



Government of Western Australia
Department of Commerce

EXPLANATORY MEMORANDUM

Co-operatives Bill 2009

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Overview of Bill

The *Co-operatives Bill 2009* (the 'Bill') regulates the formation, registration and operation of co-operatives in Western Australia.

Co-operatives are currently regulated by the *Companies (Co-operative) Act 1943* (the CC Act) and the *Co-operative and Provident Societies Act 1903* (the CPS Act). The Bill will replace these statutes with a single, modern, plain language legislation for co-operatives.

The current legislation is based on outdated nineteenth century companies law which inadequately regulates co-operatives in the contemporary commercial environment. The objectives of the Bill are to provide a more suitable legislative framework that is reflective of the current commercial and social environment and which will facilitate inter-jurisdictional trade and the growth of the co-operatives sector.

The Bill will provide a number of specific benefits to co-operatives. In particular, the Bill will:

- promote co-operative philosophy, principles, practices and objectives;
- facilitate cross-border fundraising and trading by improving consistency with co-operatives legislation in other States and Territories;
- simplify the registration process for co-operatives trading in other States and Territories by introducing new mutual recognition provisions;
- provide access to Co-operative Capital Units (CCUs), a new type of financial instrument which will enhance a co-operative's capacity to raise capital by enabling fundraising amongst non-members;
- provide new confidentiality safeguards for a co-operative's membership register, which is a significant concern for co-operatives given that their membership list is often also their client base;
- ensure directors of co-operatives are accountable to members for their actions and decisions by introducing new director duties analogous to those in the *Corporations Act 2001*;
- introduce modern requirements for disclosure to members when co-operatives are formed and when shares and debentures are issued;
- facilitate and regulate take-overs, mergers, transfer of engagements, arrangements and reconstruction provisions; and
- provide more efficient winding-up procedures where appropriate.

The introduction and implementation of the Bill also provides an opportunity to promote this form of organisation to regional, agricultural, indigenous, housing, artistic and other communities that could benefit from utilising the co-operative structure to meet their members' needs. The Bill has been developed in consultation with the industry and the key industry association for co-operatives in Western Australia, Co-operatives WA.

Part 1 – Preliminary

Division 1 – Introductory

- Clause 1 Sets out the name of the Act.
- Clause 2 Provides for the commencement of the Act on a day or days to be fixed by proclamation.
- Clause 3 Outlines the objects of the Act.
- Clause 4 Sets out the terms used in the Act and clarifies how references to the Commonwealth *Corporations Act 2001* are to be interpreted.

Division 2 – Qualified privilege

- Clause 5 Expands the application of “qualified privilege” to proceedings involving defamation.

Division 3 – The co-operative principles

- Clause 6 Sets out the co-operative principles drawn from the ‘Statement on Co-operative Identity’ adopted at the 1995 General Assembly of the International Co-operative Alliance. The co-operative principles reflect a commitment to self-help, self-responsibility, democracy, equality, equity and concern for the community. These principles are contained in co-operatives’ legislation in every other jurisdiction in Australia. The current legislation does not contain co-operative principles.
- Clause 7 Provides that interpretations of the Act that promote the co-operative principles are to be preferred to interpretations that would not promote the co-operative principles.

Division 4 – Application of Corporations Act to co-operatives

- Clause 8 Provides a definition of the terms; “company”, “corporations legislation” and “excluded Corporations legislation provision” for the purpose of Division 4 of the Act.
- Clause 9 Excludes the application of the *Corporations Act* to co-operatives except for those provisions of the Corporations law that are set out in subsection (2). In particular, Parts 1.2A(disclosing entities), Chapter 2L(debentures), Chapter 6CA(continuous disclosure), Chapter 6D (fundraising) and Part 7.10 (prohibited conduct relating to financial products and services) are not excluded from applying to co-operatives except in relation to shares, co-operative capital units, debentures or deposits in a co-operative.

- Clause 10 Provides that provisions of the *Corporations Act* may be adopted by regulation, with or without specified modifications.
- Clause 11 Provides that provisions of the *Corporations Act* adopted by this Act apply with any modifications that may be necessary or appropriate for the effective application of the provisions to co-operatives.

Part 2 – Formation

Division 1 – Types of co-operatives

- Clause 12 Provides that a co-operative registered under the Act may be either a distributing or non-distributing co-operative.
- Clause 13 Requires a distributing co-operative to have share capital that gives a return or distribution on surplus or share capital.
- It also prescribes the minimum number of members required to form a distributing co-operative or co-operative group.
- Clause 14 Sets out the requirements to be registered as a non-distributing co-operative. A non-distributing co-operative may or may not have a share capital but must not give returns or distributions on surplus or share capital other than the nominal value of shares (if any) on winding up.
- It also prescribes the minimum number of members required to form a non-distributing co-operative or co-operative group.

Division 2 – Formation meeting

- Clause 15 Provides that a formation meeting must be held before a proposed co-operative (other than an existing corporation) can be registered and specifies the matters that must be considered and agreed upon at the meeting (for example, the proposed rules and first directors). For proposed distributing co-operatives an approved disclosure statement must also be presented to the meeting.
- A formation meeting provides for membership involvement in the establishment of a co-operative.

Division 3 – Approval of disclosure statement and rules

Clause 16 Provides that a proposed distributing co-operative must submit a draft disclosure statement to the Registrar at least 35 days (unless otherwise approved by the Registrar) prior to the formation meeting. The draft disclosure statement must also be accompanied by a written statement specifying the date on which the formation meeting is due to be held.

Clause 17 Provides that each proposed co-operative must submit a draft of its rules to the Registrar at least 35 days (or shorter period approved by the Registrar) prior to the formation meeting.

The 35 day period allows the Registrar time to consider whether the rules are acceptable. The Registrar's approval will be implied unless the co-operative has received notification to the contrary from the Registrar at least 5 days before the formation meeting.

Division 4 – Registration of proposed co-operative

Clause 18 Prescribes the form and content of an application for registration for a proposed co-operative and requires the application to be filed with the Registrar within two months of the formation meeting.

Clause 19 Requires the Registrar to register a co-operative and its rules if the co-operative satisfies the requirements outlined in this Clause (eg compliance with the Act).

Provision is also made for the Registrar to refuse registration and to give written reasons for such refusal.

Clause 20 Provides that incorporation occurs upon registration and that the Registrar must issue a certificate of registration.

Division 5 – Registration of an existing corporation

- Clause 21 Provides that an existing corporation can apply to be registered as a co-operative. An existing corporation includes an existing co-operative that is transferring to the new Act. However, a transferring co-operative is exempt from many of the registration requirements outlined in this Division (as provided for in clause 25).
- Clause 22 Provides that prior to applying for registration as a co-operative, the corporation must pass a special resolution approving the proposed registration and any alteration to its existing memorandum to enable it to comply with the Act. The proposed rules must include active membership requirements and in the case of a distributing co-operative, a disclosure statement must be presented to the meeting.
- Also provides that for a corporation which transfers to this Act, the requirement to pass a resolution approving the proposed registration and the proposed rules is satisfied if the resolution is passed by a two-thirds majority at a general meeting of members and in accordance with section 177(1)(a) and (3) of the Act.
- Clause 23 Sets out the requirements for an existing corporation to make an application for registration as a co-operative and prescribes the form and content of such an application.
- Clause 24 Requires the Registrar to register a proposed co-operative subject to the requirements for registration as set out in the division being met.
- Provision is also made for the Registrar to refuse registration and to give written reasons for such refusal.
- Further provides that registration as a co-operative only takes effect when the corporation ceases to be registered under the law under which it was previously registered.
- Clause 25 Exempts a transferring co-operative from the registration requirements in clauses 24(4) to (6) if immediately before the commencement of this Act the corporation was registered under either the *Companies (Co-operative) Act 1943* or the *Co-operative and Provident Societies Act 1903*.
- Clause 26 Requires the Registrar to issue a certificate of registration to the corporation and publish notice of that certificate in the *Government Gazette*.

Clause 27 Sets out the effect of registration as a co-operative and in particular provides that registration does not prejudice any right of a member in respect of any shares held by that member at the time of registration and incorporation and that the change of registration does not affect the identity of the corporation.

Division 6 – Conversion of co-operative

Clause 28 Provides that a co-operative may, by alteration of its rules (by special resolution passed by means of a special postal ballot), convert from a co-operative with a share capital to one without (or vice versa) or from a distributing co-operative to a non-distributing co-operative (or vice versa).

Further provides that any alteration of rules to convert from a co-operative with share capital to one without share capital cannot be passed unless a notice has been published in the local newspaper.

Division 7 – Reviews

Clause 29 Provides for a person's right of appeal to the Supreme Court against a failure of the Registrar to approve a draft disclosure statement.

Clause 30 Provides for a person's right of appeal to the Supreme Court against a failure of the Registrar to approve draft rules.

Clause 31 Provides for an applicant's right of appeal to the Supreme Court against a failure of the Registrar to register the co-operative.

Clause 32 Provides that the Supreme Court may make any order it considers appropriate to dispose of an appeal under this Division.

Division 8 – General

Clause 33 Provides that any money accepted by a proposed co-operative must be held on trust until the co-operative is registered and returned if the co-operative is not registered within three months of receiving the money. Penalty applies.

Clause 34 Requires the Registrar to issue a duplicate certificate of registration if satisfied that the original certificate is lost or destroyed, upon paying the prescribed fee.

Part 3 – Legal Capacity and Powers

Division 1 – General powers

- Clause 35 Describes the effect of incorporation of a co-operative.
- Clause 36 Outlines a co-operatives power to form companies, partnerships, joint ventures and other commercial entities or to acquire or dispose of interests in corporations, unit trusts and joint ventures.

Division 2 – Doctrine of ultra vires abolished

- Clause 37 Provides guidance in the interpretation of the division.
- Clause 38 Provides that the doctrine of *ultra vires* does not apply to co-operatives and ensures that the co-operatives' officers and members give effect to the provisions of the co-operative's rules relating to the primary activities or powers of the co-operative.
- Clause 39 Provides that the co-operative has the legal capacity of a natural person and specifies certain powers a co-operative has within and outside the State in relation to its securities and other property (including co-operative capital units).
- Clause 40 Provides that a co-operative's rules may contain restrictions or prohibitions on the exercise by the co-operative of a power but explains that these restrictions are not necessarily contraventions of the Act.

Division 3 – Persons having dealings with co-operatives

- Clause 41 Provides that a person is entitled to make the assumptions in clause 42 in relation to dealings with a co-operative and with persons who have, or purport to have, acquired title to property from a co-operative.

- Clause 42 Outlines the assumptions a person is entitled to make, as provided by clause 41.
- Such assumptions include:
- directors, officers or agents of the co-operative are properly appointed and have the authority to perform their duties and perform them properly; and
 - documents issued on behalf of the co-operative are genuine and properly executed as required under the clause.
- Clause 43 Provides that a person who has actual or implied knowledge that an assumption is incorrect is not entitled to make that assumption.
- Clause 44 Provides that a person is not considered to have constructive knowledge of a co-operative's rules or documents (other than those relating to registrable charges) filed with the Registrar. However, it also provides that a member of a co-operative does have constructive knowledge of the rules of a co-operative.
- Clause 45 Provides that a person's entitlement to make assumptions under this division is not affected by the fraudulent conduct of, or forgery by, a person, unless the person attempting to rely on the assumption has actual knowledge of the fraudulent conduct or forgery.

Division 4 – Authentication and execution of documents and confirmation of contracts

- Clause 46 Provides that a co-operative may use its common seal to authenticate a document or proceeding requiring authentication.
- Clause 47 Provides that a co-operative may have one or more official seals, each of which must be a facsimile of the co-operative's common seal, to be used in place of its common seal outside the State where the common seal is kept.
- Clause 48 Provides that a document or proceeding may also be authenticated by the signature of either two directors of the co-operative or a director and secretary of the co-operative.

- Clause 49 Provides that a co-operative may authorise (by writing under its common seal) a person, as its agent or attorney to execute deeds on its behalf for the period noted in the instrument conferring authority or until notice of termination of the authority has been given to the person dealing with the agent or attorney.
- Deeds signed by and under the seal of the agent or attorney or under the official seal of the co-operative bind the co-operative, and the seal has effect as if it was a common seal of the co-operative.
- Clause 50 Provides that a document executed under the seal of the co-operative is not invalid merely because the person attesting the affixing of the seal was in any way interested in the matter contained in the document.
- Clause 51 Provides that a person acting under authority of a co-operative may make, vary or discharge a contract on behalf of the co-operative.
- Clause 52 Provides that this division does not affect the operation of a law requiring a consent or sanction to be obtained, or some procedure to be complied with in relation to the making, varying or discharging of a contract.

Division 5 – Pre-registration contracts

- Clause 53 Provides that a co-operative will be bound by a pre-registration contract entered into by a person on behalf of or for the benefit of the co-operative, if the co-operative is registered and ratifies the contract within a reasonable period after the contract is entered into or within any period agreed to by the parties.
- The clause also provides that a person will be released from liability under the pre-registration contract if the co-operative enters into another contract in substitution for it within a reasonable period after the pre-registration contract is entered into or within any period agreed to by the parties to the pre-registration contract.
- The clause further provides for the payment of damages where a co-operative is not registered or does not ratify or substitute the pre-registration contract.

Clause 54 Provides that 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.

The clause also provides that the party giving the release is not entitled to recover damages from the person and the person does not have a right of liability against the co-operative in respect of the person's liability under this division.

