registered rule of a cooperative for the time being in force.

**“seal”**, of a cooperative, means common seal or official seal.

**“secretary”**, of a cooperative, means the person appointed under section 213A to be, or to act as, the secretary of the cooperative.

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<sup>227</sup> Schedule 3, section 18 (Register of cooperative charges)

<sup>228</sup> Schedule 3, section 45 (Definitions)

<sup>229</sup> Schedule 3, section 1 (Interpretation)

<sup>230</sup> Section 433 (Appointment of registrar)

<sup>231</sup> Schedule 2, part 3 (Related bodies)

<sup>232</sup> Schedule 3, section 26 (Definitions)

<sup>233</sup> Section 380 (Definitions for part)

<sup>234</sup> Schedule 2, part 1 (Relevant interests)

<sup>235</sup> Schedule 3, section 32 (Definitions)

<sup>236</sup> Schedule 5, section 1 (Definitions)

## SCHEDULE 8 (continued)

“**share**” means share in the share capital of a cooperative.

“**subordinated debt**” see section 255.<sup>237</sup>

“**subsequent registered charge**” for schedule 3, part 3, division 1 see section 45 of that schedule.<sup>238</sup>

“**subsidiary**” see the Corporations Law.

“**surplus**”, in relation to a cooperative, means the excess of income over expenditure after making adequate allowance for taxation expense, depreciation in value of the property of the cooperative and for future contingencies.

“**trading cooperative**” means a trading cooperative under section 14.<sup>239</sup>

“**transfer**” for part 12, division 2 see section 299.<sup>240</sup>

“**transferred cooperative**” for schedule 5 see section 1 of that schedule.

“**unregistered charge**” for schedule 3, part 3, division 1 see section 45 of that schedule.<sup>241</sup>

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<sup>237</sup> Section 255 (Subordinated debt)

<sup>238</sup> Schedule 3, section 45 (Definitions)

<sup>239</sup> Section 14 (Trading cooperatives)

<sup>240</sup> Section 299 (Meaning of “new body” and “transfer”)

<sup>241</sup> Schedule 3, section 45 (Definitions)

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## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 3 November 2000. Future amendments of the Cooperatives Act 1997 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
amdt	=	amendment	prov	=	provision
ch	=	chapter	pt	=	part
def	=	definition	pubd	=	published
div	=	division	R[X]	=	Reprint No.[X]
exp	=	expires/expired	RA	=	Reprints Act 1992
gaz	=	gazette	reloc	=	relocated
hdg	=	heading	renum	=	renumbered
ins	=	inserted	rep	=	repealed
lap	=	lapsed	s	=	section
notfd	=	notified	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
om	=	omitted	SIA	=	Statutory Instruments Act 1992
orig	=	original	SIR	=	Statutory Instruments Regulation 1992
p	=	page	SL	=	subordinate legislation
para	=	paragraph	sub	=	substituted
prec	=	preceding	unnum	=	unnumbered
pres	=	present			
prev	=	previous			

## 4 Table of earlier reprints

### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	none	1 September 1997
1A	to Act No. 82 of 1997	8 January 1998
1B	to Act No. 27 of 1999	24 August 1999
2	to Act No. 5 of 2000	31 March 2000
2A	to Act No. 5 of 2000	23 June 2000
2B	to Act No. 24 of 2000	7 July 2000

## 5 List of legislation

### **Cooperatives Act 1997 No. 39**

date of assent 25 August 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 September 1997 (1997 SL No. 286)

as amended by—

### **Justice and Other Legislation (Miscellaneous Provisions) Act (No. 2) 1997 No. 82 ss 1–2(1), 3 pt 7 sch**

date of assent 5 December 1997

commenced on date of assent

### **Financial Sector Reform (Queensland) Act 1999 No. 27 ss 1–2(1), (4), 76 sch 1 pt 3**

date of assent 16 June 1999

ss 1–2, 76 commenced on date of assent

remaining provisions commenced 1 July 1999 (see s 2(1) and proc pubd Cwlth of Australia gaz June 1999, No. S283)

### **Equity and Fair Trading (Miscellaneous Provisions) Act 1999 No. 63 pts 1, 5 s 22 sch 1**

date of assent 6 December 1999

ss 1–2 commenced on date of assent

sch 1 items 20–21 commenced 16 June 2000 (2000 SL No. 36)

sch 1 item 29 commenced 5 May 2000 (2000 SL No. 36)

remaining provisions commenced 10 March 2000 (2000 SL No. 36)

**Police Powers and Responsibilities Act 2000 No. 5 ss 1–2(1)–(2), 373 sch 2**

date of assent 23 March 2000

commenced on date of assent (see s 2(1)–(2))

**Equity and Fair Trading (Miscellaneous Provisions) Act 2000 No. 24 pts 1, 8**

date of assent 27 June 2000

commenced on date of assent

**Statute Law (Miscellaneous Provisions) Act 2000 No. 46 ss 1, 3 sch**

date of assent 25 October 2000

commenced on date of assent

**6 List of annotations****Corporations Law adopted by this Act or the regulations****s 10** amd 1999 No. 63 s 22 sch**Interpretation of adopted provisions of Corporations Law****s 11** amd 1999 No. 63 ss 23, 22 sch**Trading cooperatives****s 14** amd 1999 No. 63 s 24**Non-trading cooperatives****s 15** amd 1999 No. 63 s 25**Formation meeting****s 16** amd 1999 No. 63 s 22 sch**Approval of disclosure statement****s 17** amd 1999 No. 63 s 26**Application for registration of proposed cooperative****s 19** amd 1999 No. 63 s 22 sch**Circumstances in which membership ceases—all cooperatives****s 66** amd 1999 No. 63 s 22 sch**Carrying on business with too few members****s 68** amd 1999 No. 63 s 22 sch**Cooperative to give information to person intending to become a member****s 71** amd 1999 No. 63 s 27**Entry fees and regular subscriptions****s 72** amd 1999 No. 63 s 22 sch**Repayment of shares on expulsion****s 76** amd 1999 No. 63 s 28**Interest on deposits and debentures****s 133** amd 1999 No. 63 s 22 sch**Repayment of deposits and debentures****s 134** amd 1999 No. 63 s 22 sch