Clause 55 Provides that this division replaces any rights or liabilities anyone would otherwise have in relation to a pre-registration contract.

Part 4 – Membership

Division 1 – General

- Clause 56 Provides for the admission of persons as members of a co-operative.
- Clause 57 Provides for the admission of co-operatives and other corporations as members of a co-operative group.
- (The term ‘co-operative group’ is used in this Bill rather than the term ‘association’ which is used in some other jurisdictions. This alternate terminology avoids any confusion with associations registered under the *Associations Incorporations Act 1987*.)
- Clause 58 Defines qualification for membership in terms of active member potential and eligibility under the rules. Specifies that the rules must contain certain active membership provisions.
- Further provides that a person who was a member of a co-operative immediately before that co-operative transferred to this Act, is qualified to be admitted to membership of the co-operative despite the absence of reasonable grounds for believing that the person will be an active member of the co-operative.
- Clause 59 Provides that membership may be individual or joint, unless the rules otherwise provide.
- Clause 60 Provides that a member is precluded from avoiding any obligation or liability on the grounds of minority, and that a person under 18 may not hold any office in a co-operative but is entitled to vote.
- Clause 61 Provides that if a corporation is a member of a co-operative, it may by instrument served on the co-operative appoint a person to represent it in relation to its membership.
- Clause 62 Provides that the board may request that a corporation which is a member of the co-operative must make available for inspection by the board a list of the names of its shareholders, and if relevant, the number of shares held by each shareholder or a list of members of the corporation. Penalty applies.

- Clause 63 Sets out the circumstances in which membership ceases – including cancellation, expulsion, resignation and bankruptcy.
- Provides that the estate of a deceased member remains liable until the member’s personal representative or some other person is registered in the member’s place.
- Clause 64 For co-operatives with share capital, sets out those additional circumstances in which a membership ceases.
- Clause 65 Provides that a director must not knowingly allow a co-operative to carry on business with fewer than the minimum number of members for more than 28 days, and prescribes those minimums.
- Further provides that upon default, a director becomes liable to satisfy certain obligations of the co-operative and allows the Registrar to extend the 28-day period. Penalty applies.

Division 2 – Rights and liabilities of members

- Clause 66 Requires a board to enter the name of members in the members’ register within 28 days after the person is admitted to membership and prohibits a member from exercising their rights until that time. Penalty applies.
- Clause 67 Limits a member’s liability to the co-operative to any charges payable by the member under the rules and any unpaid monies owing on shares, where applicable.
- Further provides that a member of a co-operative without share capital is liable for any changes payable by the member to the co-operative as required by its rules.
- Clause 68 Requires the board of a co-operative to give written notice to each person eligible to become a member of that person’s right to request to either inspect or be provided copies of the rules of the co-operative, all special resolutions applicable to the member and a copy of the last annual report.
- The clause also compels the board to comply with any written request made by a member pursuant to this clause.

- Clause 69 Provides that rules of a co-operative may require payment of entry fees and regular subscriptions and that written notice of such charges must be provided to prospective members (otherwise that person is not liable for those charges).
- Clause 70 Provides that the rules of a co-operative may contain provisions requiring members to have specified dealings with the co-operative for a fixed period (such as the sale of products to the co-operative). Any resulting contract will therefore be binding on all parties and any rules will be valid, even though the contract or rules will be invalid as being in restraint of trade.
- Clause 71 Provides that co-operatives can make rules that impose a fine on a member and limits the maximum fine to an amount that may be prescribed by regulation. Specifies conditions that must be fulfilled prior to a fine being imposed and provides that a fine, or part thereof, can be set off against amounts payable to the member.
- Clause 72 Provides for charges on certain property of members and former members where a debt is owed to a co-operative, and the set-off of any amount paid towards satisfaction of that debt.
- Clause 73 Provides for the repayment of the amount paid up on a member's share when the member is expelled or resigns.

Division 3 – Death of member

- Clause 74 Defines the meaning of a deceased member's "interest" in a co-operative.
- Clause 75 Specifies to whom the board may transfer a deceased member's share or interest in a co-operative.
- Clause 76 Specifies to whom the board may transfer a deceased member's share or interest in a co-operative when the total value of the member's share or interest is less than \$10,000 (or a higher amount if prescribed).
- Clause 77 Requires the value of a deceased member's share or interest to be decided under the rules of a co-operative.
- Clause 78 Provides that any transfer of property made by the board of a co-operative in accordance with the Division is valid and effectual against any demand made on the co-operative by any other person.

Division 4 – Disputes involving members

- Clause 79 Requires the rules of a co-operative to provide for a grievance procedure that must apply natural justice and allow for a member to be represented by any person.
- Clause 80 Provides that a member or a co-operative may make application to the Supreme Court for an order declaring and enforcing the rights or obligations of members or the co-operative. The court may refuse the order and make an order for costs in certain specified circumstances.

Division 5 – Oppressive conduct of affairs

- Clause 81 Extends the definition of 'member' of a co-operative in this division to include any person to whom a share in the co-operative has been transferred by will or by operation of law.
- Clause 82 Excludes any action taken under part 6 of the Act from this division.
- Clause 83 Specifies who may apply to the Supreme Court for an order under this division.
- Clause 84 Sets out the range of orders that the Supreme Court may make under this division including a winding-up or transfer of jurisdiction.
- Clause 85 Provides that the Supreme Court may make an order if it considers the co-operative's affairs are oppressive or unfairly prejudicial or unfairly discriminatory against a member, or contrary to the interests of the members as a whole.
- Clause 86 Provides that the Supreme Court need not make an order to wind-up a co-operative if this would unfairly prejudice an oppressed member.
- Clause 87 Provides that if a co-operative is wound-up under this division, winding up provisions of this Act apply as if the order for winding up had been made by the Supreme Court.
- Clause 88 Provides that if an order under this division makes any alteration to the co-operative's rules it has effect as if it had been made by special resolution, and the co-operative must not make further alteration to the rules inconsistent with the order without the leave of the Supreme Court.

Clause 89 Requires an applicant for an order to lodge a copy of the order with the Registrar within 14 days after it is made.

Division 6 – Proceedings on behalf of a co-operative by members and others

Clause 90 Sets out those persons who, with leave of the Supreme Court, may bring, or intervene in, proceedings on behalf of a co-operative.

Clause 91 Sets out the requirements for the granting of leave for the purpose of clause 90.

Clause 92 Specifies the persons who may apply to the Supreme Court for an order that they be substituted for a person to whom leave has been granted under clause 91.

Clause 93 Provides that ratification or approval of conduct by members does not prevent a person acting in accordance with clause 91 nor does it have the effect that proceedings brought or intervened in with leave under section 91 must be decided in favour of the defendant, or that an application under that section must be refused.

Clause 94 Provides that leave of the Supreme Court must be obtained in order to discontinue, compromise or settle a proceeding.

Clause 95 Sets out the general powers of the Supreme Court in relation to proceedings brought, or intervened in, under this division.

Clause 96 Sets out the powers of the Supreme Court to make orders for costs in respect of a proceeding or application under clause 91.

Part 5 – Rules

- Clause 97 Provides that the rules of a co-operative have the effect of a binding contract between a co-operative, its directors, its secretary, chief executive officer and members.
- Clause 98 Specifies the required form and content of a co-operative's rules which must set out or otherwise make provision for those matters in Schedule 1.
- Clause 99 Provides for members and others to obtain a copy of the rules upon payment of a fee. The maximum fee is to be prescribed by regulation.
- Clause 100 Imposes a penalty on any person who gives a false copy of the rules of a co-operative to a member or prospective member.
- Clause 101 Provides that model rules for co-operatives may be prescribed by regulation.
- Clause 102 Provides that the rules of a co-operative can only be altered in accordance with the Act.
- Clause 103 Provides that a proposed alteration of a co-operative's rules must be approved by the Registrar before the co-operative can pass a resolution to alter its rules.
- A draft of the proposed alteration must be submitted to the Registrar 21 days before notice of the proposed special resolution is given to members or the resolution is passed by the board.
- The proposed alteration must be accompanied by a written statement specifying the date on which the notice is due to be given to members or the resolution is due to be passed by the board and the Registrar is taken to have approved the alteration unless at least 5 days before the specified date, the Registrar gives written notice to the contrary to the co-operative.
- Clause 104 Provides that the rules of a co-operative can only be altered by a special resolution unless otherwise provided.
- Clause 105 Sets out the circumstances and requirements for an alteration of the rules of a co-operative by resolution of the co-operative's board.
- Clause 106 Provides that an alteration of the rules has no effect until registered. Sets out the registration process and timeframe, and the circumstances in which the Registrar can refuse registration.

- Clause 107 Allows a co-operative to appeal to the Supreme Court against a failure by the Registrar to approve any alteration to its rules.
- Clause 108 Allows a co-operative to appeal to the Supreme Court against a failure of the Registrar to register an alteration of its rules.
- Clause 109 Provides the Supreme Court may make such orders as it considers appropriate to dispose of an appeal under clause 107 or 108.

Part 6 – Active membership

The active membership provisions contained in this part strongly support the co-operative principles of democratic member control and member economic participation and in turn, help to distinguish co-operatives from corporations where member control and participation is limited. Membership is cancelled where members do not use or support the primary activity of their co-operative.

Division 1 – Definitions

- Clause 110 Defines the meaning of “active membership resolution.”
- Clause 111 Defines active membership in terms of a member’s involvement with the primary activity of a co-operative.
- Clause 112 Establishes what active membership provisions and resolutions are for the purpose of this Division.

Division 2 – Rules to contain active membership provisions

- Clause 113 Requires a co-operative to have at least one primary activity.
- Clause 114 Requires a board to ensure that a co-operative’s rules contain active membership provisions.
- Clause 115 Specifies the factors and considerations that a board must take into account in deciding its primary activities and for determining an appropriate activity test in relation to each primary activity.
- Clause 116 Limits the active membership provisions that can be contained in the rules of a distributing co-operative.
- Clause 117 Provides that for a non-distributing co-operative, payment of a regular subscription, if authorised by the rules, may establish active membership.

Division 3 – Active membership resolutions

- Clause 118 Sets out the notice requirements to members for a meeting to consider an active membership resolution. Provides for the Registrar to determine a member’s active membership status in the event of a dispute.

Clause 119 Prescribes the eligibility of directors to vote on an active membership resolution under consideration at a board meeting.

Division 4 – Cancellation of membership of inactive or missing members

Clause 120 Provides the board may cancel the membership of a member if their whereabouts are unknown for at least 3 years or the member is not an active member during the past three years or as stated by the rules.

Further provides for a right of appeal to the Supreme Court against the board's decision cancel membership.

Clause 121 Provides that if a co-operative has a share capital, the board must declare the member's shares forfeited at the same time as the member's membership is cancelled under clause 120.

Clause 122 Provides that a director must use all proper diligence to ensure that a membership is cancelled under this part and sets out the penalty for non-compliance.

Clause 123 Provides that cancellation of membership may be deferred by the board for a period of up to one year in specified circumstances.

Clause 124 Sets out the circumstances in which a board must not cancel a membership including if the co-operative is insolvent, under administration, in the course being wound up or in any other circumstances prescribed by regulation.

Clause 125 Provides that a notice of intention to cancel membership must be given to a member unless the member's whereabouts is unknown and the amount required to be repaid to the member does not exceed \$100 (or any other amount prescribed by regulations).

Clause 126 Empowers the Supreme Court to order against the cancellation of a membership.

- Clause 127 Provides that where a membership is cancelled, a new co-operative must repay to the member any amount owing to the member within one year and transferring co-operatives (i.e. existing co-operatives transferring to the new legislation) have three years to pay out the member.
- The clause also sets out other ways in which the co-operative may apply the amount owing to a member if the board considers that repayment would adversely affect the financial position of the co-operative or the board and former member agree.
- These alternate applications include allotting or issuing debentures of the co-operative to the former member or, if the former member agrees in writing, appropriating the amount as a donation.
- The clause further provides that a transferring co-operative may calculate the amount owing to a former member in accordance with its rules as they existed prior to transferring to this Act.
- Clause 128 Sets out the alternative interest rates applicable to deposits, debentures and co-operative capital units ('CCU's) pursuant to clauses 73 and 127.
- Clause 129 Provides that deposits, debentures or CCU's must be repaid within 10 years of the cancellation of membership or such shorter time as the board agrees would not adversely affect the financial position of the co-operative or as provided by the rules.
- Clause 130 Requires a co-operative to keep a register of cancelled memberships.

Division 5 – Entitlements of former members of distributing co-operatives

- Clause 131 Limits the application of this division to distributing co-operatives.
- Clause 132 Provides that, unless otherwise provided for in the rules of a co-operative, former shareholders are to be regarded as existing shareholders for certain purposes including in relation to the former shareholder's entitlement to a distribution of surplus upon winding up of the co-operative that commences within 2 years after the person's shares were forfeited.
- Clause 133 Provides for the entitlements of a former shareholder whose shares have been forfeited within 2 years of a merger of, or a transfer of engagements by the co-operative of which they were a member.

- Clause 134 Provides for the set-off of amounts repaid to a person under clause 127 or clause 129 against any entitlement of the person under clause 132.
- Clause 135 Provides that a co-operative may be exempted from any provision of this division by regulation.

Part 7 – Shares

Division 1 – Nature of share

Clause 136 Describes the nature of a share or other interest in a co-operative.

Division 2 – Disclosure

Clause 137 Requires the board of a distributing co-operative to provide a member with a disclosure statement containing specified information, upon request by that person.

Clause 138 Outlines the information that must be contained in a disclosure statement to intending shareholders.

Clause 139 Provides that the Registrar may, by *Gazette* notice, exempt a co-operative from any requirements under clauses 137 or 138 if the Registrar is satisfied that compliance with the requirement would be inappropriate in the circumstances or would impose an unreasonable burden.

Division 3 - Issue of shares

Clause 140 Provides that the nominal value of shares is to be fixed by the co-operative's rules and allows a co-operative to have more than one class of share, provided the shareholding and rights of shareholders comply with co-operative principles.

Prohibits the issue of shares to non-members.

Clause 141 Applies sections 716(2), 722, 723(2), 724(1)(a) and 2(a) and 734 of the *Corporations Act 2001 (Cth)* (disclosure requirements) to co-operatives in the circumstances described in sub-clause 2, subject to specified modifications in terminology.

Clause 142 Provides that a share in a co-operative (other than a transferred co-operative) must not be allotted unless at least 10% of the nominal value of the share has been paid.

Clause 143 Provides that a co-operative must not issue shares at a discount.

- Clause 144 Allows a distributing co-operative to issue shares at a premium and provides that any premium received must be transferred to a share premium account and treated as paid-up share capital.
- Further provides that the premium may be applied in the ways described in sub-clause 4 (including paying up unissued shares to be issued to members of the co-operative as fully paid bonus shares).
- Clause 145 Provides that a share may be held jointly unless the rules provide otherwise.
- Clause 146 Provides that members may be required to take up additional shares under a proposal approved by special resolution. The proposal must have a disclosure statement and other specified information.
- Clause 147 Provides that the rules of a distributing co-operative may authorise the issue of bonus shares to members if its assets have been sold at a profit or revalued at a greater value than that disclosed prior to revaluation in the books. This does not apply if the assets were acquired for resale at a profit.
- Clause 148 Specifies certain restrictions on the issue of bonus shares and limits the total nominal value of a bonus shares issued in any one year to no more than 20% of the issued share capital of the co-operative (or some other percentage prescribed by regulation).
- Clause 149 Specifies the content of the notice which must be given to members of the meeting or postal ballot at which a special resolution is to be proposed for the approval of a bonus share issue.

Division 4 – Beneficial and non-beneficial interest in shares

- Clause 150 Provides that a board may direct a person to disclose certain matters specified in clause 151 in relation to relevant interests in shares of the co-operative.

- Clause 151 Specifies the matters which must be disclosed pursuant to clause 150. The matters include details of the person's relevant interests in the shares of the co-operative, the name and address of each other person who has a relevant interest in the relevant shares together with the nature of the interest and the circumstances which gave rise to that interest.
- Further provides that disclosure is only required to the extent to which it is ascertainable by the person required to make the disclosure and the disclosure must be made within 2 business days after the direction in clause 150 is made.
- Clause 152 Provides that a trustee, executor or administrator of the estate of a dead person who was the registered holder of a share in a co-operative may be registered as the holder of the share as trustee, executor or administrator of that estate.
- Clause 153 Provides for the registration of an administrator as the holder of a share in a co-operative previously held by a person who has become mentally or physically incapable.
- Clause 154 Provides for the registration of the Official Trustee in bankruptcy as the holder of a share in a co-operative previously held by a person who has become bankrupt.
- Clause 155 Provides that a person registered pursuant to clauses 152, 153 or 154 is subject only to the same liabilities in relation to the share as would have applied to the original shareholder.
- Clause 156 Provides that shares held by a trustee may be identified in the register of members as being held in trust.
- Clause 157 Provides that no notice of a trust is to be entered on a register except as provided in this division.

Division 5 – Sale or transfer of shares

- Clause 158 Provides restrictions on the sale or transfer of shares.
- Clause 159 Provides for the transfer of shares on the death of a member to an administrator or executor or to another person with consent of the board.

- Clause 160 Prohibits the sale or transfer of a share in a co-operative which would result in the purchaser or transferee holding in excess of 20% of the nominal value of the issued share capital of the co-operative (or a lower percentage specified in the rules of a co-operative).
- Clause 161 Provides that a share transfer does not become effective until the transfer is registered.
- Clause 162 Provides that where a share is transferred to a non-member under this division, the transferee becomes a member of the co-operative when the name of the transferee is entered in the register.

Division 6 – Repurchase of shares

- Clause 163 Provides for the purchase and repayment of member's shares by a co-operative up to a sum of 5% of the nominal value of issued capital if provided for by the rules.
- Clause 164 Provides that the board, if it is of the opinion that the payment of the repurchase price would adversely affect the financial position of the co-operative, may apply an amount owed as a deposit or allot or issue debentures or CCU's in satisfaction of that amount.
- Clause 165 Requires the cancellation of any shares forfeited to or purchased by the co-operative.

Part 8 – Voting and Meetings

Division 1 – Voting entitlements

- Clause 166 Applies the provisions of this Part to voting on all resolutions of the co-operative.
- Clause 167 Provides that each member is entitled to only one vote regardless of any shareholding except in the case of a co-operative group which may have up to 5 votes and the chairman has a casting vote at a board or general meeting.
- Clause 168 Provides that if allowed under the rules, voting at a general meeting may be by proxy.
- Further provides that the rules of a co-operative may limit the number of persons for which a person may act as a proxy on the same question and that a person cannot exercise more than one proxy vote during a vote on the same question unless the vote is conducted by poll demanded under section 194.
- Clause 169 Provides that a person who directly or indirectly controls the exercise of the right to vote of a member commits an offence and invalidates any vote that is exercised. Penalty applies.
- Clause 170 Provides that a member cannot vote if the member has sold, transferred or disposed of the beneficial interest in the member's shares, or agreed to do so.
- Clause 171 Provides that a member cannot vote if another person has a relevant interest in the member's share or right to vote. Also provides for a review by the Registrar.
- Clause 172 Provides that appointed representatives are entitled to receive notice of meetings and to exercise the members' rights to vote and to be elected to the board of directors.
- Clause 173 Provides that ineligibility to vote in relation to a matter does not affect any other right, entitlement, obligation or duty of a member.
- Clause 174 Provides that the vote of any member not entitled to vote must be disregarded.

Division 2 – Resolutions

- Clause 175 Provides that, except as otherwise provided in the Act or the co-operative's rules, decisions by a co-operative are to be determined by ordinary resolution.
- Clause 176 Provides that an ordinary resolution is passed by a simple majority at a general meeting or by a postal ballot.
- Clause 177 Defines a special resolution as one passed by a two-thirds majority (except for a special postal ballot where the required majority is 75%) and sets out the requirements for the notice of meeting.
- Clause 178 Defines how the voting majority is determined, including the applicability of proxies.
- Clause 179 Provides that the passing of a special resolution is evidenced by a declaration made by the chairperson of the meeting or the returning officer in the case of a postal ballot.
- Clause 180 Provides that a special resolution has immediate effect once passed except where it is passed by a special postal ballot in which case it must first be registered pursuant to clause 182(1).
- Clause 181 Requires 2 copies of each special resolution passed (except for a change of rules) to be lodged with the Registrar and specifies the requirements for the accompanying documentation. Penalty applies.
- Clause 182 Requires the Registrar to register a special resolution if satisfied that the co-operative has complied with the Act.

Division 3 – Resolution by circulated document

- Clause 183 Applies the division to a resolution of a co-operative if the co-operative has fewer than 50 members and the resolution is required to be passed at a general meeting.
- Clause 184 Provides for the passing of a resolution of members by circulation of a document signed by each member, setting out the terms of the resolution.

Division 4 – Postal ballots

- Clause 185 Provides that postal ballots must be held according to the rules.
- Clause 186 Specifies the requirements for a special postal ballot including a minimum 21 day notice period and the provision of a disclosure statement (approved by the Registrar) to each member containing the information specified in sub-clause 3.
- Clause 187 Specifies the circumstances in which a special postal ballot is required.
- Clause 188 Provides for the holding of a postal ballot upon the request of a specified number of members. Sets out the requirements for a requisition for a postal ballot and prescribes a two-month time frame for conducting the ballot.
- Further provides that the co-operative may recover expenses from the requisitioning members if the special resolution is not ultimately passed.
- Clause 189 Describes the expenses that constitute the 'expenses involved in holding the ballot' for the purposes of clause 188(4).

Division 5 – Meetings

- Clause 190 Provides that the first annual general meeting must be held within 18 months of incorporation or of its last annual general meeting and the second or any subsequent meeting must be held within 5 months after the close of the financial year or such other time as approved by the Registrar or prescribed by regulation.
- Clause 191 Provides that the board may call a special general meeting of the co-operative at any time.
- Clause 192 Provides that the board must give each member at least 14 days notice of a general meeting.
- Clause 193 Makes provision for the quorum for a meeting of a co-operative to be specified in its rules and provides that business cannot be transacted without a quorum.

- Clause 194 Provides that a question for decision at a general meeting is to be determined by a show of hands unless, 5 members present in person at the meeting (or represented by proxy) demand a poll or the chairman directs a question be determined by poll.
- Further provides that in the case of an equality of votes, the chairman may exercise a second or casting vote if provided for in the rules.
- Clause 195 Provides for the convening of a general meeting by the board on the requisition of at least 20% of active members or any lesser percentage specified in the rules. The meeting must be held within 2 months of the requisition and if it is not held, the requisitioning members may convene the meeting.
- Further provides that this clause does not apply in relation to a transferred co-operative during the 3 year period commencing on the day the co-operative is registered under this Act.
- Clause 196 Provides for the entering and confirming of minutes of each general meeting, board meeting and sub-committee meeting. The minutes of each general meeting must be available for inspection by members.

Part 9 – Management and administration of co-operatives

Division 1 – The Board

- Clause 197 Provides that the business of a co-operative is to be managed by a board of directors who may exercise all the powers of a co-operative other than those that must be exercised by the co-operative in general meeting.
- Validates the acts of directors despite any defect in their appointment.
- Clause 198 Sets out certain provisions applying to the election and re-election of directors in addition to those specified in the rules of the co-operative (n.b - the rules are required to specify *inter alia* the number and qualification of directors, period of office, and the holding of annual elections).
- Clause 199 Defines the meaning of “member director” and requires the majority of directors to be member directors.
- Clause 200 Specifies those persons who cannot qualify as a director including the auditor of the co-operative or a person who has been convicted on indictment of an offence relating to the management of a corporation. Penalty applies.
- Clause 201 Provides for the holding of board meetings at least every three months with a quorum of 50% of board members. Also allows for the appointment and removal of the chairperson to be provided for by the rules.
- Clause 202 Provides for the business of the board to be transacted by the circulation and signing of papers among all the directors and requires a resolution approved in this way to be recorded in the minutes within 28 days.
- Clause 203 Provides that the rules of a co-operative may provide for a alternate director to be appointed to act in the place of a director who is absent from a meeting of the board.
- Clause 204 Provides that, if authorised by the rules, the board may delegate any of its powers to a director or a committee of directors or members.
- Clause 205 Provides for the removal from and vacation of office of a director in accordance with the rules. It also lists a number of circumstances for which the office of director is vacated.

Division 2 – Secretary

Clause 206 Requires a co-operative to have a secretary and provides that a person cannot be appointed as a secretary unless the person is an adult who ordinarily lives in Australia.

Division 3 – Duties and liabilities of directors, officers and employees

Clause 207 Defines 'officer' for the purposes of this division.

Clause 208 Requires officers of co-operatives to act honestly in the exercise of their powers and the discharge of the duties of their office. Penalty applies.

Clause 209 Specifies the standard of care and diligence required of officers of co-operatives. It adopts the 'reasonable person' test. Penalty applies. An officer satisfies this requirement if they have acted in the best interests of the co-operative.

Clause 210 Prohibits the improper use of information or position by officers of co-operatives to gain an advantage for themselves or for any other person. Penalty applies.

Clause 211 Provides that a co-operative may recover damages from a person who contravenes this division and sets out the maximum amount recoverable based on the circumstances.

Clause 212 Provides that this division does not affect other legal duties and liabilities relating to a person's office or employment in relation to a co-operative.

Clause 213 Applies specific provisions of the Corporations Act relating to indemnities and insurance for officers and auditors to co-operatives, subject to certain modifications in terminology.

Clause 214 Specifically applies Part 3 of the Corporations Act (concerning officers of co-operatives) to co-operatives subject to further modifications in terminology.

Division 4 – Restrictions on directors and officers

Clause 215 Limits a director's remuneration to fees, concessions and benefits approved by a general meeting. Penalty applies.

Clause 216 Prohibits officers from obtaining certain financial accommodation without the approval of a majority of directors. Penalty applies.

- Clause 217 Sets out the approval requirements for a co-operative wanting to provide financial accommodation to a director or an associate of a director. Penalty applies.
- Clause 218 Restricts a director of a co-operative, the primary activity of which is or includes land acquisition from selling land to the co-operative except under a special resolution. Penalty applies.
- Clause 219 Provides that a co-operative must not enter into a management contract unless that contract has first been approved by special resolution.

Division 5 – Declaration of interests

- Clause 220 Requires directors to declare the nature and extent of any interest in contracts or proposed contracts with the co-operative.
- The clause also prescribes the nature and form of any declaration. Penalty applies.
- Clause 221 Requires every declaration made under this division to be recorded in the minutes of the meeting at which it was made.
- Clause 222 Provides that this division does not affect or limit the operation of any rule of law or a rule of the co-operative.
- Clause 223 Provides that an interest in certain contracts or proposed contracts between a co-operative and a director need not be declared.