**Register of cancelled memberships**

s 135      amd 1999 No. 63 s 22 sch

**Disclosure to intending shareholders in trading cooperative**

s 143      sub 1999 No. 63 s 29

**Content of disclosure statement to intending shareholders**

s 143A     ins 1999 No. 63 s 29

**Exemptions for disclosure statements**

s 143B     ins 1999 No. 63 s 29

**Adoption of certain Corporations Law provisions about shares**

s 144A     ins 1999 No. 63 s 30

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

s 149      amd 1999 No. 63 s 22 sch

**Purchase and repayment of shares**

s 170      amd 1999 No. 63 s 31

**PART 8—VOTING AND MEETINGS**

pt hdg     sub 1999 No. 63 s 32

**Application of part to voting**

s 173      sub 1999 No. 63 s 33

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

s 179A     ins 1999 No. 63 s 34

**Division 2A—Resolution by circulated document**

div hdg    ins 1999 No. 63 s 35

**Application of div 2A**

s 192A     ins 1999 No. 63 s 35

**Resolution by circulation of document—fewer than 50 members**

s 192B     ins 1999 No. 63 s 35

**Annual general meetings**

s 198      amd 1999 No. 63 s 22 sch

**Minutes**

s 204      amd 1999 No. 63 s 22 sch

**Qualification of directors**

s 207      amd 1999 No. 63 s 36

**Disqualified persons**

s 208      amd 1999 No. 63 s 22 sch

**Meeting of the board of directors**

s 209      amd 1999 No. 63 s 37

**Transaction of business outside meetings**

s 210      amd 1999 No. 63 s 22 sch

**Division 1A—Secretary****div hdg** ins 1999 No. 63 s 38**Secretary****s 213A** ins 1999 No. 63 s 38**Recovery of damages by cooperative****s 218** amd 1997 No. 82 s 3 sch**Adoption of Corporations Law provisions about officers of cooperatives****s 221** amd 1999 No. 63 s 22 sch**Requirements for accounts and financial records****prov hdg** amd 1999 No. 63 s 22 sch**s 232** amd 1999 No. 63 s 22 sch**Power of registrar to grant exemptions****s 233** amd 1999 No. 63 s 39**Annual report to be filed with registrar****prov hdg** amd 1999 No. 63 s 40(1)**s 242** amd 1999 No. 63 s 40(2)**Name to include certain matter****s 245** amd 1997 No. 82 s 22; 1999 No. 27 s 76 sch 1**Restriction on use of word “cooperative” or similar words****s 248A** ins 1999 No. 63 s 41**Limits on deposit taking****s 252** amd 1999 No. 63 s 22 sch**Adoption of certain other Corporations Law provisions****s 256A** ins 1999 No. 63 s 42**Application of Corporations Law—reissue of redeemed debentures****s 259** amd 1999 No. 63 s 22 sch**Distribution of surplus or reserves to members****s 266** amd 1999 No. 63 s 43**Maximum permissible level of share interest****s 273** amd 1999 No. 63 s 22 sch**Application for transfer****s 300** amd 1997 No. 82 s 3 sch; 1999 No. 27 s 76 sch 1**Requirements before application can be made****s 301** amd 1999 No. 63 s 22 sch**Transfer not to impose greater liability etc.****s 303** amd 1999 No. 63 s 22 sch**New body must give copy of new certificate of registration or incorporation to registrar****s 304A** ins 1999 No. 63 s 44

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s 462 amd 1999 No. 63 s 49

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**PART 19—REPEALS, SAVINGS AND TRANSITIONAL**

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**Amendment of other Acts**

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**SCHEDULE 2—RELEVANT INTERESTS, ASSOCIATES, RELATED BODIES****PART 3—RELATED CORPORATIONS**

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**SCHEDULE 3—REGISTRATION ETC. OF CHARGES****Supreme Court may extend required period**

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**SCHEDULE 4—RECEIVERS, AND OTHER CONTROLLERS, OF PROPERTY OF COOPERATIVES****Payment of certain debts, out of property subject to floating charge, in priority to claims under charge**

s 24 amd 1999 No. 63 s 22 sch

**SCHEDULE 5—SAVINGS AND TRANSITIONAL****Winding-up**

s 14 amd 1999 No. 63 s 51

**SCHEDULE 7—ACTS AMENDED**

om R1 (see RA s 40)

**SCHEDULE 8—DICTIONARY**def “**accounting records**” om 1999 No. 63 s 52(1)def “**deposit-taking cooperative**” amd 1997 No. 82 s 3 schdef “**deregistration**” ins 1999 No. 63 s 52(2)def “**financial records**” ins 1999 No. 63 s 52(2)def “**secretary**” ins 1999 No. 63 s 52(2)