Division 6 – Financial reports and audit

- Clause 224 Defines “entity” and “control” for the purposes of this division as having the same meaning in relation to a co-operative that is has under the *Corporations Act* in relation to a corporation.
- Clause 225 Specifies requirements for accounts and accounting records of a co-operative and provides for a regulation to be made detailing the requirements. Provides an exemption from the reporting requirements for some small co-operatives.
- Clause 226 Provides that the Registrar may, by *Gazette* notice, exempt a co-operative, a proposed auditor, a director or an auditor from compliance with a provision or regulation made under this part.

- Clause 227 Requires directors to make certain disclosures required by the regulations. Penalty applies.
- Clause 228 Provides qualified privilege for auditors and persons who publish documents prepared by auditors.
- Clause 229 Provides that the financial year of a co-operative be defined in the rules, and limits its duration to a maximum of 18 months in the circumstances of initial registration and/or an alteration of the financial year provisions in the rules.

Division 7- Registers, records and returns

- Clause 230 Specifies which registers must be kept by co-operatives. Penalty applies.
- Clause 231 Prescribes where the registers may be kept – which must be in Western Australia – and requires notification to the Registrar if the register is not kept at the co-operative’s registered office.
- Clause 232 Provides for the inspection of registers by members and entitles members to obtain a copy of entries without charge or on payment of a fee prescribed by the rules. Penalty applies.
- Clause 233 Restricts the use or disclosure of information obtained from a register and provides for compensation for misuse.
- Clause 234 Provides that the Registrar must be notified of the appointment (and cessation of appointment) of a director, principal executive officer or secretary, and prescribes the format and timeframe of the notification. Penalty applies.
- Clause 235 Requires a co-operative to send to the Registrar within the required period in each year an annual report containing specified information. Penalty applies.
- Clause 236 Provides that the Registrar may request a list of the members of a co-operative (and its subsidiaries) together with other particulars. Penalty applies.
- Clause 237 Requires a co-operative to provide a special return at the request of the Registrar. Penalty applies.

Division 8 – Name and registered office

- Clause 238 Specifies the required components of a co-operative's name. It must include the words "co-operative" and "limited" (or an abbreviation) and it must not include anything declared by regulation as unsuitable (unless approved by the Registrar). Limits the use of the word "co-operative" in the name of a corporation only to those registered under this Act. Penalty applies.
- Clause 239 Provides for the use of certain abbreviations for the terms "co-operative" [co-op], "limited" [ltd] and "and" [&] in the name or description of a co-operative.
- Clause 240 Requires the name of a co-operative to appear on its seal and other specific documents. Penalty applies.
- Clause 241 Provides for the change of name of a co-operative by special resolution.
- Clause 242 Provides a penalty for any person, other than a co-operative, who trades or carries on business under a name including or importing the word "co-operative" or "co-op".
- Clause 243 Requires a co-operative to have a registered office where it must have its name displayed. Notification of change of registered office must be given to the Registrar within 28 days of the change. Penalty applies.

Part 10 – Funds and property

Division 1 – Power to raise money

Clause 244	Defines “financial accommodation” to include the obtaining of credit and the borrowing or raising of money.
Clause 245	Provides that regulations may impose requirements and restrictions on obtaining financial accommodation and giving security.
Clause 246	Restricts the ability to take deposits to those co-operatives which were authorised to do so prior to the commencement of the Act.
Clause 247	Provides that members are not required to see to the application of money provided to the co-operative by way of loan or deposit.
Clause 248	<p>Provides that the Registrar may give a direction to the co-operative as to the way in which it is to exercise its functions in obtaining financial accommodation. A direction may require a co-operative to:</p> <ul style="list-style-type: none">• cease obtaining financial accommodation;• repay all or part of any finance obtained;• refinance that which is repaid; or• conform to directions regarding investment or use of any proceeds. <p>The clause also provides a right of review to the Supreme Court against any decision made by the Registrar.</p>
Clause 249	Provides that a co-operative may incur subordinated debt and prescribes the priority ranking that a creditor would have in the event of the co-operative winding up.
Clause 250	Provides that the provisions of part 1.2A, Chapters 2L, 6CA and 6D and part 7.10 of the <i>Corporations Act</i> are adopted and apply to and in respect of debentures of a co-operative, except when an issue of debentures is made by a co-operative solely to members or solely to members and employees.
Clause 251	Applies sections 722 (application money to be held on trust) and 734 (restriction on advertising and publicity regarding offer of securities) of the <i>Corporations Act</i> to an issue of debentures to which clause 252 applies.
Clause 252	Requires a co-operative to provide a disclosure statement, containing specified matters, where an issue of debentures is solely to members or solely to members and employees of the co-operative.

- Clause 253 Provides that a debenture cannot be sold or transferred except with the consent of the board and in accordance with the rules.
- Clause 254 Adopts and applies sections 124(1)(b) and 563AAA of the *Corporations Act* in relation to debentures issued by a co-operative to any of its members so that a co-operative has power to reissue redeemed debentures.
- Clause 255 Provides that a co-operative may require its members to lend money to the co-operative for a period of up to 7 years if approved by special resolution. Specifies the matters to be detailed in the proposal to members including a disclosure statement approved by the Registrar and an option for a member to resign.
- Further provides that the board may deduct loan monies from amounts payable to a member and specifies which members are bound by the proposal.
- Clause 256 Specifies the interest rate payable on a compulsory loan under clause 255.

Division 2 – Co-operative Capital Units

A Co-operative Capital Unit (CCU) is a financial instrument presently unique to NSW but which will become part of this legislation and the uniform co-operatives laws across all Australian jurisdictions. CCUs are being introduced to provide co-operatives with a flexible means of raising additional capital from both members and non-members, so that co-operatives can compete more effectively with other commercial organisations.

Although co-operatives have always been able to raise capital through the issue of debentures, CCUs are intended to be more flexible. It is possible for a CCU to be structured through their terms of issue, anywhere along a continuum, from a redeemable preference share to an ordinary debenture. The CCU provisions incorporate a number of checks and balances to ensure that the co-operative principles are not compromised.

- Clause 257 Defines a co-operative capital unit (CCU) as an interest issued by a co-operative conferring an interest in the capital, but not the share capital of a co-operative.
- Provides that a CCU is personal property and may be dealt with as such in accordance with the rules of the co-operative and ownership laws.

Clause 258	<p>Provides that on a winding up of a co-operative, a debt owed to a person as a former CCU holder is to rank for priority of payment in accordance with the terms of issue of the CCU.</p> <p>Such a debt may not rank as a secured debt if it is secured but if it is unsecured may not rank in priority to other unsecured debts. However, it may rank equally with or behind unsecured debts and, if the debt ranks behind unsecured debts, may rank in priority to, equally with or behind debts due to contributories.</p>
Clause 259	<p>Provides that for the purpose of Part 10 Division 1 of this Bill (fundraising) the issuing of a CCU is to be considered to be the obtaining of financial accommodation and a CCU is to be considered to be a debenture.</p>
Clause 260	<p>Provides that CCUs may be issued to a person whether or not they are members of the co-operative.</p>
Clause 261	<p>Provides that the rules of a co-operative must permit the issue of CCUs and prescribes that the rules must contain provisions for:</p> <ul style="list-style-type: none"> • a single vote per CCU held at CCU holder meetings; • variation of CCU holders' rights; • exclusion of a CCU holder from the rights and entitlements of a member; and • the same entitlement to notices and other documents as a debenture holder.
Clause 262	<p>Provides that a co-operative may not issue CCUs unless the terms of issue have been approved by both a special resolution and the Registrar. Further provides that the Registrar is not to approve the terms of issue unless satisfied that the terms will not result in a failure to comply with co-operative principles and are not contrary to the rules of the co-operative or this Act.</p> <p>Specifies the information that the terms of issue must include.</p>
Clause 263	<p>Provides that in discharging their duties, it is proper for directors of a co-operative to take into account that the holders of CCUs have none of the rights or entitlements of members, and are not to be regarded as members of the co-operative.</p>

- Clause 264 Provides that the redemption of CCUs is not to be considered to be a reduction of capital in the share capital of the co-operative and that CCUs may only be redeemed as set out in the terms of issue and only if they are fully paid up.
- Further provides that CCUs can only be redeemed from profits, the proceeds of a fresh share issue, or an approved issue of CCUs.
- Clause 265 Provides for the creation of a capital redemption reserve where CCUs are to be redeemed out of profits and applies this Bill's provisions relating to the reduction of share capital to the capital redemption reserve of distributing co-operatives.
- Clause 266 Provides that, if the terms of issue allow, a co-operative may redeem CCUs held by an active member through either the issue of shares to the member or the payment of amounts unpaid on the member's shares, up to the nominal value of CCUs to be redeemed.

Division 3 – Charges

- Clause 267 Gives effect to Schedule 3 “Registration of Charges” and specifies those mortgages, charges and encumbrances to which the schedule does not apply.

Division 4 – Receivers and other controllers of property of co-operatives

- Clause 268 Provides that Schedule 4 “Receivers, and Other Controllers, of Property of Co-operatives” has effect for this division.

Division 5 – Disposal of surplus from activities

- Clause 269 Provides that the board of a co-operative may approve the retention of all or part of a business surplus to be applied for the benefit of the co-operative.
- Clause 270 Provides that the rules of a co-operative may authorise the co-operative to apply a specified proportion of its surplus for any charitable purpose. The rules of a distributing co-operative may also authorise the co-operative to apply part of its surplus for supporting any activity approved by the co-operative.

Clause 271 Allows the rules of a co-operative to authorise a co-operative to apply a part of the surplus arising in any year from the business of the co-operative by distribution to members as either a rebate, an issue of bonus shares or an issue of a limited dividend.

Further provides that any distribution to members under this clause must be made in proportion to the value of business done by each member with the co-operative or to profits earned by the co-operative on business done by each member with the co-operative or in proportion to shares held by the member (as the case may be).

Clause 272 Provides that a co-operative may credit part of a business surplus to a person who is not currently a member under certain membership conditions.

Division 6 – Acquisition and disposal of assets

Clause 273 Unless otherwise provided by the rules, requires specified major transactions to be approved by special resolution by means of special postal ballot. These transactions relate to the sale or lease of a co-operative's undertaking, acquisition or disposal of property to a director or employee or relative of such person or acquisition or disposal of property which affects the activities which a co-operative carries on. Penalty applies.

Part 11 – Restrictions on the acquisition of interests in co-operatives

Division 1 – Restrictions on share and voting interest

- Clause 274 Applies this part to distributing co-operatives only.
- Clause 275 Requires a person to give notice to a co-operative within 5 business days of either becoming aware of having, or ceasing to have, a voting interest in the co-operative. Penalty applies.
- Clause 276 Requires that a person must give notice to a co-operative within 5 business days of becoming aware of either a substantial share interest, a substantial change in a share interest, or ceasing to have an interest. Penalty applies.
- “Substantial share interest” is defined as 5% or more of the issued share capital and “substantial change” is defined as a change representing at least 1% of the issued share capital.
- Clause 277 Specifies the requirements for notices under this division.
- Clause 278 Prohibits a person from having an interest in the shares of a co-operative, the value of which is more than 20% of the nominal value of the issued share capital of the co-operative.
- Further provides that the Registrar and/or the members (by way of a special resolution by special postal ballot that is then approved by the Registrar) may increase the maximum permissible percentage.
- Clause 279 Provides that the maximum permissible level of share interest for the purposes of section 283(1) for a member of a co-operative which has transferred to this Act, is the level of the member’s relevant interest in the shares immediately before the transfer day.
- This clause ceases to operate 6 months after the day on which a co-operative transfers to this Act.
- Clause 280 Provides for shares to be forfeited where a person holds a relevant interest in a share of a co-operative in contravention of this division.
- Clause 281 Sets out the powers of the board of a co-operative in response to a suspected failure to notify a voting interest pursuant to clause 278, including the right to refuse to register a share transfer, suspending entitlements, and requesting certain information.

Clause 282	Sets out the powers of the Supreme Court to make orders in relation to a contravention of clause 283.
Clause 283	Requires a co-operative to notify the Registrar in writing within 14 days of becoming aware that a person has a relevant interest of more than 20% of the issued share capital or if there has been a change in the shareholding of that person.
Clause 284	Requires a co-operative to keep a register of notifiable interests pursuant to this division which must be open for inspection free of charge to a member and to any other person for no more than the prescribed fee.
Clause 285	Provides that the Registrar or the board of a co-operative, may require an unlisted company that is a member of a co-operative, to provide: <ul style="list-style-type: none"> • a list of its shareholders and their shareholdings; • the name and details of the interests of any person who has a relevant interest in the company; and • the name of each associate of the company.
Clause 286	Provides that a member is still liable to repay a loan to the co-operative despite having a relevant interest in shares in contravention of this division.
Clause 287	Describes the extent of operation of this division including outside of Australia.
Clause 288	Provides that the Registrar may exempt, by <i>Gazette</i> notice, a person from the operation of this division.

Division 2 – Restrictions on certain share offers

Clause 289	Specifies the share offers to which this division applies.
Clause 290	Provides that a share offer can't be made unless the offer has been approved by special resolution by a special postal ballot and the Registrar.
Clause 291	Prohibits the making of a share offer if the offer operates to discriminate between active and inactive members of a co-operative.
Clause 292	Provides that offers to which this division applies must first be submitted to the board of the co-operative and the board must within 28 days (or longer period set by the Registrar) consider the offer.

- Clause 293 Prohibits the public announcement of a proposed takeover involving the conversion of a co-operative to a company where the person making the announcement knows that the announcement is false, is recklessly indifferent as to whether it is true or false, or has no reasonable grounds for believing that the performance of obligations arising from the announcement is possible. Penalty applies.
- Clause 294 Provides that for share offers involving conversion of a co-operative to a corporation, the disclosure statement must contain details of relevant interests to be acquired by directors and other material information to make a decision.
- Clause 295 Provides that where a share offer contravenes this division, the person making the offer cannot be registered as a shareholder or vote at a meeting of the co-operative.
- Clause 296 Provides that the Registrar may exempt, by *Gazette* notice, a co-operative or a person from compliance with a provision of this division and the requirements of a special postal ballot.

Part 12 – Merger, transfer of engagements, winding up

Division 1 – Mergers and transfers of engagements

- Clause 297 Provides that this division does not apply to a merger or transfer of engagement that falls under Part 14.
- Clause 298 Provides that two or more co-operatives may consolidate all or any of their assets, liabilities and undertakings by way of merger or transfer of engagements.
- Clause 299 Provides that a proposed merger or transfer must be approved by each of the participating co-operatives by either a special resolution passed by special postal ballot or with the consent of the Registrar, a resolution of the board of the co-operative.
- Clause 300 Requires a co-operative to provide a disclosure statement to members at least 21 days prior to the closing of the special postal ballot. Specifies the requirements of the disclosure statement and provides that the Registrar may, by Gazette notice, exempt a co-operative from complying with this clause.
- Clause 301 Sets out the requirements for making an application for approval of a merger or transfer of engagement.
- Clause 302 Requires the Registrar to approve a merger application if satisfied that the division has been complied with, the rules of the transferee co-operative are adequate, the certificate of registration is surrendered and there is no good reason why the merger should not take effect.
- Clause 303 Requires the Registrar to approve an application for a transfer of engagement if satisfied that the division has been complied with, the rules of the transferee co-operative are adequate, the certificate of registration is surrendered and there is no good reason why the transfer should not take effect.
- Clause 304 Provides for a transfer of engagements by direction of the Registrar with the approval of the Minister. Penalty applies.

Division 2 – Transfer of incorporation

- Clause 305 Provides that a co-operative may apply to be registered as a company, association, or a body incorporated under a law of a place that is outside of Western Australia and is prescribed by regulations.

- Clause 306 Provides that before an application is made under clause 305, the co-operative must pass a special resolution (by special postal ballot) approving the proposed application, determining the co-operatives name and adopting its rules.
- Further provides that the new name cannot include the word “co-operative”.
- Clause 307 Defines “new body” and “transfer” for the purpose of this division.
- Clause 308 Provides that on the transfer of a co-operative under this division, the co-operative ceases to be registered as a co-operative under the Bill.
- Clause 309 Provides that the rules adopted under this division must not impose a greater or different liability on the members of the new body who were members of the co-operative.
- Clause 310 Provides that a certificate of registration or incorporation of the new body is evidence that the requirements of this division have been met.
- Clause 311 Requires the new body to provide the Registrar with a copy of its new certificate of registration or incorporation. Penalty applies.
- Clause 312 Provides that the new body is the same entity as the corporation constituted by the co-operative. Division 6 (effect of merger etc. on property, liabilities etc.) also applies to a transfer under this division.

Division 3 – Winding-up and deregistration

- Clause 313 Provides that a co-operative may be wound up voluntarily by the Supreme Court or on a certificate of the Registrar.
- Clause 314 Provides for the winding up on a certificate of the Registrar, only if the grounds specified in clause 336 exist.
- Further provides that the liquidator need not be a registered liquidator.
- Clause 315 Provides that a co-operative may be deregistered in the same way as a company under the *Corporations Act*.
- Clause 316 Applies specific sections of the *Corporations Act* to the winding-up or deregistration of a co-operative.

- Clause 317 Provides that a voluntary winding-up must be by creditors' voluntary winding-up or by special resolution by special postal ballot. A regulation may exempt a co-operative from compliance with this section or clause 186.
- Clause 318 Provides that a members' voluntary winding-up starts when the result of the special postal ballot is recorded in the minute book of the co-operative.
- Clause 319 Defines the meaning of "surplus property" and requires the surplus property of a non-distributing co-operative to be distributed in accordance with the necessary provisions in its rules.
- Clause 320 In the case of a voluntary winding-up, provides that the Registrar may appoint a person to fill a vacancy in the office of liquidator.
- Clause 321 Provides for a member or creditor of the co-operative or the liquidator to apply to the Supreme Court to review the liquidator's remuneration.
- Clause 322 Provides for the liability of a member to contribute in a winding-up where their membership is cancelled under part 6 (active membership) or where their shares are purchased under clause 163 (purchase and repayment of shares) within 2 years before the commencement of the winding-up.

Division 4 – Administration of co-operative – application of Corporations Act

- Clause 323 Applies specific sections of the *Corporations Act* to the administration of a co-operative.

Division 5 – Appointment of administrator

- Clause 324 Provides that the Registrar may appoint an administrator to conduct the affairs of a co-operative if the grounds specified in clause 341(2) exist.
- Clause 325 Describes the effect of the appointment of an administrator on directors and contracts of a co-operative and provides that the administrator has the functions of the board.
- Clause 326 Provides for the revocation of appointment of an administrator by the Registrar and requires the administrator to submit a report to the Registrar showing how the administration was carried out.

- Clause 327 Provides that the expenses of administration, including remuneration as approved by the Registrar, are payable from the funds of the co-operative.
- Further provides that upon a winding-up, an administrator has the same priority in relation to expenses as a liquidator.
- Clause 328 Provides that the administrator is liable for any loss incurred as a result of fraud, dishonesty, negligence or wilful failure to comply with the Act or the rules by the administrator.
- Clause 329 Provides the Registrar with additional powers where the Registrar has appointed directors of a co-operative under clause 326.
- Clause 330 Provides that once an administrator is appointed a person may not commence or continue court proceedings against a co-operative without leave of the Supreme Court.
- Clause 331 Provides that an administrator, upon a request of the Registrar, must prepare a report for the Registrar showing how the administration is being carried out.

Division 6 – Effect of merger etc. on property, liabilities etc

- Clause 332 Provides that this division applies to a merger of co-operatives under this part and defines the terms “new body”, “original body”, and “relevant day” for the purposes of a merger.
- Clause 333 Provides that this division applies to a transfer of engagements under Division 1 and defines the terms “new body”, “original body”, and “relevant day” for the purposes of a transfer of engagements.
- Clause 334 Provides that this division applies to a transfer of incorporation under Division 2 and defines the terms “new body”, “original body”, and “relevant day” for the purposes of a transfer of incorporation.
- Clause 335 Defines the terms “assets”, “instrument”, and “liabilities” and provides that property, rights, liabilities, proceedings and other acts and matters pertaining to the original body apply to the new body.
- Further provides that the operation of this clause does not give rise to any breach of contract or to a remedy by any party.

Division 7 – Miscellaneous

Clause 336 Specifies the grounds for a winding-up on the certificate of the Registrar under clause 314, a transfer of engagement by direction of the Registrar under clause 304 and the appointment of an administrator under division 5.

Further provides that the Registrar must not certify under this section as to a matter unless the matter has been proved to the Registrar's satisfaction.

Clause 337 Provides that the provisions of Part 5.7B (Recovering property or compensation for the benefit of creditors of insolvent company) of the *Corporations Act* are adopted and apply to a co-operative.

Part 13 – Arrangements and Reconstructions

Division 1 – General requirements

- Clause 338 Provides that a compromise or arrangement is binding only if approved by the Supreme Court and agreed to:
- in the case of creditors, by a majority of those whose debts or claims constitute at least 75% of the total; or
 - in the case of members, by special resolution by special postal ballot.
- Clause 339 Specifies who may apply to the Supreme Court for a court ordered meeting of creditors and provides for the Court to direct the way in which the meeting is to be called and where it may be held.
- Clause 340 Provides that a Supreme Court order may only be made if the Registrar has been given notice of the hearing of the application and has had a reasonable opportunity to examine the draft explanatory statement and make submissions to the Court.
- Clause 341 Provides that where the Supreme Court orders 2 or more meetings of creditors to be held in relation to a proposed compromise or arrangement the results are to be aggregated.
- Clause 342 Specifies the persons who are disqualified from administering a compromise or arrangement approved under this Act except with the leave of the Supreme Court.
- Clause 343 Applies the provisions of Schedule 4 to a person appointed to administer an approved compromise or arrangement.
- Clause 344 Provides for the application of section 536 (supervision and liquidators) of the *Corporations Act* to persons appointed to administer a compromise or arrangement.
- Clause 345 Requires a co-operative to ensure that a copy of an order of the Supreme Court approving a compromise or arrangement is annexed to each future copy of the co-operative's rules. Penalty applies.
- Clause 346 Provides that, if directed by a resolution of the members, the directors must instruct nominated accountants and/or solicitors to report on any proposed compromise or arrangement and to make such reports available for inspection by members prior to the Court hearing or special postal ballot. Penalty applies.

- Clause 347 Provides that the Supreme Court may restrain further legal proceedings where a proposed compromise or arrangement is between a co-operative and its creditors.
- Clause 348 Provides that the Supreme Court need not approve a compromise or arrangement intended to effect a takeover, unless it is satisfied that there is no attempt to avoid the takeover provisions of part 11, Division 2, and the Registrar makes no objection to the compromise or arrangement.

Division 2 – Explanatory statements

- Clause 349 Requires an explanatory statement to accompany any notice of meeting or special postal ballot, and/or to be obtainable on request. Specifies what must be included in an explanatory statement.
- Clause 350 Provides for the explanatory statement referred to in clause 349 to be approved by the Registrar and for the statement to specify material interests and the effect of those interests.
- Clause 351 Provides that a contravention of this division constitutes an offence by the co-operative and any other person involved and sets a penalty for default. Also prescribes what constitutes a defence to a prosecution. Penalty applies.

Division 3 – Facilitating reconstructions and mergers

- Clause 352 Provides that the Supreme Court may make a range of orders in the case of a compromise or arrangement connected with the reconstruction or merger of a co-operative.

Division 4 – Acquisition of shares of dissenting shareholders

- Clause 353 Defines 'dissenting shareholder' and 'excluded shares' for the purposes of this division.
- Clause 354 Provides that this division applies to a scheme or contract involving a transfer of shares only where the scheme or contract has been approved by the holders of at least 90% of the nominal value of the relevant shares within 4 months after the offer is made.

- Clause 355 Provides that a transferee may give a compulsory acquisition notice to a dissenting shareholder and binds the transferee to acquire those shares on at least the same terms that apply to approving shareholders (unless the Supreme Court orders otherwise upon application of the dissenting shareholder).
- Clause 356 Specifies certain restrictions to the application of clause 360 where the nominal value of excluded shares exceeds 10% of the aggregate nominal value of all shares to be transferred under the scheme.
- Clause 357 Provides that remaining shareholders in the transferor co-operative may require the transferee to acquire the holders' shares.
- Clause 358 Sets out the requirements for the transfer and registration of, and payment of consideration for, shares pursuant to a compulsory acquisition. Provides that the Supreme Court may order that these provisions are not to apply where a dissenting shareholder has made such an application.
- Clause 359 Provides for the disposal of the consideration received for shares compulsorily acquired.
- Further provides that amounts and property held in trust for at least 2 years must be paid or consideration transferred to the Registrar to be dealt with under part 9.7 (unclaimed property) of the Corporations Act.

Division 5 – Miscellaneous

- Clause 360 Provides that the Registrar must be given written notice of the appointment of a person to administer a compromise or arrangement within 14 days. Penalty applies.
- Clause 361 Empowers the Supreme Court to require the provision of certain reports concerning the proposed compromise or arrangement to be given.
- Clause 362 Describes the effect of an out-of-jurisdiction compromise or arrangement on creditors of a foreign co-operative whose debts are recoverable by action in a Court of this State.
- Clause 363 Requires the jurisdiction of the Supreme Court under this part to be exercised in harmony with its jurisdiction under the *Corporations Act*.
- Clause 364 Entitles the Registrar to appear and be heard in any proceeding before the Supreme Court under this part.

Part 14 – Mutual recognition

Division 1 – Introductory

- Clause 365 Contains a number of definitions of terms for the purposes of this part. A “participating co-operative” is one that is registered or incorporated under a co-operatives law of another State.
- Clause 366 Specifies what constitutes ‘carrying on business’ by a foreign co-operative in this State and specifies those matters that are not to be regarded as ‘carrying on business’.
- Clause 367 Provides that a law of another State may be declared a co-operatives law for the purposes of this Act so long as the Minister certifies that the law substantially corresponds to the provisions of this Act. Requires the Minister to notify his/her Ministerial counterpart in another State of a declaration being made.
- Clause 368 Excludes the application of the *Corporation Act* to foreign co-operatives authorised to carry on business in this State except for those provisions specified in sub Clause (2).

Division 2 – Mutual recognition of foreign co-operatives

- Clause 369 Provides that a foreign co-operative must not carry on business in Western Australia unless it is authorised to do so under this part. Penalty applies.
- Clause 370 Provides that a participating foreign co-operative is authorised to carry on business in Western Australia after notifying the Registrar as required by this part. Any authorisation is subject to the same conditions or restrictions that apply in its home jurisdiction.
- Provides that a non-participating foreign co-operative is authorised to carry on business in WA if the Registrar issues an authorisation notice.
- Clause 371 A transitional clause that provides that a company that is registered under Part XI (foreign companies) of the *Companies (Co-operative Act) 1943* immediately before the commencement of Clause 369 of this Bill is taken to be a foreign co-operative authorised under this part to carry on business in this state and that Act ceases to apply to that company.

- Clause 372 Requires a foreign co-operative proposing to carry on business in Western Australia to lodge a written notice with the Registrar together with the information specified in sub-clause 2 including a copy of the certificate of registration and a statement by the directors that the co-operative is able to pay its debts.
- Clause 373 Requires the Registrar to issue a written authorisation notice to a participating co-operative that has lodged an application in accordance with this division.
- Clause 374 Provides that the Registrar may issue a written authorisation notice to a non-participating co-operative if an application is lodged in accordance with this division and the Registrar is satisfied that the rules of the co-operative comply with the specified requirements.
- Clause 375 Provides that a foreign co-operative must not carry on business in this State under a name that is likely to be confused with the name of a body corporate or a registered business name.
- Clause 376 Provides that a foreign co-operative ceases to be authorised to carry on business if it is deregistered in its home State or if its authority in this State is withdrawn or if in the case of a non-participating co-operative, the Registrar decides not to issue an authorisation notice to the co-operative.
- Clause 377 Sets out the grounds on which the Registrar may issue a notice to a foreign co-operative to show cause why its authority to carry on business should not be withdrawn.
- Provides that the co-operative may make submissions to the Registrar within a specified period (which must be at least 14 days). If the Registrar is satisfied that any of the grounds have been established, written notice may be given withdrawing the authority to carry on business.
- Clause 378 Provides that a foreign co-operative may appeal to the Supreme Court against the Registrar's refusal to issue an authorisation notice or to give notice to a co-operative that it is not authorised to carry on business in WA.
- Clause 379 Applies the provisions of this Act specified in Schedule 5 and the regulations to a foreign co-operative authorised to carry on business in this State under this part.

Division 3 – General

- Clause 380 Requires the name and place of origin of a foreign co-operative to appear on its seal and other specified documents. Penalty applies.
- Clause 381 Requires the Registrar, if requested by a participating Registrar to provide copies of public documents relating to a co-operative (including a foreign co-operative).
- Clause 382 Requires that a foreign co-operative must notify the Registrar within 28 days of any change in the information provided by the co-operative under section 372 within 28 days of the change. Penalty applies.
- Clause 383 Requires a foreign co-operative to notify the Registrar within 7 days of ceasing to carry on business in this State. Penalty applies.
- Unless the Registrar is notified, the co-operatives intends resuming carrying on business within 12 months after it ceased, the Registrar must notify the co-operative that it is not authorised to carry on business in this State.
- Clause 384 Provides that the Registrar may exercise any function conferred by or under a co-operatives law.

Division 4 – Winding up of foreign co-operatives in this State

- Clause 385 Applies the provisions of this division to the winding up of a foreign co-operative in or in relation to this State.
- Clause 386 Sets out the grounds upon which the Supreme Court may order the winding up of a foreign co-operative following an application by the Registrar.
- Clause 387 Applies the provisions of parts 5.4B and 5.6 and section 601AE of the *Corporations Act* to the winding up, deregistration or withdrawal of authority to carry on business of a foreign co-operative, subject to the modifications set out in Schedule 6.
- Further provides that the liability of a member or former member of a co-operative being wound up under this division continues even if the co-operative has ceased to exist in its home jurisdiction.
- Clause 388 Provides for the vesting of any outstanding property of a foreign co-operative if it is wound-up in this State.

Division 5 – Mergers and transfers of engagements affecting foreign co-operatives

- Clause 389 Defines “appropriate Registrar”, “State co-operative” and “State Registrar” for the purpose of this division.
- Clause 390 Provides for a merger or transfer of engagements between WA co-operatives. It also provides for a merger or transfer of engagements between a State co-operative and a non-participating co-operative if it results in a Western Australian Co-operative being formed.
- Clause 391 Specifies the approval requirements that must be complied with before an application can be made under this division.
- Further provides that approval can be made by special resolution or by resolution of the board in certain circumstances.
- Clause 392 Requires that a disclosure statement containing the specified matters be sent to each member by each co-operative prior to the passing of the special resolution approving the merger or transfer of engagement. The Registrar may exempt, by gazette notice, the State co-operative or foreign co-operative from complying with this section.
- Clause 393 Provides for the making of an application to this State’s Registrar for approval of a merger or transfer of engagements under this division.
- Clause 394 Provides for the approval of a merger under this division by the State Registrar and specifies those matters that must be satisfied before approval is given.
- On approval the Registrar must cancel registration of the State co-operative involved, and where a State co-operative results from the merger, register the merged co-operative and its rules and issue a certificate of registration.
- Clause 395 Provides for the approval of a transfer of engagements under this division by the State Registrar.
- Clause 396 Describes the effect of a merger or transfer of engagements and includes definitions for the purpose of this division.
- Clause 397 Provides that this division applies to a merger or transfer of engagements involving a foreign co-operative instead of Division 1 of part 12 of this Act.

Part 15 – Supervision and protection of co-operatives

Division 1 – Supervision and inspection

- Clause 398 Contains certain definitions for the purposes of this part.
- Clause 399 Provides that in this part “co-operative” includes subsidiaries, foreign co-operatives and co-operative ventures.
- Clause 400 Provides for the appointment of inspectors for the purposes of the Act. The Registrar may appoint a person with the necessary expertise or experience or a person having satisfactorily completed an approved training course to be an instructor.
- Clause 401 Provides that the Registrar and investigators have and may exercise all of the functions of an inspector.
- Clause 402 Provides that each inspector must be supplied with an identity card and prescribes the contents of the card.
- Also provides a penalty where a person does not return the person's identity card within 21 days of ceasing to be an inspector.
- Clause 403 Provides that an inspector may exercise a power in relation to someone only if the inspector first produces the inspector's identity card for the other person's inspection or the identity card is made clearly visible to the other person.
- Clause 404 Provides that the powers of an inspector are subject to the directions of the Registrar and may be limited by a regulation or under a condition of appointment or by written notice.
- Clause 405 Provides that an inspector holds office on the conditions stated in the instrument of appointment. It also prescribes when an inspector's appointment terminates.
- Clause 406 Specifies the circumstances in which an inspector may enter a place.
- Clause 407 Provides for the procedure to be adopted by an inspector intending to ask the occupier of a place to consent to the inspector or other inspector entering the place. Further provides that a Court may presume that the occupier did not consent if no acknowledgement is evidenced in writing.

- Clause 408 Provides that inspectors may by notice require a co-operative to produce relevant documents and may also require certain persons to appear, answer questions and produce documents. Specifies when a person is considered to be involved in the activities of the co-operative.
- Clause 409 Provides that when authorised to enter a place, inspectors have the power to search for evidence of a contravention of the Act and search for relevant documents. Also provides the power to require persons involved with the activities of the co-operative to produce relevant documents, answer questions or provide information.
- Clause 410 Specifies the functions of inspectors in relation to taking possession of, or making copies of, relevant documents. An inspector may require certain persons to make a statement about a document.
- While an inspector retains possession of a document the inspector must permit a person who would ordinarily be entitled to inspect the document to inspect the document at any reasonable time and make a copy of, or take extracts from, the document.
- Clause 411 Provides that a person is not excused from making a statement on the grounds that the statement might tend to incriminate them, but the statement is not admissible against them in criminal proceedings other than proceedings under this division.
- Clause 412 Provides that an inspector may apply to a magistrate for a warrant to enter a place to search for evidence of contravention of this Act. The application must be sworn and state the grounds on which the warrant is sought.
- The clause further prescribes the content of the warrant and the grounds that must be satisfied before a warrant may be issued.
- Clause 413 Provides for the procedure to be followed where an application for a warrant is made other than in person in circumstances of urgency or where the inspector is at a remote location. Further provides that a Court may presume that the exercise of the power was not authorised by a warrant issued under this clause unless the contrary is proved.

- Clause 414 Requires the inspector named in the warrant to announce that he/she is authorised by the warrant to enter the place and give any person at the place an opportunity to allow entry to the premises. Also requires the inspector to produce his/her identity card for inspection by the person.
- Clause 415 Describes the general powers and procedures to be exercised by an inspector after entering a place. Provides that the inspector may require a person in the place to give the inspector reasonable help to exercise those powers, and imposes a penalty for a failure to comply without reasonable excuse.
- Clause 416 Provides an inspector with the power to seize a thing if they reasonably believe the thing is evidence of an offence against this Act and if seizure of the thing is consistent with the purpose of entry as told to the occupier.
- Clause 417 Sets out the requirements for an inspector to issue a receipt for any things seized.
- Clause 418 Sets out the circumstances and timing for the return of a seized thing to its owner.
- Clause 419 Sets out the procedures and powers of an inspector to require the name and address of a person found, or reasonably suspected of, committing an offence, and provides a penalty for a failure to comply with such a requirement.
- Clause 420 Provides for penalty provisions for persons knowingly giving false or misleading statements to an inspector.
- Clause 421 Empowers an inspector to require a person to produce any document this Act requires the person to hold or keep.
- The inspector may keep the document to make an extract or copy but must return it as soon as practicable. Penalty applies.
- Clause 422 Provides for penalty provisions for persons knowingly giving false or misleading documents to an inspector.
- Clause 423 Provides for penalty provisions for persons obstructing an inspector in the exercise of a power under this Act without reasonable excuse. Also specifies the procedures to be followed by an inspector.
- Clause 424 Provides for the admissibility into evidence of copies or extracts of records relating to the affairs of a co-operative.

Clause 425 Relates to documents containing privileged legal communication and provides that a legal practitioner may refuse to comply with a requirement under clauses 408 or 410 under specified circumstances.

Division 2 – Inquiries

Clause 426 Contains definitions of “affairs”, “costs”, “investigator” and “involved person” for the purposes of this division.

Clause 427 Provides for the appointment by the Chief Executive Officer (DOCEP) of investigators to inquire into the affairs of a co-operative (or its subsidiary) in certain circumstances.

Clause 428 Specifies the powers of investigators including the giving of notices in the approved form, administering an oath or affirmation and taking possession of documents.

Clause 429 Provides for the examination of “involved persons” by investigators. Also provides that a lawyer may be in attendance during any examination of an involved person.

Clause 430 Provides for privilege of an involved person who is a legal practitioner, and prescribes the procedures applying to the supply or non-supply of documents. Penalty applies.

Clause 431 Creates a number of offences by involved persons including the refusal or failure to comply, knowingly giving false information or misleading material, and knowingly making false or misleading statements. Penalty applies.

Clause 432 Creates a number of offences relating to documents including concealment, destruction or alteration, and prohibits documents or other property of a co-operative being sent outside the State.

Clause 433 Provides for the admissibility into evidence of a record of an examination made under clause 429. Prescribes that a copy may be given to the person examined and a legal practitioner and sets a penalty for any misuse by the latter.

Clause 434 Provides for interim and final reports to be made by an investigator to the Registrar. Also provides that a report by an investigator may be accompanied by any documents acquired during the investigation and prescribes the Registrar’s manner of dealing with such documents.

Clause 435 Provides for the institution of legal proceedings following an inquiry under this division. Further provides that an involved person may be compelled to give all the assistance the person is reasonably able to give.

Clause 436 Provides for the admissibility into evidence of an investigator's report on certification by the Registrar.

Clause 437 Provides for the payment of the costs of an inquiry under this division.

Division 3 – Prevention of fraud etc.

Clause 438 Prohibits the falsification of the records of a co-operative.

Clause 439 Prohibits the obtaining of any property of a co-operative by fraud or misappropriation of its assets, and the misuse of any assets in the possession of a person except as provided for in the rules. Penalty applies.

Further provides that if a person is found guilty, they must, if ordered by the Court, return the property and repay all money improperly applied.

Clause 440 Prohibits the offering or payment of a commission, fee or reward, whether pecuniary or otherwise, to an officer of a co-operative in relation to a transaction of the co-operative. Penalty applies.

Clause 441 Prohibits an officer of a co-operative from accepting a commission, fee or reward referred to in clause 440. Penalty applies.

The clause further provides that the officer of a co-operative found guilty under this clause is liable to make good to the co-operative double the value or amount received.

Clause 442 Prohibits the making of false statements in, or in relation to, any application, request or demand for money made to or of a co-operative. Penalty applies.

Provides for a co-operative to exercise its rights against a mortgage or other security executed by a person found guilty under this provision.

Division 4 – Miscellaneous powers of the Registrar

Clause 443 Provides that the Registrar must call a special meeting, or hold an inquiry, upon application by a majority of the board, or not less than one-third of the members of a co-operative. The Registrar may require evidence that the meeting or inquiry is to be held for good reason and without malicious motive.

- Clause 444 Provides for the holding of a special meeting. It also prescribes that the Registrar can direct the time, place and agenda of the meeting, provide such notice to members as the Registrar deems appropriate, and attend and address the meeting.
- Clause 445 Provides for the payment of the expenses of a special meeting called, or inquiry held, under this division.
- Clause 446 Allows the Registrar, without any application, to hold, or appoint an inspector to hold, an inquiry into the working and financial affairs of a co-operative.
- Clause 447 Provides for the calling by the Registrar of a special meeting following an inquiry under this division.
- Clause 448 Allows the Registrar to require reasonable information and evidence from an applicant in relation to any application for registration or approval under the Act.
- Clause 449 Allows the Registrar to extend or abridge any time for anything required to be done by a co-operative under the Act, the regulations, or the rules of a co-operative.
- Clause 450 Empowers the Registrar to intervene in, and become a party to, any proceedings relating to a matter arising under this Act or the regulations. It also prescribes who may represent the Registrar at any proceeding.

Part 16 – Administration of this Act

Division 1 – The Registrar

- Clause 451 Provides for the Commissioner as defined in the *Consumer Affairs Act 1971*, to be the Registrar of co-operatives for the purposes of this Act.
- Clause 452 Provides for the appointment of a deputy Registrar and assistant Registrars who may exercise any of the Registrar's functions.
- Clause 453 Provides that the Registrar may delegate any of his/her powers including this power of delegation.
- Clause 454 Requires the Registrar to keep specified registers of information including a register of co-operatives, a register of foreign co-operatives and a register of co-operative charges established under Schedule 3 clause 18.
- Clause 455 Requires the Registrar to keep any other registers considered necessary, in a form that the Registrar considers appropriate. Also provides that documents must be kept in the office of the Registrar.
- Clause 456 Provides for the disposal of documentary records held by the Registrar after certain time limits, subject to the *State Records Act 2000*.
- Clause 457 Provides for inspection of the register(s) and documents held by the Registrar, and the obtaining of copies of those documents, by the public for a prescribed fee.
- Clause 458 Provides that the Registrar may advise an applicant seeking approval of an action or thing, that the approval is considered to have been granted at the end of a specified period unless the applicant is otherwise notified.
- Clause 459 Provides that a document is not considered to be lodged unless all of the required information is provided and the fee (if any prescribed by regulations) paid.
- Clause 460 Provides for the lodging of documents by facsimile or electronic transmission. Also provides that the Registrar may require a person to produce and lodge the originals.
- Clause 461 Empowers the Registrar to reject or refuse to register documents in certain circumstances, and to request that the documents be appropriately amended, completed or replaced.

Division 2 – Protection from liability

Clause 462 Provides protection from liability for the Minister, the Registrar or a deputy or assistant Registrar and the Crown.

Division 3 – Evidence

Clause 463 Provides that certificates of registration issued under the Act are conclusive evidence of incorporation and that all registration requirements have been complied with.

Clause 464 Provides that the Registrar may issue certificates certifying that certain matters have or have not been done, or that certain requirements of the Act have or have not been complied with.

Clause 465 Provides for the admissibility into evidence of records kept by a co-operative. It also prescribes that a document purporting to be a record kept by a co-operative is, unless the contrary is proved, taken to be a record kept by the co-operative under a requirement of this Act.

Clause 466 Provides that minutes purporting to be minutes of the business transacted at a meeting of a co-operative or the board are evidence that the business recorded was transacted at the meeting and that the meeting was duly convened and held.

Clause 467 Provides that official certificates and other documents signed by, or bearing the seal of the Registrar, including a certified copy of the rules of a co-operative, are to be received in evidence without further proof.

Clause 468 Provides that judicial notice is to be taken of the signature and seal of the person who holds, or has held, the office of Registrar.

Clause 469 Provides that a printed copy of the rules of a co-operative, verified by statutory declaration by the secretary of the co-operative to be a true copy of its registered rules, is evidence of the rules.

Clause 470 Provides that the registers of a co-operative are evidence of the particulars inserted therein.

Division 4 – Enforceable undertakings

- Clause 471 Provides that where it appears that a person has contravened this Act, the Registrar may request that the person provide a written undertaking to discontinue the conduct, comply with the Act in the future or take action to rectify the consequences of the contravention.
- Further provides that the person may withdraw or vary the undertaking at any time, with the consent of the Registrar.
- Clause 472 Requires the Registrar to keep a register of undertakings in accordance with this Act.
- Clause 473 Prohibits the Registrar from making an application under this section if the Registrar has started legal proceedings against the person for conduct that is the subject of the undertaking.
- The clause also empowers the Supreme Court to make orders where a person fails to comply with a request to give an undertaking.

Part 17 – Offences and proceedings

- Clause 474 Provides that a director or other officer who is involved in a contravention of a provision of the Act by a co-operative is taken to have to have contravened the same provision.
- Clause 475 Provides that a co-operative must, within 28 days of a conviction of an offence against the Act, give to each member of the co-operative notice of the conviction.
- Clause 476 Imposes obligations of confidentiality, with specified exceptions, on person involved in the administration of this or the former Act.
- Clause 477 Provides that knowingly making a false or misleading statement in a document required for this Act or to be lodged with the Registrar, or causing anything to be omitted from such a document that makes it false or misleading, is an offence. Penalty applies.
- Clause 478 Creates a further offence for a continuing failure to do a required act after conviction and sets out the formula for determining the penalty for a further offence.
- Clause 479 Provides that a contravention by a co-operative of the Act, or its rules in making, guaranteeing or raising any loan or receiving any deposit does not affect the civil rights and liabilities of any person, but the money becomes payable immediately.
- Clause 480 Provides for the issuing of injunctions by the Supreme Court on the application of the Registrar or an affected person on certain specified grounds. It provides that the Court may grant an interim injunction and may discharge or vary an injunction under this section.
- Clause 481 Provides that proceedings for an offence under the Act may be instituted at any time within 3 years after the alleged commission of the offence. Also provides that only the co-operative may institute a proceeding for the recovery of a fine or penalty imposed by its own rules.

Part 18 – General

- Clause 482 Requires the Registrar to register a dissolution of a co-operative and cancel its registration as soon as practicable after the co-operative is dissolved or has otherwise ceased to exist.
- Clause 483 Provides for the service of documents on co-operatives and foreign co-operatives.
- Clause 484 Provides for the service of documents on a member of a co-operative, and permits a non-distributing co-operative to give notice under certain conditions by publishing in a newspaper circulating in the area served by the co-operative.
- Clause 485 Provides for the exchange of information between State Registrars where a reciprocal arrangement is in force and sets out the requirements of a reciprocal arrangement.
- Clause 486 Requires translations of any non-English documents that are required to be furnished or lodged.
- Clause 487 Provides that specified exemptions under the Act may be given on conditions.
- Clause 488 Provides that the Registrar may approve forms for use under the Act.
- Clause 489 Provides for the making of regulations under the Act.
- Clause 490 Repeals the *Companies (Co-operatives) Act 1943*.
- Clause 491 Repeals the *Co-operative and Provident Societies Act (1903)*.

Part 19 – Transitional and savings provisions

Division 1 - Preliminary

- Clause 492 Provides definitions for ‘co-operative company’, ‘former act’, ‘registered society’ and ‘transition period’.
- Clause 493 Provides that the provisions of this schedule do not prejudice or affect the application of the *Interpretation Act 1984* to and in relation to the repeals affected by clauses 490 and 491.
- Clause 494 Provides that regulations may prescribe all matters required to deal with any insufficiency in transitional provisions contained in this Act.

Division 2 – Prohibition on registration under former Act

- Clause 495 Provides that during the transition period a corporation cannot register under the *Companies (Co-operative) Act 1943* Part VI or XI or register as a co-operative and provident society under the *Co-operative and Provident Societies Act 1903*.

Division 3 – Transfer to incorporation under this Act

- Clause 496 Provides that unless one of the events described in sub-clause 2 apply, a co-operative must apply for registration under this act not later than 3 months before the end of the transition period (being the day before the *Companies Co-operative Act 1943* and the *Co-operative and Provident Societies Act 1903*) are repealed.
- Clause 497 Provides that if a co-operative company fails to comply with clause 5, the Registrar may decide to register the entity using a name determined by the Registrar and using rules, the content of which are determined by the Registrar.

Division 4 – General transitional provisions

- Clause 498 Provides that special resolutions, court orders and applications of the Court made before the transfer day are to be considered and given effect to under the former Act, whether or not it has been repealed.
- Clause 499 Provides that any inspection or inquiry into the affairs of a co-operative that was commenced immediately prior to the transfer day is to be completed under the former Act, whether or not it has been repealed.

Clause 500 Provides that any offer of shares in a co-operative company made prior to the transfer day is to be completed under the former Act, whether or not it has been repealed.

Clause 501 Enables the Registrar to specify a period longer than 3 years for co-operatives to comply with the active membership provisions in clause 127.

Division 5 – Pending incorporation, reconstruction or winding up

Clause 502 Provides that any special resolution supporting an application for registration or incorporation under another written law is to be given effect under the former act. Further provides that the company or society will continue to be incorporated and regulated by the former Act until the application has been granted or refused.

Clause 503 Provides that any process commenced immediately prior to the transfer day to implement a scheme for reconstruction or amalgamation or to dissolve a society must be completed under the former Act.

Clause 504 Provides that any process for winding-up commenced immediately prior to the transfer is to be completed under the former Act.

Part 20 – Consequential amendments

There are a number of Acts that regulate the affairs of co-operatives outside of the *Companies (Co-operative) Act 1943* and the *Co-operative and Provident Societies Act 1903*. This schedule provides for consequential amendments by updating various terms and references in those Acts.

Division 1 – Consequential amendments commencing on registration of Co-operative Bulk Handling Act

- Clause 505 Amends the *Grain Marketing Act 2002*
- Amends the *Bulk Handling Act* by deleting references to the former legislation and redefining co-operative as a co-operative registered under this Act.
- Clause 506 Amends the *Local Government Act 1995*

Division 2 – Consequential amendments commencing on commencement of this Act

- Clause 507 Amends the *Civil Judgments Enforcement Act 2004*
- Clause 508 Amends the *Criminal Property Confiscation Act 2000*
- Clause 509 Amends the *Equal Opportunity Act 1984*.
- Clause 510 Amends the *Taxi Act 1994*
- Clause 511 Amends the *Western Australian Treasury Corporation Act 1986*

Division 3 – Consequential amendments commencing on repeal of former Acts

- Clause 512 Amends the *Civil Judgments Enforcement Act 2004*
- Clause 513 Amends the *Criminal Property Confiscation Act 2000*
- Clause 514 Amends the *Equal Opportunity Act 1984*
- Clause 515 Amends the *Housing Loan Guarantee Act 1957*
- Clause 516 Amends the *Loans (Co-operative Companies) Act 2004*
- Clause 517 Amends the *Taxi Act 1994*
- Clause 518 Amends the *Western Australian Treasury Corporation Act 1986*

Schedule 1 – Matters for which rules must make provision

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| Clause 1 | Specifies those matters that must be contained in a co-operative's rules. |
| Clause 2 | Sets out additional matters that are to be provided for in the rules of any co-operatives with share capital. |
| Clause 3 | Sets out additional matters that are to be provided for in the rules of non-distributing co-operatives. |

Schedule 2 – Relevant interests, associates, related bodies

Division 1 – Relevant interests

This part has application to the restriction on voting rights under part 8 (voting) and part 11 (restrictions on the acquisition of interests in a co-operative).

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| Clause 1 | Applies certain terminology for the purposes of this division. |
| Clause 2 | Provides that a person who has power to vote in respect of a right to vote, or has power to dispose of a share, has a relevant interest in the right to vote or in the share. |
| Clause 3 | Provides that if a corporation has power to vote in respect of a right to vote, or has power to dispose of a share, then a person is to be considered under this part to have the same powers as the body has if the body or its directors act under directions, instructions or the wishes of the person or a person has a controlling interest in the body. |
| Clause 4 | Provides that if a corporation or associate of a corporation has power to vote in respect of a right to vote, or has power to dispose of a share, then a person is considered to have the same power as the body or associate if the person, or associate(s) of the person, has the power to vote in respect of a right to vote attached to not less than 20% of the voting shares in the body. |
| Clause 5 | Provides that if a person has entered into an agreement or has an enforceable right against another person or has granted to another person an option with respect to an issued share or right to vote which the other person has a relevant interest in, then on performance of that agreement or enforcement of the right or exercise of the option then that person is considered to have a relevant interest in the share or right to vote. |
| Clause 6 | Provides that if a corporation is taken to have a relevant interest in a share or right to vote pursuant to clause 5, a person is taken to have a relevant interest if the body or its directors act under the directions, instructions, or wishes of the person, or the person has either a controlling interest in, or has the power to vote in relation to not less than 20% of the voting shares of, the body. |
| Clause 7 | Provides that it is immaterial under this part whether or not the power to vote is express, implied, formal, informal, exercisable singly or jointly, cannot be related to a particular share, or subject to restraint or restriction. |

- Clause 8 Provides that a corporation can be considered to have a relevant interest in a share or right to vote arising from membership of the body itself.
- Clause 9 Excludes a relevant interest in a share or right to vote where a person's ordinary business includes money lending, and the authority to exercise powers as holder of the relevant interest because of the security given in the ordinary course of business in connection with money lending.
- Clause 10 Excludes a relevant interest where the share or right to vote is subject to a trust and the person has the relevant interest as a trustee of the trust.
- Clause 11 Excludes a relevant interest in a share or right to vote where a person's ordinary business includes dealing in securities, and the authority to exercise powers derives only because of instructions given by another person to dispose of the share in the normal course of business.
- Clause 12 Excludes a relevant interest in a share or right to vote of a person who has been appointed, except where value or consideration is given, to vote as a proxy or representative of a corporation.
- Clause 13 Excludes a relevant interest of a person in a share or right to vote if the person has it because he/she holds an office prescribed by regulation.
- Clause 14 Provides that regulations may exclude a relevant interest in a share from the application of this Act.
- Clause 15 Provides for the effect of this schedule.
- Clause 16 Provides that a relevant interest in a share or right to vote in respect of a corporation other than a co-operative is to be construed under the *Corporations Act*.

Division 2 – Associates

This part has application to part 11 (restrictions on the acquisition of interests in co-operatives) and part 1, Schedule 2 (above).

- Clause 17 Limits the application of this part.
- Clause 18 Provides that associates of a corporation include directors or secretaries, a related corporation, or a director or secretary of a related corporation.

- Clause 19 Provides that in specified circumstances an associate of a person includes those with whom the person has an agreement relating to:
- the voting power attached to shares in a body;
 - control or influence over the composition of the board or the conduct of the affairs of a body;
 - the acquisition of a body's shares in which the other has a relevant interest; or
 - the disposal of a body's shares in accordance with the other's directions.
- Clause 20 Expands on the application of a reference to an associate of a person.
- Clause 21 Provides that a person is not an associate of another person merely because he/she:
- gives the other person advice in a professional capacity or business relationship;
 - as a client, instructs a securities dealer to acquire shares;
 - makes an offer in relation to shares held by the other; or
 - appoints the other person as a proxy or corporate representative.

Division 3 – Related Corporations

- Clause 22 Provides an explanation of the meaning of “related corporations” for the purposes of the Act.

Schedule 3 – Registration etc. of charges

This schedule gives effect to section 267 of the Act and provides for: the notification of charges; the registration of and priority of charges; the effect of certain charges against a liquidator, administrator or other person; and the assignment and variation or satisfaction of charges.

Part 1 – Preliminary

- Clause 1 Contains certain definitions for the purposes of this Schedule 3.
- Clause 2 Provides that a charge created pursuant to clause 17 of this schedule, is, until it is registered to be treated 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.
- Clause 3 Provides that documents are taken to be lodged when they are received at the office of the Registrar by an officer authorised to receive them.

Division 2 – Registration

Subdivision 1 – Charges

- Clause 4 Sets out the types of charges to which the schedule applies, including charges over: property; uncalled share capital; personal chattels; goodwill; book debts; marketable securities; crops or wool or stock; and negotiable instruments.
- Clause 5 Specifies the charges that are excluded from the operation of this schedule.
- Clause 6 Provides that the reference in clause 4(2)(d) of the schedule to a charge on a personal chattel is a reference to a charge on any article capable of complete transfer by delivery, which could include a fixture or a growing crop.
- Clause 7 Describes what the reference in clause 4(2)(f) of the schedule to 'book debt' includes. Provides that the reference to a book debt includes a charge on a debt payable or to become payable to the co-operative at some future time in connection with a profession, trade or business carried on by the co-operative, whether entered in a book or not and it also 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.

- Clause 8 Provides that the reference to a lien or charge on a crop, a lien or charge on wool or a stock mortgage, includes a reference to a security that is registrable under a law prescribed by the regulations of a State or Territory.
- Clause 9 Describes when a co-operative is taken to have deposited a document of title with another person.
- Clause 10 Excludes from the operation of this schedule, a charge on land and a charge on fixtures given by a charge on the land to which they are affixed.
- Clause 11 Applies the provisions of this division to chargeable property even though the instrument of charge includes other property of the co-operative or property that is specifically excluded from these provisions.
- Clause 12 Provides that a charge is not invalidated merely because of a failure to lodge or give a notice or other document required by this part.

Subdivision 2 – Notice of charge

- Clause 13 Provides that a co-operative must notify the Registrar within 45 days after the creation of a charge and specifies the particulars to be included in the notice. Also requires the co-operative to provide verified true copies of resolutions or instruments creating the charge in the circumstances listed.
- Clause 14 Provides that where a co-operative issues a series of debentures constituting a charge, the charge is created when the first debenture is issued. Further provides that the Registrar must be provided with a copy of any further resolution authorising the issue of debentures in the series.
- Clause 15 Applies the priority rules in clauses 46 to 49 of this schedule to an issue of several debentures where the instrument creating the charge entitles holders to equal priority.
- Clause 16 Provides that where a payment or discount has been made or allowed by a co-operative in relation to a subscription for debentures, the amount or rate is to be included in the notice required by clause 13.
- Clause 17 Provides for the form and content of the required notice to the Registrar where a co-operative acquires property subject to a charge.

Subdivision 3 – Registration

- Clause 18 Requires the Registrar to keep a register of co-operative charges.
- Clause 19 Requires a notice to be lodged under division 2 to be registered, and sets out the particulars that are to be recorded in the register.
- Clause 20 Provides that where stamp duty has not been paid, the charge can be provisionally registered, and remain so for up to 28 days or such longer period as may be prescribed.
- Clause 21 Provides that where required particulars are not supplied to the Registrar, the charge can be provisionally registered subject to compliance within a time period specified in a notice issued by the Registrar.
- Further provides, that if the Registrar’s direction is not complied with on or before the specified time period, the Registrar must delete the particulars from the Register.
- Clause 22 Provides for the registration of a charge on the date and time noted when the word “provisional” is deleted from the register.
- Clause 23 Describes the priority rules that apply where a co-operative files notice of 2 or more charges not already registered and relating to the same property acquired by the co-operative.
- Clause 24 Provides that the register must contain the particulars of any assignment or variation of the charge.
- Clause 25 Provides that the Registrar may, by Gazette notice, declare a specified standard time to be the standard time for this division.

Subdivision 4 – Certain charges void against liquidator or administrator

- Clause 26 Contains definitions of “critical day” and “relevant day” for the purposes of this division.
- Clause 27 Provides that where a co-operative is to be wound up or an administrator is appointed, certain registrable charges on property of the co-operative are void as security against the liquidator or administrator as the case may be.

- Clause 28 Sets out the circumstances in which a variation in the terms of a registrable charge is void as security to the extent of the variation.
- Clause 29 Provides that the Supreme Court may extend the periods required to give notice of a charge or a variation in the terms of a charge.
- Clause 30 Sets out the circumstances in which certain charges created after an unregistered registrable charge are void as security against a liquidator or administrator.
- Clause 31 Provides that clause 27(1), (2) and 28 do not affect a person's title to property purchased for value in good faith without notice that a co-operative is to be wound up or an administrator is appointed.

Subdivision 5 – Certain charges in favour of persons void

- Clause 32 Contains certain definitions for the purposes of this division.
- Clause 33 Provides that a charge in favour of certain persons who seek to enforce the charge within 6 months of its creation and without leave of the Supreme Court is void.
- Clause 34 Provides that the Supreme Court may give leave for a charge to be enforced, so long as the co-operative was solvent immediately after the charge was created.
- Clause 35 Excludes certain matters from the operation of clause 33.

Subdivision 6 – Assignment, variation or satisfaction of charges

- Clause 36 Provides that notice is to be lodged with the Registrar within 45 days of a charge being assigned to another chargee or of certain variations being made to the terms of the charge.
- Clause 37 Provides that a chargee must give an acknowledgement memorandum to a co-operative when a charge is totally or partially satisfied, or a property is wholly or partly released from a charge, and the co-operative may file the memorandum with the Registrar.

Subdivision 7 – General

- Clause 38 Provides for the filing of notices required by this part by a co-operative or an interested person.
- Clause 39 Creates an offence where a co-operative or an officer of the co-operative is knowingly concerned in a breach of certain provisions of this part requiring notices to be lodged. Penalty applies.
- Clause 40 Requires a co-operative to keep at its registered office a copy of specified documents relating to a charge on property of the co-operative.
- Clause 41 Requires a co-operative to keep and maintain a register of charges and specifies the particulars to be recorded. Further provides that the register must be available for inspection.
- Clause 42 Provides for the Registrar to issue a certificate recording certain details of a charge to a person upon request. Further provides that a certificate issued under this clause is evidence that the requirements of this division as to registration have been complied with.
- Clause 43 Provides that the Supreme Court may order any accidental omission from, or misstatement in, the register or a memorandum mentioned in clause 37 to be rectified.
- Clause 44 Provides that the Registrar may, by Gazette notice, exempt a person from compliance with certain requirements of this part.

Division 3 – Order of priority

Subdivision 1 – General

- Clause 45 Contains certain definitions for the purposes of this division.
- Clause 46 Applies the provisions of subdivision 2 of this division to the order of priorities of registrable charges subject to any consents or agreements that affect the relative priorities.

Subdivision 2 – Priority rules

- Clause 47 Sets out the general priority rules to be applied to registered charges.

Clause 48 Sets out the general priority rule to be applied to unregistered charges.

Clause 49 Sets out the special priority rules to be applied to registered charges in relation to present and prospective liabilities.

Schedule 4 - Receivers and other controllers of property of co-operatives

This schedule gives effect to section 268 of the Act.

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| Clause 1 | Contains certain definitions for the purposes of this schedule. |
| Clause 2 | Provides that the schedule applies to a receiver of property of a co-operative appointed after the commencement of this schedule, even if it arose from a matter occurring before commencement. |
| Clause 3 | Sets out those persons who are not qualified to be appointed, or act, as a receiver of property, but exempts a person validly appointed before commencement. |
| Clause 4 | Provides that the Supreme Court may declare whether a controller of a co-operative's property is acting validly. |
| Clause 5 | Provides that a receiver or controller is liable for debts incurred by them during the course of the receivership, possession or control. Also provides that where an appointment was not properly made, a Court can transfer liability from the controller to the person who purported to make the appointment. |
| Clause 6 | Sets out the liability of a controller in circumstances where there was a pre-existing agreement between the co-operative and the owner or lessor of property used by the co-operative. |
| Clause 7 | Sets out those powers of a receiver of property of a co-operative that are additional to the powers conferred by the order or instrument under which the receiver was appointed. |
| Clause 8 | Provides that a controller has a duty of care in exercising a power of sale of the property of a co-operative. |
| Clause 9 | Provides that the Supreme Court may authorise a managing controller to sell, or otherwise dispose of, specified property of a co-operative even though it may be subject to a prior charge. |
| Clause 10 | Provides for the power of a receiver to carry on the business of the co-operative during a winding up. |

- Clause 11 Requires a controller to open and maintain an account with a financial institution and to deposit all monies of the co-operative into that account within 3 days of its receipt. Also requires the controller to keep records that explain all transactions and allows these records to be inspected by a director, creditor or member of the co-operative.
- Clause 12 Requires a managing controller to report within 2 months about the co-operative's affairs, to lodge that report with the Registrar and to publicise the preparation and availability of the report in a newspaper circulating in the relevant State or Territory.
- Clause 13 Requires a receiver to report to the Registrar where it appears that a person connected with the management of the co-operative may be guilty of an offence or negligence or breach of duty. Also provides that the Supreme Court may direct the receiver to lodge the report with the Registrar.
- Clause 14 Provides that the Supreme Court or the Registrar may inquire into the performance of a controller, and the Court may order the controller to pay compensation where the co-operative sustains loss as a result of misfeasance, neglect or omission.
- Clause 15 Provides that a controller may apply to the Supreme Court for directions.
- Clause 16 Provides that the Supreme Court may fix the remuneration to be paid to a receiver, and may amend or vary an order made under this clause upon application by a liquidator, an administrator, the Registrar or the receiver.
- Clause 17 Provides that a controller has qualified privilege in certain circumstances.
- Clause 18 Provides that the Registrar must be notified of an appointment of a receiver or controller, and the appointment published in the Gazette. Further provides that the appointee must advise the Registrar of an office address, of any change to that address, and upon ceasing to act as a controller.
- Clause 19 Requires a co-operative to insert a statement that a receiver or controller has been appointed after the first appearance of the co-operative's name on its public documents or negotiable instruments.

- Clause 20 Provides that officers of a co-operative are to report about the co-operative's affairs to a controller within a specified period, and requires the controller to lodge a copy of the report with the Registrar and to send a copy to the trustees for the holders of debentures, if any.
- Clause 21 Provides for a controller to require reports from persons associated with the co-operative including past or present officers and employees.
- Clause 22 Allows a controller to inspect any records of the co-operative relating to the property.
- Clause 23 Requires a controller to lodge an account of receipts and payments with the Registrar within specified periods, and provides that the Registrar may cause such accounts to be audited by a registered company auditor.
- Clause 24 In circumstances where a receiver has been appointed on behalf of debenture holders, provides for the payment of certain debts out of property subject to a floating charge, and specifies the order of priority for payment.
- Clause 25 Provides for enforcement by the Supreme Court of a controller's duty to make returns or lodge accounts.
- Clause 26 Allows the Supreme Court to remove a controller for misconduct.
- Clause 27 Allows the Supreme Court to remove a redundant controller, or limit a controller's activity to only specified property of the co-operative.
- Clause 28 Clarifies the effect of sections 26 and 27 of the schedule.

Schedule 5 – Applied co-operatives provisions

This schedule will give effect to section 379 of the Act.

Clause 1 States the provisions applicable to participating co-operatives.

Clause 2 States the provisions applicable to non-participating co-operatives.

Schedule 6 – Modifications to Corporations Act

This schedule gives effect to section 387 of the Act.

Clause 1 Applies Parts 5.4B and 5.6 of the *Corporations Act* with specified modifications.

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